

HOUSE BILL NO. 659
INTRODUCED BY G. EVERETT

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING ACTIONS CHALLENGING PUBLIC SERVICE COMMISSION ORDERS; ALLOWING ANY PERSON, INCLUDING A PERSON ELECTED OR APPOINTED TO A PUBLIC POSITION, TO CHALLENGE AN ORDER; ALLOWING A PERSON ALLEGING FRAUD OR A CONSTITUTIONAL VIOLATION TO CHALLENGE A COMMISSION ACTION WITHIN 2 YEARS AFTER DISCOVERY OF THE ALLEGED VIOLATION; AMENDING SECTIONS 2-4-702, 27-2-201, AND 69-3-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-4-702, MCA, is amended to read:

"2-4-702. Initiating judicial review of contested cases. (1) (a) A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final written decision in a contested case is entitled to judicial review under this chapter. This section does not limit use of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by statute.

(b) A party who proceeds before an agency under the terms of a particular statute may not be precluded from questioning the validity of that statute on judicial review, but the party may not raise any other question not raised before the agency unless it is shown to the satisfaction of the court that there was good cause for failure to raise the question before the agency.

(2) (a) Except as provided in ~~subsection~~ subsections (2)(c) and (2)(e), proceedings for review must be instituted by filing a petition in district court within 30 days after service of the final written decision of the agency or, if a rehearing is requested, within 30 days after the written decision is rendered. Except as otherwise provided by statute or subsection (2)(d), the petition must be filed in the district court for the county where the petitioner resides or has the petitioner's principal place of business or where the agency maintains its principal office. Copies of the petition must be promptly served upon the agency and all parties of record.

(b) The petition must include a concise statement of the facts upon which jurisdiction and venue are based, a statement of the manner in which the petitioner is aggrieved, and the ground or grounds specified in 2-4-704(2) upon which the petitioner contends to be entitled to relief. The petition must demand the relief to which the petitioner believes the petitioner is entitled, and the demand for relief may be in the alternative.

(c) If a petition for review is filed pursuant to 33-16-1012(2)(c), the workers' compensation court, rather than the district court, has jurisdiction and the provisions of this part apply to the workers' compensation court in the same manner as the provisions of this part apply to the district court.

(d) If a petition for review is filed challenging a licensing or permitting decision made pursuant to Title 75 or Title 82, the petition for review must be filed in the county where the facility is located or proposed to be located or where the action is proposed to occur.

(e) If a petition for review is filed pursuant to 69-3-402(2), proceedings for review must be instituted by filing a petition in district court within 2 years after discovery of the alleged violation.

(3) Unless otherwise provided by statute, the filing of the petition may not stay enforcement of the agency's decision. The agency may grant or the reviewing court may order a stay upon terms that it considers proper, following notice to the affected parties and an opportunity for hearing. A stay may be issued without notice only if the provisions of 27-19-315 through 27-19-317 are met.

(4) Within 30 days after the service of the petition or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be required by the court to pay the additional costs. The court may require or permit subsequent corrections or additions to the record."

Section 2. Section 27-2-201, MCA, is amended to read:

"27-2-201. Actions upon judgments. (1) Except as provided in subsections (3) through ~~(5)~~ (6), the period prescribed for the commencement of an action upon a judgment or decree of any court of record of the United States or of any state within the United States is within 10 years.

(2) The period prescribed for the commencement of an action upon a judgment or decree rendered in a court not of record is within 10 years. The cause of action is considered, in that case, to have accrued when final judgment was rendered.

(3) The period prescribed for the commencement of an action to collect past-due child support ~~that has accrued after October 1, 1993~~, under an order entered by a court of record or administrative authority is within 10 years of the termination of support obligation or within 10 years from entry of a lump-sum judgment or order for support arrears, whichever is later.

(4) The period prescribed for the commencement of an action to collect past-due child support that has accrued under a support order issued in another state, in a foreign country, or in a tribal court is as provided in

subsection (3) or as provided in the law of the issuing jurisdiction, whichever period is longer.

(5) An action under 46-18-247(3) to enforce an order of restitution entered by a court of record may be commenced at any time within the offender's lifetime during which restitution remains unpaid.

(6) An action under 69-3-402(2) for alleged constitutional violations or allegations of fraud against the public service commission may be commenced at any time within 2 years after discovery of the alleged violation."

Section 3. Section 69-3-402, MCA, is amended to read:

"69-3-402. Action to challenge commission order. (1) ~~Any~~ Except as provided in subsection (2), a party in interest or a person, including a person elected or appointed to a public position, being dissatisfied with an order of the commission fixing any rate, fare, charge, classification, or joint rate or any order fixing any regulation, practice, or service may, within 30 days, commence an action in the district court of the proper county against the commission and other interested parties as defendants to vacate and set aside ~~any such the~~ the order on the ground that the rate, fare, charge, classification, or joint rate fixed in ~~such the~~ the order is unlawful or unreasonable or that ~~any such the~~ the regulation, practice, or service fixed in ~~such the~~ the order is unlawful or unreasonable.

(2) For alleged constitutional violations or allegations of fraud, a party of interest or a person, including a person elected or appointed to a public position, may challenge a commission order pursuant to subsection (1) within 2 years after discovery of the alleged violation.

~~(2)(3)~~ The commission and other parties ~~defendant~~ defending the action shall file ~~their an~~ an answer to ~~said~~ the complaint within 20 days after the service ~~thereof of the complaint, whereupon such and the action shall must~~ of the complaint, whereupon such and the action shall must be ~~at issue and stand~~ ready for hearing ~~upon~~ within 20 days' notice to either party.

~~(3)(4)~~ All actions brought under this part ~~shall must~~ must have precedence over any civil cause of a different nature pending in ~~such the~~ the court, ~~and the court shall always be deemed open for the hearing thereof.~~

~~(4)(5)~~ In all actions under this part, the burden of proof ~~shall be upon~~ is on the party attacking or resisting the order of the commission to show that the order is unlawful or unreasonable, ~~as the case may be."~~

NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

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