

State of Arizona
Senate
Fiftieth Legislature
Second Regular Session
2012

SENATE BILL 1193

AN ACT

AMENDING SECTIONS 12-284, 12-902, 12-904, 12-906, 12-907, 12-908, 12-909, 12-910, 12-911, 12-912, 12-914 AND 41-1001.01, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 6, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-1001.02; AMENDING SECTIONS 41-1055, 41-1092 AND 41-1092.06, ARIZONA REVISED STATUTES; RELATING TO ADMINISTRATIVE PROCEDURE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
 2 Section 1. Section 12-284, Arizona Revised Statutes, is amended to
 3 read:

4 12-284. Fees

5 A. Except as otherwise provided by law, the clerk of the superior
 6 court shall receive fees classified as follows:

7 Class	Description	Fee
8 A	Initial case filing fee	
9	Tax case	\$ 166.00
10	Filing complaint, <u>NOTICE OF APPEAL</u>	
11	<u>UNDER SECTION 12-904</u> or petition	166.00
12	Filing intervenor	166.00
13	Additional plaintiffs	166.00
14	Filing foreign judgment	166.00
15	Ownership of real property becomes an	
16	issue plaintiff	166.00
17	Appellant	
18	(except under sections 12-1809 and 13-3602)	166.00
19	Change of venue to this county	166.00
20	Petition for change of name	166.00
21	Filing a process server application	166.00
22 B	Subsequent case filing fee	
23	Filing answer, <u>NOTICE OF APPEARANCE</u>	
24	<u>UNDER SECTION 12-907</u> or initial appearance	\$ 88.00
25	Additional defendants	88.00
26	Notice of appeal to appellate courts	
27	(except under section 12-2107)	88.00
28	Cross-appeal by appellee (except under section	
29	12-2107)	88.00
30	Ownership of real property becomes an	
31	issue defendant	88.00
32	Jurisdiction exceeded appellee	
33	(within 20 days of filing)	88.00
34	Response to show cause that does one or more	
35	of the following:	
36	1. Requests affirmative relief or	
37	counterrelief	
38	2. Attacks the sufficiency of process	
39	or the proceedings	
40	3. Takes other affirmative action	88.00
41 C	Initial case filing fee	
42	Filing petition for annulment	\$ 131.00
43	Filing for dissolution/legal separation petition	131.00
44	Petition in formal testacy or appointment	
45	proceeding	131.00

1	Application for informal probate or informal	
2	appointment	131.00
3	Petition for supervised administration petition	
4	to appoint guardian	131.00
5	Petition to appoint conservator or make other	
6	protective order	131.00
7	Opposing petition in testacy or appointment	
8	proceedings or appointment of guardian or	
9	conservator	131.00
10	Single estate application or petition under	
11	title 14, chapter 3, section 14-3938	131.00
12	Domestic relations case for which a fee is not	
13	specifically prescribed	131.00
14	D Subsequent case filing fee	
15	Filing answer to annulment	\$ 66.00
16	Filing for dissolution/legal separation answer	66.00
17	Any person opposing contested petition if no	
18	prior payment made	66.00
19	Postadjudication petitions in	
20	domestic relations cases	66.00
21	Postjudgment activities in probate cases	66.00
22	E Minimum clerk fee	
23	Filing power of attorney	\$ 26.00
24	Change of venue to another county transmittal	
25	fee	26.00
26	Change of venue to another county pursuant to	
27	section 12-404 transmittal fee	26.00
28	Filing transcript and docketing judgment from	
29	any courts	26.00
30	Issuance of writs of: attachment, execution,	
31	possession, restitution, prohibition and	
32	enforcement of order of judgment-garnishment	26.00
33	Certified copy or abstract of marriage	
34	application or license	26.00
35	Certificate of correctness of copy of record	26.00
36	Justice of peace certificate	26.00
37	Each certificate of clerk to any matter in	
38	clerk's record not specifically provided	26.00
39	Filing any paper or performing any act for which	
40	a fee is not specifically prescribed	26.00
41	Subpoena - (civil)	26.00
42	Research in locating a document (per year or	
43	source researched)	26.00
44	Exemplification (per certification)	26.00
45	Authentication (per certification)	26.00

1	Seal a court file	26.00
2	Reopen a sealed court file	26.00
3	Retrieve bank records	26.00
4	Reel of film alpha index per year (plus per	
5	page fee below)	26.00
6	Payment history report	26.00
7	Certification under one document certification	26.00
8	Civil traffic appeal	26.00
9	F Per page fee	
10	Making copies (on appeal and on request)	
11	per page	\$.50
12	Making extra copies per page	.50
13	Making photographic or photostatic copies	
14	per page	.50
15	Comparison fee of papers furnished by applicant	
16	per page	.50
17	Alpha index per page	.50
18	G Special fees	
19	Small claim tax case	\$ 22.00
20	Marriage license and return of a	
21	marriage license	72.00
22	Postage and handling	7.00
23	Notary services	7.00
24	Stop payment on check	14.00

25 B. The clerk of the superior court shall receive the fees prescribed
 26 in subsection A of this section for the following services:

27 1. Making copies of papers and records required to be made by the
 28 clerk on appeal, and copies of papers and records in the clerk's office made
 29 on request in other cases, for each legal size page of original.

30 2. Making extra copies of the papers and records mentioned in
 31 paragraph 1 of this subsection, required or requested for each page of copy
 32 of such papers and records.

33 3. In a clerk's office, in which a photographic or photostatic method
 34 of recording is used or is available for use in cooperation with other public
 35 offices, preparing copies enumerated in paragraphs 1 and 2 of this subsection
 36 for each page of copy or fraction of a page of copy. Portions of several
 37 pages of records may be combined in one page of copy. The clerk may prepare
 38 an abstract of marriage in lieu of a reproduction of the recorded marriage
 39 license. The fee shall apply to matters whether recorded in such office by
 40 longhand, typing, electronic, photographic or photostatic methods. The fees
 41 for copies are exclusive of the fees for certification or authentication.

42 4. Issuing a certificate as to official capacity of a justice of the
 43 peace and affixing a seal to the certificate.

1 5. Each subpoena issued in a civil proceeding or filing any paper or
2 performing any act for which a fee is not specifically prescribed by law, but
3 the clerk shall not charge for the clerk's services in administering the oath
4 in connection with any affidavit, petition, letters or other pleading or
5 document which, after administration of the oath therefor, is promptly filed
6 by the clerk and becomes a part of a case or matter of record in the office
7 of the clerk.

8 C. In addition to the fees required by subsection A of this section,
9 the clerk shall charge and collect a surcharge of fifteen dollars for each
10 filing of a postadjudication petition in a domestic relations case for which
11 a fee presently is charged under class D in subsection A of this
12 section. The surcharge shall be used exclusively to fund domestic relations
13 education and mediation programs established pursuant to section
14 25-413. Each month the clerk shall transmit the monies the clerk collects
15 pursuant to this subsection to the county treasurer for deposit in the
16 domestic relations education and mediation fund established by section
17 25-413.

18 D. Excluding the monies that are collected pursuant to subsection C of
19 this section, each month the clerk shall transmit seventy-five per cent of
20 the monies collected for subsequent case filing fees for postadjudication
21 petitions in domestic relations cases under class D in subsection A of this
22 section to the county treasurer for deposit in the expedited child support
23 and parenting time fund established pursuant to section 25-412. The
24 remaining twenty-five per cent of the monies collected pursuant to this
25 subsection shall be distributed pursuant to section 12-284.03.

26 E. At the commencement of each action for annulment, dissolution of
27 marriage, legal separation, maternity or paternity, the petitioner shall pay
28 to the clerk of the court the initial case filing fee for the action provided
29 in subsection A of this section. At the time of filing a response, the
30 respondent shall pay to the clerk of the court the subsequent case filing fee
31 for the action provided in subsection A of this section. In each county
32 where the superior court has established a conciliation court, the petitioner
33 and respondent shall each pay to the clerk a sixty-five dollar fee. The
34 monies from the additional fee shall be used to carry out the purposes of the
35 conciliation court pursuant to title 25, chapter 3, article 7.

36 F. In garnishment matters:

37 1. A fee shall not be charged for filing an affidavit seeking only the
38 release of exempt wages.

39 2. A fee shall not be charged for filing a garnishee's answer, for
40 filing a judgment against the garnishee or for the issuance or return of
41 process incident to such a judgment.

42 3. For any contest relating to or any controversion of a garnishment
43 matter, unless the contesting party has paid an appearance fee in that cause,
44 the required appearance fee shall be paid, except that the garnishee shall
45 not pay a clerk's fee.

1 G. A person who is cited to appear and defend an order to show cause
2 shall not be charged an appearance fee. The person may stipulate to or
3 consent to the entry of an order without the payment of an appearance
4 fee. An appearance fee shall be paid if the person is present in person or
5 by an attorney and does one or more of the following:

- 6 1. Requests affirmative relief or counterrelief.
- 7 2. Attacks the sufficiency of process or the proceedings.
- 8 3. Takes other affirmative action.

9 H. A petitioner shall not be charged a fee for requesting an order of
10 protection pursuant to section 13-3602 or an injunction against harassment
11 pursuant to section 12-1809. A defendant shall not be charged an answer fee
12 in an order of protection action if the defendant requests a hearing pursuant
13 to section 13-3602, subsection I or in an injunction against harassment
14 action if the defendant requests a hearing pursuant to section 12-1809,
15 subsection H.

16 I. A person who files a registrar's order pursuant to section
17 32-1166.06 shall not be charged a fee.

18 J. The clerk of the court shall charge and collect a forty-six dollar
19 filing fee for a petition for emancipation of a minor filed pursuant to
20 chapter 15 of this title. Each month the clerk shall transmit the monies the
21 clerk collects pursuant to this subsection to the county treasurer for
22 deposit in the emancipation administrative costs fund established by section
23 12-2456.

24 K. Except for monies that are collected pursuant to subsections C, D,
25 E and J of this section, the clerk of the superior court shall transmit
26 monthly to the county treasurer all monies collected pursuant to this section
27 for distribution or deposit pursuant to section 12-284.03.

28 L. The supreme court may increase the fees prescribed in subsection A
29 of this section in an amount not to exceed the per cent of change in the
30 average consumer price index as published by the United States department of
31 labor, bureau of labor statistics between that figure for the latest calendar
32 year and the calendar year in which the last fee increase occurred.

33 Sec. 2. Section 12-902, Arizona Revised Statutes, is amended to read:
34 12-902. Scope of article

35 A. This article applies to and governs:

36 1. Every action to ~~review~~ judicially **REVIEW** a final decision of an
37 administrative agency except public welfare decisions pursuant to title 46,
38 or if the act creating or conferring power on an agency or a separate act
39 provides for judicial review of the agency decisions and prescribes a
40 definite procedure for the review.

41 2. An action to review the decision at an administrative hearing ~~held~~
42 ~~pursuant to section 33-1905~~ **AS OTHERWISE PROVIDED BY STATUTE**.

43 B. Unless review is sought of an administrative decision within the
44 time and in the manner provided in this article, the parties to the
45 proceeding before the administrative agency shall be barred from obtaining

1 judicial review of the decision. If under the terms of the law governing
2 procedure before an agency an administrative decision becomes final because
3 of failure to file any document in the nature of an objection, protest,
4 petition for hearing or application for administrative review within the time
5 allowed by the law, the decision is not subject to judicial review under the
6 provisions of this article except for the purpose of questioning the
7 jurisdiction of the administrative agency over the person or subject matter.

8 Sec. 3. Section 12-904, Arizona Revised Statutes, is amended to read:
9 12-904. Commencement of action; transmission of record

10 A. An action to review a final administrative decision shall be
11 commenced by filing a ~~complaint~~ NOTICE OF APPEAL within thirty-five days from
12 the date when a copy of the decision sought to be reviewed is served upon the
13 party affected. The method of service of the decision shall be as provided
14 by law governing procedure before the administrative agency, or by a rule of
15 the agency made pursuant to law, but if no method is provided a decision
16 shall be deemed to have been served when personally delivered or mailed by
17 certified mail to the party affected at the party's last known residence or
18 place of business. Service is complete on personal service or five days
19 after the date that the final administrative decision is mailed to the
20 party's last known address. THE NOTICE OF APPEAL SHALL IDENTIFY THE FINAL
21 ADMINISTRATIVE DECISION SOUGHT TO BE REVIEWED AND INCLUDE A STATEMENT OF THE
22 ISSUES PRESENTED FOR REVIEW. THE STATEMENT OF AN ISSUE PRESENTED FOR REVIEW
23 IS DEEMED TO INCLUDE EVERY SUBSIDIARY ISSUE FAIRLY COMPRISED IN THE
24 STATEMENT.

25 B. Within ten days after filing a ~~complaint~~ NOTICE OF APPEAL pursuant
26 to this article, the party seeking judicial review shall file a notice of the
27 action with the office of administrative hearings or the agency that
28 conducted the hearing, and the office of administrative hearings or the
29 agency that conducted the hearing shall transmit the record to the superior
30 court. The record shall consist of the following:

- 31 1. The original agency action from which review is sought.
- 32 2. Any motions, memoranda or other documents submitted by the parties
33 to the appeal.
- 34 3. Any exhibits admitted as evidence at the administrative hearing.
- 35 4. The decision by the administrative law judge and any revisions or
36 modifications to the decision.
- 37 5. A copy of the transcript of the administrative hearing, if the
38 party seeking judicial review desires a transcript to be included in the
39 record and provides for preparation of the transcript at the party's own
40 expense. Any other party may have a transcript included in the record by
41 filing a notice with the office of administrative hearings or the agency that
42 conducted the hearing within ten days after receiving notice of the ~~complaint~~
43 NOTICE OF APPEAL and providing for preparation of the transcript at the
44 party's own expense.

1 Sec. 4. Section 12-906, Arizona Revised Statutes, is amended to read:
2 12-906. Service of process

3 In an action to review the decision of an administrative agency, a copy
4 of the ~~summons and complaint~~ NOTICE OF APPEAL shall be served ~~as in civil~~
5 ~~actions and as provided by~~ PURSUANT TO RULE 4 OF the rules of civil
6 procedure, ~~upon~~ ON the agency at its principal office and ~~upon~~ ON all other
7 ~~defendants~~ PARTIES TO THE PROCEEDING BEFORE THE AGENCY.

8 Sec. 5. Section 12-907, Arizona Revised Statutes, is amended to read:
9 12-907. Appearance of parties to the appeal

10 Within twenty days after service of the ~~summons and complaint~~ NOTICE OF
11 APPEAL, the ~~defendant~~ APPELLEE agency and all other ~~defendants shall answer~~
12 ~~the complaint~~ APPELLEES SHALL FILE A NOTICE OF APPEARANCE IN RESPONSE TO THE
13 NOTICE OF APPEAL. ALL SUBSEQUENT FILINGS SHALL BE MADE AS PROVIDED BY
14 SECTION 12-914.

15 Sec. 6. Section 12-908, Arizona Revised Statutes, is amended to read:
16 12-908. Parties

17 A. In an action to review a final decision of an administrative
18 agency, the agency and all persons, other than the ~~plaintiff~~ APPELLANT, who
19 are parties of record in the proceedings ~~shall be made defendants~~ MAY APPEAR
20 IN THE PROCEEDINGS BEFORE THE SUPERIOR COURT AS APPELLEES.

21 B. IF THE ADMINISTRATIVE HEARING IS HELD BEFORE THE OFFICE OF
22 ADMINISTRATIVE HEARINGS, THE OFFICE OF ADMINISTRATIVE HEARINGS IS NOT A PARTY
23 OF RECORD IN THE PROCEEDINGS AND IS NOT TO BE NAMED AS A PARTY IN THE NOTICE
24 OF APPEAL OR TO APPEAR AS A PARTY IN THE APPELLATE PROCEEDINGS BEFORE THE
25 COURT UNLESS OTHERWISE REQUIRED BY LAW OR ORDER OF THE COURT. FOR THE
26 PURPOSES OF THIS SECTION, THE OFFICE OF ADMINISTRATIVE HEARINGS INCLUDES THE
27 DIRECTOR OF THE OFFICE OF ADMINISTRATIVE HEARINGS AND THE ADMINISTRATIVE LAW
28 JUDGE.

29 Sec. 7. Section 12-909, Arizona Revised Statutes, is amended to read:
30 12-909. Pleadings and record on review

31 A. The ~~complaint~~ NOTICE OF APPEAL shall contain a statement of the
32 findings and decision or part ~~thereof~~ OF THE FINDINGS AND DECISION sought to
33 be reviewed. ~~, and shall clearly specify the grounds upon which review is~~
34 ~~sought. It shall also state whether a transcript is to be designated as part~~
35 ~~of the record pursuant to section 12-904, subsection B, paragraph 5.~~

36 B. ~~Except as otherwise provided, the defendant shall file an~~
37 ~~answer.~~ Notwithstanding section 12-904, subsection B, by order of the court
38 or by stipulation of all parties to the action, the record may be shortened
39 or supplemented.

40 C. If the cause is remanded to the administrative agency and a review
41 thereafter is sought of the administrative decision, the original and
42 supplemental record, or so much thereof as is determined by court order or
43 stipulation of all the parties, shall constitute the record on review.

1 Sec. 8. Section 12-910, Arizona Revised Statutes, is amended to read:
2 12-910. Scope of review

3 A. An action to review a final administrative decision shall be heard
4 and determined with convenient speed. If requested by a party to an action
5 within thirty days after filing a ~~complaint~~ NOTICE OF APPEAL, the court shall
6 hold an evidentiary hearing, including testimony and argument, to the extent
7 necessary to make the determination required by subsection E of this
8 section. The court may hear testimony from witnesses who testified at the
9 administrative hearing and witnesses who were not called to testify at the
10 administrative hearing.

11 B. Relevant and admissible exhibits and testimony that were not
12 offered during the administrative hearing shall be admitted, and objections
13 that a party failed to make to evidence offered at the administrative hearing
14 shall be considered, unless either of the following is true:

15 1. The exhibit, testimony or objection was withheld for purposes of
16 delay, harassment or other improper purpose.

17 2. Allowing admission of the exhibit or testimony or consideration of
18 the objection would cause substantial prejudice to another party.

19 C. For review of final administrative decisions of agencies that are
20 exempt from sections 41-1092.03 through 41-1092.11, pursuant to section
21 41-1092.02, the trial shall be de novo if trial de novo is demanded in the
22 ~~complaint~~ NOTICE OF APPEAL or ~~answer~~ MOTION of ~~a defendant~~ AN APPELLEE other
23 than the agency and if a hearing was not held by the agency or the
24 proceedings before the agency were not stenographically reported or
25 mechanically recorded so that a transcript might be made. On demand of any
26 party, if a trial de novo is available under this section, it may be with a
27 jury, except that a trial of an administrative decision under section 25-522
28 shall be to the court.

29 D. The record in the superior court shall consist of the record of the
30 administrative proceeding, and the record of any evidentiary hearing, or the
31 record of the trial de novo.

32 E. The court may affirm, reverse, modify or vacate and remand the
33 agency action. The court shall affirm the agency action unless after
34 reviewing the administrative record and supplementing evidence presented at
35 the evidentiary hearing the court concludes that the action is not supported
36 by substantial evidence, is contrary to law, is arbitrary and capricious or
37 is an abuse of discretion.

38 Sec. 9. Section 12-911, Arizona Revised Statutes, is amended to read:
39 12-911. Powers of superior court

40 A. The superior court may:

41 1. With or without bond, unless required by the statute under
42 authority of which the administrative decision was entered, and before or
43 after ~~answer~~ THE FILING OF THE NOTICE OF APPEARANCE, stay the decision in
44 whole or in part pending final disposition of the case, after notice to the
45 agency and for good cause shown, except that the court shall not stay an

1 administrative decision wherein unemployment compensation benefits have been
2 allowed to a claimant pursuant to title 23, chapter 4.

3 2. Make any order that it deems proper for the amendment, completion
4 or filing of the record of the proceedings of the administrative agency.

5 3. Allow substitution of parties by reason of marriage, death,
6 bankruptcy, assignment or other cause.

7 4. Dismiss parties or realign parties ~~plaintiff and defendant~~
8 APPELLANT AND APPELLEE.

9 5. Modify, affirm or reverse the decision in whole or in part.

10 6. Specify questions or matters requiring further hearing or
11 proceedings and give other proper instructions.

12 7. When a hearing has been held by the agency, remand for the purpose
13 of taking additional evidence when from the state of the record of the
14 administrative agency or otherwise it appears that such action is just.

15 8. In the case of affirmance or partial affirmance of an
16 administrative decision requiring payment of money, enter judgment for the
17 amount justified by the record and for costs, ~~upon~~ ON which execution may
18 issue.

19 B. Technical errors in the proceedings before the administrative
20 agency or its failure to observe technical rules of evidence shall not
21 constitute grounds for reversal of the decision, unless it appears to the
22 ~~trial~~ SUPERIOR court that the error or failure affected the rights of a party
23 and resulted in injustice to him.

24 C. On motion of a party before rendition of judgment, the ~~trial~~
25 SUPERIOR court shall make findings of fact and state conclusions of law ~~upon~~
26 ON which its judgment is based.

27 Sec. 10. Section 12-912, Arizona Revised Statutes, is amended to read:

28 12-912. Costs

29 Costs may be awarded ~~defendant~~ TO THE APPELLEE agency if a judgment
30 adverse to the ~~plaintiff~~ APPELLANT is rendered. Such costs may be awarded in
31 an amount deemed reasonable by the ~~trial~~ SUPERIOR court, based ~~upon~~ ON the
32 expense the ~~defendant~~ APPELLEE agency has incurred in preparing the record of
33 the proceedings before ~~trial~~ JUDICIAL REVIEW.

34 Sec. 11. Section 12-914, Arizona Revised Statutes, is amended to read:

35 12-914. Rules of procedure

36 A. Where applicable, the rules of ~~civil~~ procedure FOR JUDICIAL REVIEW
37 OF ADMINISTRATIVE DECISIONS in superior courts, including rules relating to
38 appeals to the supreme court, shall apply to all proceedings except as
39 otherwise provided in this article, EXCEPT IN CASES IN WHICH THE SUPERIOR
40 COURT HAS CONDUCTED A TRIAL DE NOVO PURSUANT TO SECTION 12-910.

41 B. THE RULES OF CIVIL PROCEDURE APPLY TO ALL PROCEEDINGS IN WHICH THE
42 SUPERIOR COURT ORDERS A TRIAL DE NOVO PURSUANT TO SECTION 12-910.

1 Sec. 12. Section 41-1001.01, Arizona Revised Statutes, is amended to
2 read:

3 41-1001.01. Regulatory bill of rights

4 A. To ensure fair and open regulation by state agencies, a person:

5 1. Is eligible for reimbursement of fees and other expenses if the
6 person prevails by adjudication on the merits against an agency in a court
7 proceeding regarding an agency decision as provided in section 12-348.

8 2. Is eligible for reimbursement of the person's costs and fees if the
9 person prevails against any agency in an administrative hearing as provided
10 in section 41-1007.

11 3. Is entitled to have an agency not charge the person a fee unless
12 the fee for the specific activity is expressly authorized as provided in
13 section 41-1008.

14 4. Is entitled to receive the information and notice regarding
15 inspections prescribed in section 41-1009.

16 5. May review the full text or summary of all rule making activity,
17 the summary of substantive policy statements and the full text of executive
18 orders in the register as provided in article 2 of this chapter.

19 6. May participate in the rule making process as provided in articles
20 3, 4, 4.1 and 5 of this chapter, including:

21 (a) Providing written ~~or-oral~~ comments OR TESTIMONY on proposed rules
22 to an agency as provided in section 41-1023 and having the agency adequately
23 address those comments as provided in section 41-1052, subsection D,
24 INCLUDING COMMENTS OR TESTIMONY CONCERNING THE INFORMATION CONTAINED IN THE
25 ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT.

26 (b) Filing an early review petition with the governor's regulatory
27 review council as provided in article 5 of this chapter.

28 (c) Providing written ~~or-oral~~ comments OR TESTIMONY on rules to the
29 governor's regulatory review council during the mandatory sixty-day comment
30 period as provided in article 5 of this chapter.

31 7. Is entitled to have an agency not base a licensing decision in
32 whole or in part on licensing conditions or requirements that are not
33 specifically authorized by statute, rule or state tribal gaming compact as
34 provided in section 41-1030, subsection B.

35 8. Is entitled to have an agency not make a rule under a specific
36 grant of rule making authority that exceeds the subject matter areas listed
37 in the specific statute or not make a rule under a general grant of rule
38 making authority to supplement a more specific grant of rule making authority
39 as provided in section 41-1030, subsection C.

40 9. May allege that an existing agency practice or substantive policy
41 statement constitutes a rule and have that agency practice or substantive
42 policy statement declared void because the practice or substantive policy
43 statement constitutes a rule as provided in section 41-1033.

44 10. May file a complaint with the administrative rules oversight
45 committee concerning:

1 (a) A rule's, practice's or substantive policy statement's lack of
2 conformity with statute or legislative intent as provided in section 41-1047.

3 (b) An existing statute, rule, practice alleged to constitute a
4 rule or substantive policy statement that is alleged to be duplicative or
5 onerous as provided in section 41-1048.

6 11. May have the person's administrative hearing on contested cases and
7 appealable agency actions heard by an independent administrative law judge as
8 provided in articles 6 and 10 of this chapter.

9 12. May have administrative hearings governed by uniform administrative
10 appeal procedures as provided in articles 6 and 10 of this chapter **AND MAY**
11 **APPEAL A FINAL ADMINISTRATIVE DECISION BY FILING A NOTICE OF APPEAL PURSUANT**
12 **TO TITLE 12, CHAPTER 7, ARTICLE 6.**

13 13. May have an agency approve or deny the person's license application
14 within a predetermined period of time as provided in article 7.1 of this
15 chapter.

16 14. Is entitled to receive written notice from an agency on denial of a
17 license application:

18 (a) That justifies the denial with references to the statutes or rules
19 on which the denial is based as provided in section 41-1076.

20 (b) That explains the applicant's right to appeal the denial as
21 provided in section 41-1076.

22 15. Is entitled to receive information regarding the license
23 application process **BEFORE OR** at the time the person obtains an application
24 for a license as provided in ~~section~~ **SECTIONS 41-1001.02 AND** 41-1079.

25 16. May receive public notice and participate in the adoption or
26 amendment of agreements to delegate agency functions, powers or duties to
27 political subdivisions as provided in section 41-1026.01 and article 8 of
28 this chapter.

29 17. May inspect all rules and substantive policy statements of an
30 agency, including a directory of documents, in the office of the agency
31 director as provided in section 41-1091.

32 18. May file a complaint with the office of the ombudsman-citizens aide
33 to investigate administrative acts of agencies as provided in chapter 8,
34 article 5 of this title.

35 19. Unless specifically authorized by statute, may expect state
36 agencies to avoid duplication of other laws that do not enhance regulatory
37 clarity and to avoid dual permitting to the extent practicable as prescribed
38 in section 41-1002.

39 B. The enumeration of the rights listed in subsection A of this
40 section does not grant any additional rights that are not prescribed in the
41 sections referenced in subsection A of this section.

1 Sec. 13. Title 41, chapter 6, article 1, Arizona Revised Statutes, is
2 amended by adding section 41-1001.02, to read:

3 41-1001.02. Clarification of interpretation

4 A. BEFORE SUBMITTING AN APPLICATION FOR A LICENSE A PERSON MAY REQUEST
5 FROM THE AGENCY ISSUING THE LICENSE A CLARIFICATION OF ITS INTERPRETATION OR
6 APPLICATION OF A STATUTE, RULE, DELEGATION AGREEMENT OR SUBSTANTIVE POLICY
7 STATEMENT AFFECTING THE PERSON'S PREPARATION OF THE APPLICATION FOR A LICENSE
8 BY PROVIDING THE AGENCY WITH A WRITTEN REQUEST THAT STATES:

9 1. THE NAME AND ADDRESS OF THE PERSON REQUESTING THE CLARIFICATION.

10 2. THE STATUTE, RULE, DELEGATION AGREEMENT OR SUBSTANTIVE POLICY
11 STATEMENT OR PART OF THE STATUTE, RULE, DELEGATION AGREEMENT OR SUBSTANTIVE
12 POLICY STATEMENT THAT THE PERSON IS REQUESTING BE CLARIFIED.

13 3. ANY FACTS RELEVANT TO THE REQUESTED CLARIFICATION.

14 4. THE PERSON'S PROPOSED INTERPRETATION OF THE APPLICABLE STATUTE,
15 RULE, DELEGATION AGREEMENT OR SUBSTANTIVE POLICY STATEMENT OR PART OF THE
16 STATUTE, RULE, DELEGATION AGREEMENT OR SUBSTANTIVE POLICY STATEMENT.

17 5. WHETHER, TO THE BEST KNOWLEDGE OF THE PERSON, THE ISSUES OR RELATED
18 ISSUES ARE BEING CONSIDERED BY THE AGENCY IN CONNECTION WITH AN EXISTING
19 LICENSE OR LICENSE APPLICATION.

20 B. ON RECEIPT OF A REQUEST THAT COMPLIES WITH SUBSECTION A OF THIS
21 SECTION:

22 1. THE AGENCY MAY MEET WITH THE PERSON TO DISCUSS THE WRITTEN REQUEST
23 AND SHALL RESPOND WITHIN THIRTY DAYS OF THE RECEIPT OF THE WRITTEN REQUEST
24 WITH A WRITTEN CLARIFICATION OF ITS INTERPRETATION OR APPLICATION AS RAISED
25 IN THE WRITTEN REQUEST.

26 2. THE AGENCY SHALL PROVIDE THE REQUESTOR WITH AN OPPORTUNITY TO MEET
27 AND DISCUSS THE AGENCY'S WRITTEN CLARIFICATION.

28 C. NOTWITHSTANDING ANY OTHER LAW, AN AGENCY'S WRITTEN CLARIFICATION
29 PURSUANT TO THIS SECTION DOES NOT CONSTITUTE AN APPEALABLE ACTION AS DEFINED
30 IN SECTION 41-1092 OR AN ACTION AGAINST THE PARTY PURSUANT TO SECTION
31 41-1092.12.

32 D. NOTWITHSTANDING ANY OTHER LAW, THIS SECTION DOES NOT APPLY TO THE
33 ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD.

34 Sec. 14. Section 41-1055, Arizona Revised Statutes, is amended to
35 read:

36 41-1055. Economic, small business and consumer impact statement

37 A. The economic, small business and consumer impact summary shall
38 include:

39 1. An identification of the proposed rule making, including all of the
40 following:

41 (a) The conduct and its frequency of occurrence that the rule is
42 designed to change.

1 (b) The harm resulting from the conduct the rule is designed to change
2 and the likelihood it will continue to occur if the rule is not changed.

3 (c) The estimated change in frequency of the targeted conduct expected
4 from the rule change.

5 2. A brief summary of the information included in the economic, small
6 business and consumer impact statement.

7 3. If the economic, small business and consumer impact summary
8 accompanies a proposed rule or a proposed summary rule, the name and address
9 of agency employees who may be contacted to submit or request additional data
10 on the information included in the economic, small business and consumer
11 impact statement.

12 B. The economic, small business and consumer impact statement shall
13 include:

14 1. An identification of the proposed rule making.

15 2. An identification of the persons who will be directly affected by,
16 bear the costs of or directly benefit from the proposed rule making.

17 3. A cost benefit analysis of the following:

18 (a) The probable costs and benefits to the implementing agency and
19 other agencies directly affected by the implementation and enforcement of the
20 proposed rule making. The probable costs to the implementing agency shall
21 include the number of new full-time employees necessary to implement and
22 enforce the proposed rule. The preparer of the economic, small business and
23 consumer impact statement shall notify the joint legislative budget committee
24 of the number of new full-time employees necessary to implement and enforce
25 the rule before the rule is approved by the council.

26 (b) The probable costs and benefits to a political subdivision of this
27 state directly affected by the implementation and enforcement of the proposed
28 rule making.

29 (c) The probable costs and benefits to businesses directly affected by
30 the proposed rule making, including any anticipated effect on the revenues or
31 payroll expenditures of employers who are subject to the proposed rule
32 making.

33 4. A general description of the probable impact on private and public
34 employment in businesses, agencies and political subdivisions of this state
35 directly affected by the proposed rule making.

36 5. A statement of the probable impact of the proposed rule making on
37 small businesses. The statement shall include:

38 (a) An identification of the small businesses subject to the proposed
39 rule making.

40 (b) The administrative and other costs required for compliance with
41 the proposed rule making.

42 (c) A description of the methods that the agency may use to reduce the
43 impact on small businesses. These methods may include:

1 (i) Establishing less costly compliance requirements in the proposed
2 rule making for small businesses.

3 (ii) Establishing less costly schedules or less stringent deadlines
4 for compliance in the proposed rule making.

5 (iii) Exempting small businesses from any or all requirements of the
6 proposed rule making.

7 (d) The probable cost and benefit to private persons and consumers who
8 are directly affected by the proposed rule making.

9 6. A statement of the probable effect on state revenues.

10 7. A description of any less intrusive or less costly alternative
11 methods of achieving the purpose of the proposed rule making, including the
12 monetizing of the costs and benefits for each option and providing the
13 rationale for not using nonselected alternatives.

14 8. A DESCRIPTION OF ANY DATA ON WHICH A RULE IS BASED WITH A DETAILED
15 EXPLANATION OF HOW THE DATA WAS OBTAINED AND WHY THE DATA IS ACCEPTABLE DATA.
16 AN AGENCY ADVOCATING THAT ANY DATA IS ACCEPTABLE DATA HAS THE BURDEN OF
17 PROVING THAT THE DATA IS ACCEPTABLE. FOR THE PURPOSES OF THIS PARAGRAPH,
18 "ACCEPTABLE DATA" MEANS EMPIRICAL, REPLICABLE AND TESTABLE DATA AS EVIDENCED
19 IN SUPPORTING DOCUMENTATION, STATISTICS, REPORTS, STUDIES OR RESEARCH.

20 C. If for any reason adequate data are not reasonably available to
21 comply with the requirements of subsection B of this section, the agency
22 shall explain the limitations of the data and the methods that were employed
23 in the attempt to obtain the data and shall characterize the probable impacts
24 in qualitative terms. The absence of adequate data, if explained in
25 accordance with this subsection, shall not be grounds for a legal challenge
26 to the sufficiency of the economic, small business and consumer impact
27 statement.

28 D. An agency is not required to prepare an economic, small business
29 and consumer impact statement pursuant to this chapter for the following rule
30 makings:

31 1. Initial making, but not renewal, of an emergency rule pursuant to
32 section 41-1026.

33 2. Summary rule makings pursuant to section 41-1027 that only repeal
34 existing rule language.

35 3. Any rule making that decreases monitoring, record keeping or
36 reporting burdens on agencies, political subdivisions, businesses or persons,
37 unless the agency determines that increased costs of implementation or
38 enforcement may equal or exceed the reduction in burdens.

39 E. The economic, small business and consumer impact statement for a
40 rule making that is exempt pursuant to subsection D of this section shall
41 state that the proposed rule making is exempt.

42 F. The cost-benefit analysis required by subsection B of this section
43 shall calculate only the costs and benefits that occur in this state.

1 G. If a person submits an analysis to the agency that compares the
2 rule's impact on the competitiveness of businesses in this state to the
3 impact on businesses in other states, the agency shall consider the analyses.

4 Sec. 15. Section 41-1092, Arizona Revised Statutes, is amended to
5 read:

6 41-1092. Definitions

7 In this article, unless the context otherwise requires:

8 1. "Administrative law judge" means an individual or an agency head,
9 board or commission that sits as an administrative law judge, that conducts
10 administrative hearings in a contested case or an appealable agency action
11 and that makes decisions regarding the contested case or appealable agency
12 action.

13 2. "Administrative law judge decision" means the findings of fact,
14 conclusions of law and recommendations or decisions issued by an
15 administrative law judge.

16 3. "Appealable agency action" means an action that determines the
17 legal rights, duties or privileges of a party and that is not a contested
18 case. Appealable agency actions do not include interim orders by
19 self-supporting regulatory boards, ~~or~~ rules, orders, standards or statements
20 of policy of general application issued by an administrative agency to
21 implement, interpret or make specific the legislation enforced or
22 administered by it OR CLARIFICATIONS OF INTERPRETATION, nor does it mean or
23 include rules concerning the internal management of the agency that do not
24 affect private rights or interests. For the purposes of this paragraph,
25 administrative hearing does not include a public hearing held for the purpose
26 of receiving public comment on a proposed agency action.

27 4. "Director" means the director of the office of administrative
28 hearings.

29 5. "Final administrative decision" means a decision by an agency that
30 is subject to judicial review pursuant to title 12, chapter 7, article 6.

31 6. "Office" means the office of administrative hearings.

32 7. "Self-supporting regulatory board" means any one of the following:

33 (a) The Arizona state board of accountancy.

34 (b) The state board of appraisal.

35 (c) The board of barbers.

36 (d) The board of behavioral health examiners.

37 (e) The Arizona state boxing and mixed martial arts commission.

38 (f) The state board of chiropractic examiners.

39 (g) The board of cosmetology.

40 (h) The state board of dental examiners.

41 (i) The state board of funeral directors and embalmers.

42 (j) The Arizona game and fish commission.

- 1 (k) The board of homeopathic and integrated medicine examiners.
- 2 (l) The Arizona medical board.
- 3 (m) The naturopathic physicians medical board.
- 4 (n) The state board of nursing.
- 5 (o) The board of examiners of nursing care institution administrators
- 6 and adult care home managers.
- 7 (p) The board of occupational therapy examiners.
- 8 (q) The state board of dispensing opticians.
- 9 (r) The state board of optometry.
- 10 (s) The Arizona board of osteopathic examiners in medicine and
- 11 surgery.
- 12 (t) The Arizona peace officer standards and training board.
- 13 (u) The Arizona state board of pharmacy.
- 14 (v) The board of physical therapy examiners.
- 15 (w) The state board of podiatry examiners.
- 16 (x) The state board for private postsecondary education.
- 17 (y) The state board of psychologist examiners.
- 18 (z) The board of respiratory care examiners.
- 19 (aa) The office of pest management.
- 20 (bb) The state board of technical registration.
- 21 (cc) The Arizona state veterinary medical examining board.
- 22 (dd) The acupuncture board of examiners.
- 23 (ee) The Arizona regulatory board of physician assistants.
- 24 (ff) The board of athletic training.
- 25 (gg) The board of massage therapy.

26 Sec. 16. Section 41-1092.06, Arizona Revised Statutes, is amended to
27 read:

28 41-1092.06. Appeals of agency actions and contested cases:
29 informal settlement conferences; applicability

30 A. If requested by the appellant of an appealable agency action **OR THE**
31 **RESPONDENT IN A CONTESTED CASE**, the agency shall hold an informal settlement
32 conference within fifteen days after receiving the request. A request for an
33 informal settlement conference shall be in writing and shall be filed with
34 the agency no later than twenty days before the hearing. If an informal
35 settlement conference is requested, the agency shall notify the office of the
36 request and the outcome of the conference, except as provided in section
37 41-1092.01, subsection F. The request for an informal settlement conference
38 does not toll the sixty day period in which the administrative hearing is to
39 be held pursuant to section 41-1092.05.

40 B. If an informal settlement conference is held, a person with the
41 authority to act on behalf of the agency must represent the agency at the
42 conference. The agency representative shall notify the appellant in writing
43 that statements, either written or oral, made by the appellant at the
44 conference, including a written document, created or expressed solely for the
45 purpose of settlement negotiations are inadmissible in any subsequent

1 administrative hearing. The parties participating in the settlement
2 conference shall waive their right to object to the participation of the
3 agency representative in the final administrative decision.

4 Sec. 17. Effective date

5 Sections 12-284, 12-902, 12-904, 12-906, 12-907, 12-908, 12-909,
6 12-910, 12-911, 12-912, 12-914 and 41-1001.01, Arizona Revised Statutes, as
7 amended by this act, are effective from and after June 30, 2013.