

SECOND REGULAR SESSION

# HOUSE BILL NO. 1451

## 94TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE ROORDA.

Pre-filed December 18, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

3644L.01I

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### AN ACT

To repeal section 536.100, RSMo, and to enact in lieu thereof eight new sections relating to the right to petition for a trial de novo.

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

Section A. Section 536.100, RSMo, is repealed and eight new sections enacted in lieu thereof, to be known as sections 536.100, 536.142, 536.143, 536.144, 536.145, 536.146, 536.147, and 536.148, to read as follows:

536.100. Any person who has exhausted all administrative remedies provided by law and who is aggrieved by a final decision in a contested case, whether such decision is affirmative or negative in form, shall be entitled to judicial review thereof, as provided in sections 536.100 to 536.140, **unless such person files a petition for a trial de novo under the provisions of sections 536.142 to 536.148** or unless some other provision for judicial review is provided by statute; provided, however, that nothing in this chapter contained shall prevent any person from attacking any void order of an agency at any time or in any manner that would be proper in the absence of this section. If the agency or any board, other than the administrative hearing commission, established to provide independent review of the decisions of a department or division that is authorized to promulgate rules and regulations under this chapter fails to issue a final decision in a contested case within the earlier of:

- (1) Sixty days after the conclusion of a hearing on the contested case; or
- (2) One hundred eighty days after the receipt by the agency of a written request for the issuance of a final decision,

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.

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16 then the person shall be considered to have exhausted all administrative remedies and shall be  
17 considered to have received a final decision in favor of the agency and shall be entitled to  
18 immediate judicial review as provided in sections 536.100 to 536.140 or other provision for  
19 judicial review provided by statute. In cases, whether contested or not, where the law provides  
20 for an independent review of an agency's decision by a board other than the administrative  
21 hearing commission and further provides for a de novo review of the board's decision by the  
22 circuit court, a party aggrieved by the agency's decision may, within thirty days after it receives  
23 notice of that decision, waive independent review by the board and instead file a petition in the  
24 circuit court for the de novo review of the agency's decision. The party filing the petition under  
25 this section shall be considered to have exhausted all administrative remedies.

**536.142. 1. Any person who has exhausted all administrative remedies provided  
2 by law and who is aggrieved by a final decision in a contested case, whether such decision  
3 is affirmative or negative in form, may choose as an alternative to seeking judicial review  
4 of the decision under sections 536.100 to 536.140 to petition the circuit court for a trial de  
5 novo.**

6 **2. The right of trial de novo provided in subsection 1 of this section shall be**  
7 **perfected by filing an application for trial de novo with the circuit clerk in the county of**  
8 **proper venue within thirty days after the mailing or delivery of the notice of the agency's**  
9 **final decision. No summons shall issue in such case, but copies of the application shall be**  
10 **delivered to the agency and to each party of record in the proceedings before the agency**  
11 **or to his or her attorney of record, or shall be mailed to the agency and to such party or his**  
12 **or her said attorney by registered mail, and proof of such delivery or mailing shall be filed**  
13 **in the case.**

14 **3. Such application may be filed without first seeking a rehearing, but in cases**  
15 **where agencies have authority to entertain motions for rehearing and such a motion is duly**  
16 **filed, the thirty-day period aforesaid shall run from the date of the delivery or mailing of**  
17 **notice of the agency's decision on such motion.**

18 **4. The venue of such cases shall, at the option of the plaintiff, be in the circuit court**  
19 **of Cole County or in the county of the plaintiff or of one of the plaintiff's residence or if**  
20 **any plaintiff is a corporation, domestic or foreign, having a registered office or business**  
21 **office in this state, in the county of such registered office or business office, except that, in**  
22 **cases involving real property or improvements thereto, the venue shall be in the circuit**  
23 **court of the county where such real property is located. The court in its discretion may**  
24 **permit other interested persons to intervene.**

536.143. Within thirty days after the filing of the application for trial de novo or  
2 within such further time as the court may allow, the plaintiff's petition or complaint, that  
3 was before the agency for decision and from which decision the plaintiff is seeking a trial  
4 de novo, along with any responsive pleadings to the plaintiff's petition or complaint, shall  
5 be filed by the agency with the circuit court where the application for trial de novo was  
6 filed.

536.144. The court may on its own motion or upon motion of any party to the cause  
2 stay or require the agency to stay the enforcement of its order or temporarily to grant or  
3 extend or require the agency temporarily to grant or extend relief denied or withheld,  
4 pending final judgment. Such stay or other temporary relief by the court may be  
5 conditioned upon such terms as shall appear to the court to be proper. No such stay or  
6 temporary relief shall be granted by the court without notice, except in cases of threatened  
7 irreparable injury; and when in any case a stay or other temporary relief is granted  
8 without notice the court shall then make an order, of which due notice shall be given,  
9 setting the matter down for hearing as promptly as possible on the question whether such  
10 stay or other temporary relief shall be continued in effect. No such stay or other  
11 temporary relief shall be granted or continued unless the court is satisfied that the public  
12 interest will not be prejudiced thereby.

536.145. The court shall hear the case with a jury as trier of fact unless all plaintiffs  
2 waive a trial by jury, in writing, prior to the jury being sworn in.

536.146. The trial de novo shall be governed by the practice in trials before circuit  
2 judges, except that by agreement of all the parties the case may be tried by a jury of not  
3 less than six persons.

536.147. The findings of fact and conclusions of law reached by the administrative  
2 hearing body from whose decision the plaintiff made application for a trial de novo shall  
3 not be admissible in evidence in the trial de novo in part or in full and shall have no  
4 bearing upon the deliberations of the jury or the judgment of the court unless all parties  
5 to the cause agree, in writing, to the admissibility of such evidence.

536.148. Appeals may be taken from the judgment of the court as in other civil  
2 cases.

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