

1 ~~Indicates Matter Stricken~~

2 Indicates New Matter

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4 COMMITTEE AMENDMENT ADOPTED

5 May 13, 2008

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## **H. 4328**

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9 Introduced by Reps. Harrison, Delleney, Haskins, G.M. Smith,  
10 Cotty, McLeod and Hart

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12 S. Printed 5/13/08--S. [SEC 5/14/08 4:41 PM]

13 Read the first time February 6, 2008.

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9                   **A BILL**  
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11 TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA,  
12 1976, BY ADDING SECTION 1-23-505 SO AS TO DEFINE  
13 CERTAIN TERMS; BY ADDING SECTION 1-23-535 SO AS TO  
14 PROVIDE THAT THE ADMINISTRATIVE LAW COURT  
15 SHALL HAVE AN OFFICIAL SEAL; TO AMEND SECTION  
16 1-23-310, RELATING TO DEFINITIONS FOR PURPOSES OF  
17 ADMINISTRATIVE PROCEDURES, SO AS TO CHANGE A  
18 REFERENCE TO THE ADMINISTRATIVE LAW JUDGE  
19 DIVISION TO THE ADMINISTRATIVE LAW COURT; TO  
20 AMEND SECTION 1-23-320, RELATING TO CONTESTED  
21 CASE HEARINGS, SO AS TO DELETE A PROVISION  
22 REGARDING THE HANDLING OF ATTENDANCE AND  
23 TESTIMONY OF WITNESSES, PRODUCTION OF BOOKS,  
24 PAPERS, AND RECORDS, AND OTHER PROCEDURAL  
25 MATTERS AND TO PROVIDE FOR ENFORCEMENT OR  
26 RELIEF FROM AN AGENCY SUBPOENA BEFORE THE  
27 COURT; TO AMEND SECTION 1-23-380, AS AMENDED,  
28 RELATING TO JUDICIAL REVIEW AFTER EXHAUSTION OF  
29 ADMINISTRATIVE REMEDIES, SO AS TO DELETE  
30 REFERENCES TO THE ADMINISTRATIVE LAW COURT  
31 AND TO REVIEW BY AN ADMINISTRATIVE LAW JUDGE  
32 OF A FINAL DECISION IN A CONTESTED CASE TO  
33 CONFORM THE PROCEDURES TO OTHER PROCEDURAL  
34 PROVISIONS REGARDING THE COURT; TO AMEND  
35 SECTION 1-23-560, RELATING TO THE APPLICATION OF  
36 THE CODE OF JUDICIAL CONDUCT TO THE  
37 ADMINISTRATIVE LAW COURT, SO AS TO PROVIDE THAT  
38 THE CODE OF JUDICIAL CONDUCT SERVES AS THE SOLE  
39 GROUNDS FOR DISCIPLINE OF ADMINISTRATIVE LAW  
40 JUDGES AND TO ALLOW ADMINISTRATIVE LAW JUDGES  
41 AND SPOUSES TO ACCEPT INVITATIONS TO CERTAIN  
42 JUDICIAL-RELATED FUNCTIONS; TO AMEND SECTION  
43 1-23-600, AS AMENDED, RELATING TO HEARINGS AND  
44 PROCEEDINGS OF THE ADMINISTRATIVE LAW COURT, SO

1 AS TO CONFORM THE PROCEDURES TO OTHER  
2 PROCEDURAL PROVISIONS REGARDING THE COURT  
3 AND TO PROHIBIT THE HEARING OF CERTAIN INMATE  
4 APPEALS BY THE COURT; TO AMEND SECTION 1-23-610,  
5 AS AMENDED, RELATING TO REVIEW OF DECISIONS OF  
6 THE ADMINISTRATIVE LAW COURT, SO AS TO CONFORM  
7 THE PROCEDURES TO OTHER PROCEDURAL PROVISIONS  
8 REGARDING THE COURT AND TO DELETE THE  
9 PROVISION REQUIRING APPROPRIATED MONIES TO BE  
10 USED FOR THE SAME PURPOSE INDEFINITELY; AND TO  
11 AMEND SECTION 1-23-640, RELATING TO THE VENUE  
12 WHERE ADMINISTRATIVE LAW COURT CASES ARE  
13 HEARD, SO AS TO PROVIDE THAT CONTESTED CASES  
14 WILL BE HEARD AT THE PRINCIPAL OFFICES OR AT  
15 ANOTHER SUITABLE LOCATION UNDER CERTAIN  
16 CIRCUMSTANCES.

17 Amend Title To Conform

18

19 Be it enacted by the General Assembly of the State of South  
20 Carolina:

21

22 SECTION 1. Article 5, Chapter 23 of Title 1 of the 1976 Code is  
23 amended by adding:

24

25 "Section 1-23-505. As used in this article:

26 (1) 'Administrative law judge' means a judge of the South  
27 Carolina Administrative Law Court created pursuant to Section  
28 1-23-500.

29 (2) 'Agency' means a state agency, department, board, or  
30 commission whose action is the subject of a contested case hearing  
31 or an appellate proceeding heard by an administrative law judge, or  
32 a public hearing on a proposed regulation presided over by an  
33 administrative law judge.

34 (3) 'Contested case' means a proceeding including, but not  
35 restricted to, ratemaking, price fixing, and licensing, in which the  
36 legal rights, duties, or privileges of a party are required by law or  
37 by Article I, Section 22, Constitution of the State of South  
38 Carolina, 1895, to be determined by an agency or the  
39 Administrative Law Court after an opportunity for hearing.

40 (4) 'License' includes the whole or part of any agency permit,  
41 franchise, certificate, approval, registration, charter, or similar  
42 form of permission required by law, but does not include a license  
43 required solely for revenue purposes.

1       (5) 'Party' means each person or agency named or admitted as  
2 a party, or properly seeking and entitled as of right to be admitted  
3 as a party.

4       (6) 'Person' means any individual, partnership, corporation,  
5 association, governmental subdivision, or public or private  
6 organization of any character other than an agency."

7

8 SECTION 2. Article 5, Chapter 23 of Title 1 of the 1976 Code is  
9 amended by adding:

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11       "Section 1-23-535. The Administrative Law Court shall have a  
12 seal with a suitable inscription, an impression of which must be  
13 filed with the Secretary of State."

14

15 SECTION 3. Section 1-23-310(1) and (2) of the 1976 Code is  
16 amended to read:

17

18       "(1) 'Administrative law judge' means a judge of the South  
19 Carolina ~~administrative law judge division~~ Administrative Law  
20 Court created pursuant to Section 1-23-500;

21       (2) 'Agency' means each state board, commission, department,  
22 or officer, other than the legislature, ~~or the courts, but to include the~~  
23 ~~administrative law judge division or the Administrative Law Court,~~  
24 authorized by law to determine contested cases;"

25

26 SECTION 4. Section 1-23-320 of the 1976 Code is amended to  
27 read:

28

29       "Section 1-23-320. ~~(a)~~(A) In a contested case, all parties must  
30 be afforded an opportunity for hearing after notice of not less than  
31 thirty days, except in proceedings before the Employment Security  
32 Commission, which ~~shall be~~ are governed by the provisions of  
33 Section 41-35-680.

34       ~~(b)~~(B) The notice ~~shall~~ must include a:

35           (1) a statement of the time, place, and nature of the hearing;  
36           (2) a statement of the legal authority and jurisdiction under  
37 which the hearing is to be held;

38           (3) a reference to the particular sections of the statutes and  
39 rules involved;

40           (4) a short and plain statement of the matters asserted. If the  
41 agency or other party is unable to state the matters in detail at the  
42 time the notice is served, the initial notice may be limited to a  
43 statement of the issues involved. Thereafter, upon application, a  
44 more definite and detailed statement ~~shall~~ must be furnished.

1       (e)(C) Any party to ~~such these~~ proceedings may cause to be  
2 taken the depositions of witnesses within or without the State and  
3 either by commission or de bene esse. ~~Such depositions shall~~  
4 Depositions must be taken in accordance with and subject to the  
5 same provisions, conditions, and restrictions as apply to the taking  
6 of like depositions in civil actions at law in the court of common  
7 pleas; and the same rules with respect to the giving of notice to the  
8 opposite party, the taking and transcribing of testimony, the  
9 transmission and certification thereof of it, and matters of practice  
10 relating thereto shall to it apply.

11      (e)(D) The agency hearing a contested case may issue  
12 subpoenas in the name of the agency subpoenas for the attendance  
13 and testimony of witnesses and the production and examination of  
14 books, papers, and records on its own behalf or, upon request, on  
15 behalf of any other another party to the case.

16      The administrative law judge division shall, on application of  
17 any party to the proceeding enforce by proper proceedings the  
18 attendance and testimony of witnesses and the production and  
19 examination of books, papers, and records and shall have the  
20 power to punish as for contempt of court, by a fine, or  
21 imprisonment or both, the unexcused failure or refusal to attend  
22 and give testimony or produce books, papers, and records as may  
23 have been required in any subpoena issued by the agency. A person  
24 to whom a subpoena has been issued may move before the  
25 administrative law judge for an order quashing or modifying the  
26 subpoena. The agency may issue to the sheriff of the county in  
27 which any hearing is held a warrant requiring him to produce at the  
28 hearing any witness who shall have ignored or failed to comply  
29 with any subpoena issued by the agency and duly served upon  
30 such witness. Such a warrant shall authorize the sheriff to arrest  
31 and produce at the hearing such witness, and it shall be his duty to  
32 do so; but the failure of a witness so to appear in response to any  
33 such subpoena may be excused on the same grounds as provided  
34 by law in the courts of this State as to the attendance of witnesses  
35 and jurors. A party to the proceeding may seek enforcement of or  
36 relief from an agency subpoena before the Administrative Law  
37 Court pursuant to Section 1-23-600(F).

38      (e)(E) Opportunity shall must be afforded all parties to respond  
39 and present evidence and argument on all issues involved.

40      (e)(F) Unless precluded by law, informal disposition may be  
41 made of any a contested case by stipulation, agreed settlement,  
42 consent order, or default.

43      (e)(G) The record in a contested case shall must include:

1       (1) all pleadings, motions, intermediate rulings, and  
2 depositions;  
3       (2) evidence received or considered;  
4       (3) a statement of matters officially noticed;  
5       (4) questions and offers of proof, objections, and rulings  
6 ~~thereon on the contested case;~~  
7       (5) proposed findings and exceptions;  
8       (6) any decision, opinion, or report by the officer ~~or~~  
9 ~~administrative law judge~~ presiding at the hearing.

10      ~~(h)(H) Oral proceedings or any part thereof of the oral~~  
11 ~~proceedings shall must~~ be transcribed on request of ~~any~~ a party.

12      ~~(i)(I) Findings of fact shall must~~ be based exclusively on the  
13 evidence and on matters officially noticed.”

14

15 SECTION 5. Section 1-23-380 of the 1976 Code, as last amended  
16 by Act 387 of 2006, is further amended to read:

17

18      “Section 1-23-380. ~~(A)~~ A party who has exhausted all  
19 administrative remedies available within the agency and who is  
20 aggrieved by a final decision in a contested case is entitled to  
21 judicial review ~~under pursuant to~~ this article; ~~and~~ Article 1, ~~and~~  
22 Article 5. This section does not limit utilization of or the scope of  
23 judicial review available under other means of review, redress,  
24 relief, or trial de novo provided by law. A preliminary, procedural,  
25 or intermediate agency action or ruling is immediately reviewable  
26 if review of the final agency decision would not provide an  
27 adequate remedy. Except as otherwise provided by law, an appeal  
28 is to the court of appeals.

29      (1) Proceedings for review are instituted by serving and  
30 filing notice of appeal as provided in the South Carolina Appellate  
31 Court Rules within thirty days after the final decision of the  
32 agency or, if a rehearing is requested, within thirty days after the  
33 decision is rendered. Copies of the notice of appeal must be  
34 served upon the agency, ~~the Administrative Law Court~~, and all  
35 parties of record.

36      (2) Except as otherwise provided in this chapter, the serving  
37 and filing of the notice of appeal does not itself stay enforcement  
38 of the agency decision. The serving and filing of a notice of  
39 appeal by a licensee for review of a fine or penalty or of its license  
40 stays only those provisions for which review is sought and matters  
41 not affected by the notice of appeal are not stayed. The serving or  
42 filing of a notice of appeal does not automatically stay the  
43 suspension or revocation of a permit or license authorizing the sale  
44 of beer, wine, or alcoholic liquor. The agency ~~or administrative~~

1 law judge may grant, or the reviewing court may order, a stay upon  
2 appropriate terms, upon the filing of a petition under Rule 65 of  
3 the South Carolina Rules of Civil Procedure.

4 (3) If a timely application is made to the court for leave to  
5 present additional evidence, and it is shown to the satisfaction of  
6 the court that the additional evidence is material and that there  
7 were good reasons for failure to present it in the proceeding before  
8 the agency, the court may order that the additional evidence be  
9 taken before the agency upon conditions determined by the court.  
10 The agency may modify its findings and decision by reason of the  
11 additional evidence and shall file the evidence and modifications,  
12 new findings, or decisions with the reviewing court.

13 (4) The review must be conducted by the court and must be  
14 confined to the record. In cases of alleged irregularities in  
15 procedure before the agency ~~or the Administrative Law Court~~, not  
16 shown in the record, and established by proof satisfactory to the  
17 court, the case may be remanded to the agency ~~or the~~  
18 ~~Administrative Law Court~~ for action as the court considers  
19 appropriate.

20 (5) The court may not substitute its judgment for the  
21 judgment of the agency as to the weight of the evidence on  
22 questions of fact. The court may affirm the decision of the agency  
23 or remand the case for further proceedings. The court may  
24 reverse or modify the decision if substantial rights of the appellant  
25 have been prejudiced because the administrative findings,  
26 inferences, conclusions, or decisions are:

27 (a) in violation of constitutional or statutory provisions;  
28 (b) in excess of the statutory authority of the agency;  
29 (c) made upon unlawful procedure;  
30 (d) affected by other error of law;  
31 (e) clearly erroneous in view of the reliable, probative,  
32 and substantial evidence on the whole record; or  
33 (f) arbitrary or capricious or characterized by abuse of  
34 discretion or clearly unwarranted exercise of discretion.

35 (B) Review by an administrative law judge of a final decision  
36 in a contested case, heard in the appellate jurisdiction of the  
37 Administrative Law Court, must be in the same manner prescribed  
38 in subsection (A) for judicial review of final agency decisions,  
39 with the presiding administrative law judge exercising the same  
40 authority as the court of appeals; provided, that a party aggrieved  
41 by a final decision of an administrative law judge is entitled to  
42 judicial review of that decision by the court of appeals pursuant to  
43 the provisions of subsection (A) and Section 1-23-610(C)."

44

1 SECTION 6. Section 1-23-560 of the 1976 Code is amended to  
2 read:

3  
4 “Section 1-23-560. Administrative law judges are bound by the  
5 Code of Judicial Conduct, as contained in Rule 501 of the South  
6 Carolina Appellate Court Rules. The sole grounds for discipline  
7 and sanctions for administrative law judges are those contained in  
8 the Code of Judicial Conduct in Rule 502, Rule 7, of the South  
9 Carolina Appellate Court Rules. The State Ethics Commission,  
10 which is responsible for enforcement and administration of those  
11 rules pursuant to shall use the procedure contained in Section  
12 8-13-320. Notwithstanding another provision of law, an  
13 administrative law judge and the judge’s spouse or guest may  
14 accept an invitation to attend a judicial-related or bar-related  
15 function, or an activity devoted to the improvement of the law,  
16 legal system, or the administration of justice.”

17  
18 SECTION 7. Section 1-23-600 of the 1976 Code, as last amended  
19 by Act 111 of 2007, is further amended to read:

20  
21 “Section 1-23-600. (A) ~~A full and complete record must be kept~~  
22 ~~of all contested cases and regulation hearings before an~~  
23 ~~administrative law judge. All testimony must be reported, but need~~  
24 ~~not be transcribed unless a transcript is requested by any party.~~  
25 ~~The party requesting a transcript is responsible for the costs~~  
26 ~~involved. Proceedings before administrative law judges are open~~  
27 ~~to the public unless confidentiality is allowed or required by law.~~  
28 ~~The presiding administrative law judge must render the decision in~~  
29 ~~a written order. The decisions or orders of administrative law~~  
30 ~~judges are not required to be published but are available for public~~  
31 ~~inspection unless confidentiality is allowed or required by law.~~

32 (B) An administrative law judge shall preside over all hearings  
33 of contested cases as defined in Section 1-23-310 1-23-505 or  
34 Article I, Section 22, Constitution of the State of South Carolina,  
35 1895, involving the departments of the executive branch of  
36 government as defined in Section 1-30-10 in which a single  
37 hearing officer, or an administrative law judge, is authorized or  
38 permitted by law or regulation to hear and decide these cases,  
39 except those arising under the:

40 (1) Occupational Safety and Health Act, ~~those matters~~  
41 ~~arising under the;~~

42 (2) Consolidated Procurement Code, ~~those matters heard by~~  
43 ~~the;~~

44 (3) Public Service Commission, ~~the;~~

1       (4) Employment Security Commission, the;  
2       (5) Workers' Compensation Commission; or  
3       (6) other cases or hearings which are prescribed for or  
4       mandated by federal law or regulation, unless otherwise by statute  
5       or regulation specifically assigned to the jurisdiction of the  
6       Administrative Law Court. Unless otherwise provided by statute,  
7       the standard of proof in a contested case is by a preponderance of  
8       the evidence. The South Carolina Rules of Evidence apply in all  
9       contested case proceedings before the Administrative Law Court.

10      (C)(B) All requests for a hearing before the Administrative Law  
11       Court must be filed in accordance with the court's rules of  
12       procedure. Any A party that files a request for a hearing with the  
13       Administrative Law Court must simultaneously serve a copy of the  
14       request on the affected agency. Upon the filing of the request, the  
15       chief judge shall assign an administrative law judge to the case.  
16       Notice of the contested case hearing must be issued in accordance  
17       with the rules of procedure of the Administrative Law Court.

18      (C) A full and complete record must be kept of all contested  
19       cases and regulation hearings before an administrative law judge.  
20       All testimony must be reported, but need not be transcribed unless  
21       a transcript is requested by a party. The party requesting a  
22       transcript is responsible for the costs involved. Proceedings before  
23       administrative law judges are open to the public unless  
24       confidentiality is allowed or required by law. The presiding  
25       administrative law judge shall render the decision in a written  
26       order. The decisions or orders of administrative law judges are not  
27       required to be published but are available for public inspection  
28       unless confidentiality is allowed or required by law.

29      (D) An administrative law judge also shall preside over all  
30       appeals from final decisions of contested cases pursuant to the  
31       Administrative Procedures Act, Article I, Section 22, Constitution  
32       of the State of South Carolina, 1895, or another law, except that an  
33       appeal from a final order of the Public Service Commission and  
34       the State Ethics Commission is to the Supreme Court or the court  
35       of appeals as provided in the South Carolina Appellate Court  
36       Rules, an appeal from the Procurement Review Panel is to the  
37       circuit court as provided in Section 11-35-4410, an appeal from the  
38       Workers' Compensation Commission is to the court of appeals as  
39       provided in Section 42-17-60, and an appeal from the Employment  
40       Security Commission is to the circuit court as provided in Section  
41       41-35-750. An administrative law judge shall not hear an appeal  
42       from an inmate in the custody of the Department of Corrections  
43       involving the loss of the opportunity to earn sentence-related  
44       credits pursuant to Section 24-13-210(A) or Section 24-13-230(A)

1 or an appeal involving the denial of parole to a potentially eligible  
2 inmate by the Department of Probation, Parole and Pardon  
3 Services.

4 (E) Review by an administrative law judge of a final decision  
5 in a contested case, heard in the appellate jurisdiction of the  
6 Administrative Law Court, must be in the same manner as  
7 prescribed in Section 1-23-380(A) for judicial review of final  
8 agency decisions with the presiding administrative law judge  
9 exercising the same authority as the court of appeals, provided that  
10 a party aggrieved by a final decision of an administrative law  
11 judge is entitled to judicial review of the decision by the court of  
12 appeals pursuant to the provisions of Section 1-23-610.

13 (F) Notwithstanding another provision of law, a state agency  
14 authorized by law to seek injunctive relief may apply to the  
15 Administrative Law Court for injunctive or equitable relief  
16 pursuant to Section 1-23-630. The provisions of this section do  
17 not affect the authority of an agency to apply for injunctive relief  
18 as part of a civil action filed in the court of common pleas.

19 (F)(G) Notwithstanding another provision of law, the  
20 Administrative Law Court has jurisdiction to review and enforce  
21 an administrative process issued by an agency or by a department  
22 of the executive branch of government, as defined in Section  
23 1-30-10, such as a subpoena, administrative search warrant, cease  
24 and desist order, or other similar administrative order or process.  
25 A department or agency of the executive branch of government  
26 authorized by law to seek an administrative process may apply to  
27 the chief administrative law judge or his designee Administrative  
28 Law Court to issue or enforce an administrative process. A party  
29 aggrieved by an administrative process issued by a department or  
30 agency of the executive branch of government may apply to the  
31 chief administrative law judge Administrative Law Court for relief  
32 from the process as provided in the Rules of the Administrative  
33 Law Court.

34 (G)(H)(1) This subsection applies to timely requests for a  
35 contested case hearing pursuant to this section of decisions by  
36 departments governed by a board or commission authorized to  
37 exercise the sovereignty of the State.

38 (2) A request for a contested case hearing for an agency  
39 order stays the order. A request for a contested case hearing for an  
40 order to revoke or suspend a license stays the revocation or  
41 suspension. A request for a contested case hearing for a decision  
42 to renew a license for an ongoing activity stays the renewed  
43 license, the previous license remaining in effect pending  
44 completion of administrative review. A request for a contested

1 case hearing for a decision to issue a new license stays all actions  
2 for which the license is a prerequisite; however, matters not  
3 affected by the request may not be stayed by the filing of the  
4 request and matters for which a license has already been issued  
5 and a request is filed for a subsequent license related to the  
6 previously licensed matter may not be stayed by the filing of the  
7 request. Requests for contested case hearings challenging only the  
8 amount of fines or penalties must be deemed not to affect those  
9 portions of orders imposing substantive requirements.

10 (3) The general rule of subsection (G)(H)(2) does not stay  
11 emergency actions taken by an agency pursuant to an applicable  
12 statute or regulation.

13 (4) After a contested case is initiated before the  
14 Administrative Law Court, any a party may move before the  
15 presiding administrative law judge to lift the stay imposed  
16 pursuant to this subsection. Upon motion by any party, the court  
17 shall lift the stay for good cause shown or if no irreparable harm  
18 will occur, then the stay shall be lifted. A hearing must be held  
19 within three days after the motion is filed with the court and served  
20 upon the parties. The judge must issue an order no later than three  
21 business days after the hearing is concluded.

22 (5) A final decision issued by the Administrative Law Court  
23 in a contested case may not be stayed except by order of the  
24 Administrative Law Court, or the court of appeals, or in cases  
25 when Section 1-23-610(A) applies, the appropriate board or  
26 commission.

27 (6) Nothing contained in this subsection constitutes a  
28 limitation on the authority of the Administrative Law Court to  
29 impose a stay as otherwise provided by statute or by rule of court.

30 (H)(I) If a petition for judicial review of a final order of the  
31 Administrative Law Court is not filed appealed in accordance with  
32 the provisions of Section 1-23-600 1-23-610, upon request of a  
33 party to the proceedings, the clerk of the Administrative Law Court  
34 must shall file a certified copy of the final order with a clerk of the  
35 circuit court, as requested, or court of competent jurisdiction, as  
36 requested. After filing, the certified order has the same effect as a  
37 judgment of the court where filed and may be recorded, enforced,  
38 or satisfied in the same manner as a judgment of that court.”

39  
40 SECTION 8. Section 1-23-610 of the 1976 Code, as last amended  
41 by Act 387 of 2006, is further amended to read:

42  
43 “Section 1-23-610. (A)(1) For quasi-judicial review of any final  
44 decision of an administrative law judge of cases involving

1 departments governed by a board or commission authorized to  
2 exercise the sovereignty of the State, except the Department of  
3 Natural Resources and the Department of Health and  
4 Environmental Control, a petition by an aggrieved party must be  
5 filed with the appropriate board or commission and served on the  
6 opposing party not more than thirty days after the party receives  
7 the final decision and order of the administrative law judge.  
8 Appeal in these matters is by right. A party aggrieved by a final  
9 decision of a board in such a case is entitled to judicial review of  
10 that decision by the court of appeals under the provisions of (A) of  
11 this section.

12 (B) For judicial review of a final decision of an administrative  
13 law judge of cases in which review is not governed by subsection  
14 (A), including cases involving the Department of Natural  
15 Resources and the Department of Health and Environmental  
16 Control, a notice of appeal by an aggrieved party must be served  
17 and filed with the court of appeals as provided in the South  
18 Carolina Appellate Court Rules in civil cases and served on the  
19 opposing party and the Administrative Law Court not more than  
20 thirty days after the party receives the final decision and order of  
21 the administrative law judge. Appeal in these matters is by right.

22 (2) Except as otherwise provided in this chapter, the serving  
23 and filing of the notice of appeal does not itself stay enforcement  
24 of the administrative law judge's decision. The serving and filing  
25 of a notice of appeal by a licensee for review of a fine or penalty or  
26 of its license stays only those provisions for which review is  
27 sought and matters not affected by the notice of appeal are not  
28 stayed. The serving or filing of a notice of appeal does not  
29 automatically stay the suspension or revocation of a permit or  
30 license authorizing the sale of beer, wine, or alcoholic liquor.  
31 Upon motion, the administrative law judge may grant, or the court  
32 of appeals may order, a stay upon appropriate terms.

33 (C)(B) The review of the administrative law judge's order must  
34 be confined to the record. The court may not substitute its  
35 judgment for the judgment of the administrative law judge as to  
36 the weight of the evidence on questions of fact. The reviewing  
37 tribunal court of appeals may affirm the decision or remand the  
38 case for further proceedings; or it may reverse or modify the  
39 decision if the substantive rights of the petitioner hashave been  
40 prejudiced because of the finding, conclusion, or decision is:

- 41 (a) in violation of constitutional or statutory provisions;
- 42 (b) in excess of the statutory authority of the agency;
- 43 (c) made upon unlawful procedure;
- 44 (d) affected by other error of law;

1       (e) clearly erroneous in view of the reliable, probative, and  
2 substantial evidence on the whole record; or

3       (f) arbitrary or capricious or characterized by abuse of  
4 discretion or clearly unwarranted exercise of discretion.

5       (D) ~~Where appropriations in the annual general appropriations  
6 act, or where fees, fines, forfeitures, or revenues imposed or  
7 collected by agencies or commissions were required to be used for  
8 the hearing of contested cases, these appropriations or monies must  
9 continue to be used for these purposes after the effective date of  
10 this article.”~~

11

12 SECTION 9. Section 1-23-640 of the 1976 Code is amended to  
13 read:

14

15       “Section 1-23-640. The ~~division court~~ shall maintain its  
16 principal offices in the City of Columbia. However, judges of the  
17 ~~division court~~ shall hear contested cases at the ~~offices or location~~  
18 ~~of the involved department or commission as prescribed by the~~  
19 ~~agency or commission, at the division's court's~~ offices; or at a  
20 suitable ~~locations~~ location outside the City of Columbia as when  
21 determined by the chief judge.”

22

23 SECTION 10. This act takes effect upon approval by the  
24 Governor.

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