

# SENATE BILL NO. 221

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHROER.

0882S.01I

KRISTINA MARTIN, Secretary

## AN ACT

To repeal section 536.140, RSMo, and to enact in lieu thereof one new section relating to judicial review of agency determinations.

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Section A. Section 536.140, RSMo, is repealed and one new  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

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

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

7 (1) Is in violation of constitutional provisions;

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

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

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

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

15 (6) Is arbitrary, capricious or unreasonable;

16 (7) Involves an abuse of discretion.

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

17 The scope of judicial review in all contested cases, whether  
18 or not subject to judicial review pursuant to sections  
19 536.100 to 536.140, and in all cases in which judicial  
20 review of decisions of administrative officers or bodies,  
21 whether state or local, is now or may hereafter be provided  
22 by law, shall in all cases be at least as broad as the scope  
23 of judicial review provided for in this subsection[;  
24 provided, however, that nothing herein contained shall in  
25 any way change or affect the provisions of sections 311.690  
26 and 311.700].

27 3. [Whenever the action of the agency being reviewed  
28 does not involve the exercise by the agency of  
29 administrative discretion in the light of the facts, but  
30 involves only the application by the agency of the law to  
31 the facts, the court may upon application of any party  
32 conduct a de novo review of the agency decision] **In**  
33 **interpreting a state statute, rule, regulation, or other**  
34 **subregulatory document, a court or an officer hearing an**  
35 **administrative action shall not defer to a state agency's**  
36 **interpretation of such statute, rule, regulation, or other**  
37 **document, and shall interpret the meaning and effect de**  
38 **novo. In actions brought by or against a state agency,**  
39 **after applying all customary tools of interpretation, the**  
40 **court or hearing officer shall exercise any remaining doubt**  
41 **in favor of a reasonable interpretation that limits agency**  
42 **power and maximizes individual liberty.**

43 4. Wherever under [subsection 3 of] this section or  
44 otherwise the court is entitled to weigh the evidence and  
45 determine the facts for itself, the court may hear and  
46 consider additional evidence if the court finds that such  
47 evidence in the exercise of reasonable diligence could not  
48 have been produced or was improperly excluded at the hearing

49 before the agency. Wherever the court is not entitled to  
50 weigh the evidence and determine the facts for itself, if  
51 the court finds that there is competent and material  
52 evidence which, in the exercise of reasonable diligence,  
53 could not have been produced or was improperly excluded at  
54 the hearing before the agency, the court may remand the case  
55 to the agency with directions to reconsider the same in the  
56 light of such evidence. The court may in any case hear and  
57 consider evidence of alleged irregularities in procedure or  
58 of unfairness by the agency, not shown in the record.

59 5. The court shall render judgment affirming,  
60 reversing, or modifying the agency's order, and may order  
61 the reconsideration of the case in the light of the court's  
62 opinion and judgment, and may order the agency to take such  
63 further action as it may be proper to require; but the court  
64 shall not substitute its discretion for discretion legally  
65 vested in the agency, unless the court determines that the  
66 agency decision was arbitrary or capricious.

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

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