

PROPOSED

HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2382

(Reference to printed bill)

1 Strike everything after the enacting clause and insert:

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 F of this
10 section. The court may hear testimony from witnesses who testified at the
11 administrative hearing and witnesses who were not called to testify at the
12 administrative hearing.

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

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

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

21 C. For review of final administrative decisions of agencies that are
22 exempt from sections 41-1092.03, 41-1092.04, 41-1092.05, 41-1092.06,
23 41-1092.07, 41-1092.08, 41-1092.09, 41-1092.10, and 41-1092.11, pursuant to

1 section 41-1092.02, the trial shall be de novo if trial de novo is demanded
2 in the notice of appeal or motion of an appellee other than the agency and
3 if a hearing was not held by the agency or the proceedings before the
4 agency were not stenographically reported or mechanically recorded so that
5 a transcript might be made. On demand of any party, if a trial de novo is
6 available under this section, it may be with a jury, except that a trial of
7 an administrative decision under section 25-522 shall be to the court.

8 D. For review of final administrative decisions of agencies that
9 regulate a profession or occupation pursuant to title 32, title 36, chapter
10 4, article 6, title 36, chapter 6, article 7 or title 36, chapter 17, the
11 trial shall be de novo if trial de novo is demanded in the notice of appeal
12 or motion of an appellee other than the agency.

13 E. The record in the superior court shall consist of the record of
14 the administrative proceeding, and the record of any evidentiary hearing,
15 or the record of the trial de novo.

16 F. After reviewing the administrative record and supplementing
17 evidence presented at the evidentiary hearing, the court may affirm,
18 reverse, modify or vacate and remand the agency action. The court shall
19 affirm the agency action unless the court concludes that the agency's
20 action is contrary to law, is not supported by substantial evidence, is
21 arbitrary and capricious or is an abuse of discretion. In a proceeding
22 brought by or against the regulated party, the court shall decide all
23 questions of law, including the interpretation of a constitutional or
24 statutory provision or a rule adopted by an agency, without deference to
25 any previous determination that may have been made on the question by the
26 agency. In a proceeding brought by or against the regulated party, the
27 court shall decide all questions of fact without deference to any previous
28 determination that may have been made on the question by the agency.
29 Notwithstanding any other law, this subsection applies in any action for
30 judicial review of any agency action that is authorized by law.

31 G. Notwithstanding subsection F of this section, if the action
32 arises out of title 20, chapter 15, article 2, the court shall affirm the

1 agency action unless after reviewing the administrative record and
2 supplementing evidence presented at the evidentiary hearing the court
3 concludes that the action is not supported by substantial evidence, is
4 contrary to law, is arbitrary and capricious or is an abuse of discretion.

5 H. This section does not apply to any agency action pursuant to
6 title 40, chapter 2, article 5 or 6.2.

7 I. IF A FINAL ADMINISTRATIVE DECISION OF AN AGENCY THAT REGULATES A
8 PROFESSION OR OCCUPATION PURSUANT TO TITLE 32 IS APPEALED BY THE REGULATED
9 PARTY AND THE COURT AFFIRMS THE FINAL ADMINISTRATIVE DECISION, THE
10 REGULATED PARTY SHALL PAY ALL COSTS AND LEGAL FEES OF THE PREVAILING
11 PARTY."

12 Amend title to conform

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