

FIRST REGULAR SESSION

SENATE BILL NO. 265

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATORS SCHNEIDER AND CASKEY.

Read 1st time January 10, 2001, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

0980S.011

AN ACT

To repeal sections 621.055, 621.155, 621.165, 621.175, 621.185, 621.189 and 621.198, RSMo 2000, relating to administrative procedure, and to enact in lieu thereof three new sections relating to the same subject.

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

Section A. Sections 621.055, 621.155, 621.165, 621.175, 621.185, 621.189 and 621.198, RSMo 2000, are repealed and three new sections enacted in lieu thereof, to be known as sections 621.055, 621.189 and 621.198, to read as follows:

621.055. 1. Any person authorized **[under]** **pursuant to** section 208.153, RSMo, to provide services for which benefit payments are authorized **[under]** **pursuant to** section 208.152, RSMo, may seek review by the administrative hearing commission of any of the actions of the department of social services specified in subsection 2, 3, or 4 of section 208.156, RSMo. The review may be instituted by the filing of a petition with the administrative hearing commission. The procedures applicable to the processing of such review shall be those established by chapter 536, RSMo. The administrative hearing commission shall maintain a transcript of all testimony and proceedings in any review governed by this section, and copies thereof shall be made available to any interested person upon the payment of a fee which shall not exceed the reasonable cost of preparation and supply. Decisions of the administrative hearing commission under this section shall be binding subject to appeal by either party. If the provider of services prevails in any dispute **[under]** **pursuant to** this section, interest shall be allowed at the rate of eight percent per annum upon any amount found to have been wrongfully denied or withheld. In any proceeding before the administrative hearing commission **[under]** **pursuant to** this section the burden of proof shall be

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

on the provider of services seeking review.

2. As compensation for the additional duties imposed upon the administrative hearing commission [under] **pursuant to** the provisions of this section and section 208.156, RSMo, each commissioner shall annually receive the sum of five thousand dollars plus any salary adjustment provided pursuant to section 105.005, RSMo. Such additional compensation shall be paid in the same manner and at the same time as other compensation for the commissioners.

3. Any decision of the department of social services that is subject to appeal to the administrative hearing commission pursuant to subsection 1 of this section shall contain a notice of the right to appeal in substantially the following language: If you were adversely affected by this decision, you may appeal this decision to the administrative hearing commission. To appeal, you must file a petition with the administrative hearing commission within thirty days from the date of mailing or delivery of this decision, whichever is earlier; except that claims of less than five hundred dollars may be accumulated until they total that sum and at which time you have ninety days to file the petition. If any such petition is sent by registered mail or certified mail, it will be deemed filed on the date it is mailed; if it is sent by any method other than registered mail or certified mail, it will be deemed filed on the date it is received by the commission.

[621.155. The administrative hearing commission shall conduct hearings, make findings of fact and conclusions of law, and issue decisions in those cases involving complaints filed pursuant to the provisions of section 536.050, RSMo.]

[621.165. Upon receipt of a written complaint filed pursuant to section 536.050, RSMo, the administrative hearing commission shall as soon as practicable thereafter give notice of such complaint and the date upon which the hearing will be held by delivery of a copy, or by certified mail, of such complaint and notice both to the office of the agency whose authority is challenged and to the complainant.]

[621.175. Hearings in cases filed pursuant to section 536.050, RSMo, shall not be deemed to be contested cases and the procedures established by chapter 536, RSMo, or any other procedural requirements applicable to contested cases shall not apply to such hearings unless required by the provisions of the law relating to the administrative hearing commission, other independent statute or by constitutional provision. Unless the administrative hearing commission rules that special circumstances so require, and sets forth in writing such special circumstances and the reasons why they so require, evidentiary submissions shall be limited to written exhibits, physical evidence, testimony of persons present at the hearing, and affidavits. Cross-examination of persons testifying may be permitted, but shall be limited to situations where there are genuinely disputed questions of material facts. The administrative hearing commission shall maintain a transcript of all

testimony and proceedings in hearings, and copies thereof shall be made available to any interested person upon the payment of a fee which shall in no case exceed the reasonable cost of preparation and supply. Rules of discovery shall not apply to hearings held under this section, but the administrative hearing commission, at the request of a party, or on its own motion, may issue subpoenas duces tecum, but not subpoenas ad testificandum, subject to and consistent with the procedures set forth in section 536.077, RSMo. In cases heard under this section the administrative hearing commission may take judicial notice of judicially cognizable facts as well as generally recognized technical or internal administrative facts of which the administrative hearing commission has specialized knowledge. Parties shall be notified either before the hearing, or during the hearing, or by reference in preliminary reports, or otherwise, of the material so to be noticed and shall be afforded an opportunity to contest or to object to the noticing of such material.]

[621.185. Decisions after hearings in cases filed pursuant to 536.050, RSMo, shall be in writing and shall include or be accompanied by findings of fact and conclusions of law together with a statement of findings upon which the administrative hearing commission bases its decision. The administrative hearing commission shall as soon as practicable upon its decision either deliver or send by certified mail both notice of its decision as well as a copy of the full decision itself to each party to the proceeding or to his attorney of record.]

621.189. Final decisions of the administrative hearing commission in cases arising [under the provisions of sections 621.155 and 536.050, RSMo, and under] **pursuant to** the provisions of section 621.050 shall be subject to review pursuant to a petition for review to be filed in the court of appeals in the district in which the hearing, or any part thereof, is held or, where constitutionally required or ordered by transfer, to the supreme court, and by delivery of copies of the petition to each party of record, within thirty days after the mailing or delivery of the final decision and notice thereof in such a case. Review under this section shall be exclusive, and decisions of the administrative hearing commission reviewable under this section shall not be reviewable in any other proceeding, and no other official or court shall have power to review any such decision by an action in the nature of mandamus or otherwise except pursuant to the provisions of this section. The party seeking review shall be responsible for the filing of the transcript and record of all proceedings before the administrative hearing commission in the case with the appropriate court of appeals.

621.198. The administrative hearing commission shall publish and file with the secretary of state independent sets of rules of procedure for the conduct of proceedings before it. One set of rules shall apply exclusively to proceedings in licensing cases [under] **pursuant to** section 621.045. Another set of rules shall apply [exclusively to challenges to agency authority brought under section 621.155. A third set of rules shall apply] to sales and use and income tax disputes [under] **pursuant to** section 621.050. Rules of procedure adopted [under] **pursuant to** the

authority of this section shall be designed to simplify the maintenance of actions and to enable review to be sought, where appropriate, without the need to be represented by independent counsel. **The administrative hearing commission may by rule set a reasonable filing fee for cases pursuant to section 407.1031, RSMo, and section 621.053. Such fee shall be not substantially greater than the administrative hearing commission's costs in administering cases pursuant to section 407.1031, RSMo, and section 621.053.** [Each set of rules shall be promulgated under the procedures set forth in sections 536.020 to 536.035, RSMo] **Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2001, shall be invalid and void.**

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