

State of Arizona
House of Representatives
Fifty-first Legislature
Second Regular Session
2014

HOUSE BILL 2260

AN ACT

AMENDING SECTIONS 41-1001.01, 41-1009 AND 41-1376, ARIZONA REVISED STATUTES;
RELATING TO REGULATORY ENFORCEMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 41-1001.01, Arizona Revised Statutes, is amended to
3 read:
4 41-1001.01. Regulatory bill of rights; small businesses
5 A. To ensure fair and open regulation by state agencies, a person:
6 1. Is eligible for reimbursement of fees and other expenses if the
7 person prevails by adjudication on the merits against an agency in a court
8 proceeding regarding an agency decision as provided in section 12-348.
9 2. Is eligible for reimbursement of the person's costs and fees if the
10 person prevails against any agency in an administrative hearing as provided
11 in section 41-1007.
12 3. Is entitled to have an agency not charge the person a fee unless
13 the fee for the specific activity is expressly authorized as provided in
14 section 41-1008.
15 4. Is entitled to receive the information and notice regarding
16 inspections AND AUDITS prescribed in section 41-1009.
17 5. May review the full text or summary of all ~~rule-making~~ RULEMAKING
18 activity, the summary of substantive policy statements and the full text of
19 executive orders in the register as provided in article 2 of this chapter.
20 6. May participate in the ~~rule-making~~ RULEMAKING process as provided
21 in articles 3, 4, 4.1 and 5 of this chapter, including:
22 (a) Providing written comments or testimony on proposed rules to an
23 agency as provided in section 41-1023 and having the agency adequately
24 address those comments as provided in section 41-1052, subsection D,
25 including comments or testimony concerning the information contained in the
26 economic, small business and consumer impact statement.
27 (b) Filing an early review petition with the governor's regulatory
28 review council as provided in article 5 of this chapter.
29 (c) Providing written comments or testimony on rules to the governor's
30 regulatory review council during the mandatory sixty-day comment period as
31 provided in article 5 of this chapter.
32 7. Is entitled to have an agency not base a licensing decision in
33 whole or in part on licensing conditions or requirements that are not
34 specifically authorized by statute, rule or state tribal gaming compact as
35 provided in section 41-1030, subsection B.
36 8. Is entitled to have an agency not make a rule under a specific
37 grant of ~~rule-making~~ RULEMAKING authority that exceeds the subject matter
38 areas listed in the specific statute or not make a rule under a general grant
39 of ~~rule-making~~ RULEMAKING authority to supplement a more specific grant of
40 ~~rule-making~~ RULEMAKING authority as provided in section 41-1030,
41 subsection C.
42 9. May allege that an existing agency practice or substantive policy
43 statement constitutes a rule and have that agency practice or substantive
44 policy statement declared void because the practice or substantive policy
45 statement constitutes a rule as provided in section 41-1033.

1 10. May file a complaint with the administrative rules oversight
2 committee concerning:

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

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

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

11 12. May have administrative hearings governed by uniform administrative
12 appeal procedures as provided in articles 6 and 10 of this chapter and may
13 appeal a final administrative decision by filing a notice of appeal pursuant
14 to title 12, chapter 7, article 6.

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

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

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

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

24 15. Is entitled to receive information regarding the license
25 application process before or at the time the person obtains an application
26 for a license as provided in sections 41-1001.02 and 41-1079.

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

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

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

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

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

1 C. EACH STATE AGENCY THAT CONDUCTS AUDITS, INSPECTIONS OR OTHER
2 REGULATORY ENFORCEMENT ACTIONS SHALL CREATE AND CONSPICUOUSLY POST ON THE
3 AGENCY'S WEBSITE A SMALL BUSINESS BILL OF RIGHTS IN PLAIN ENGLISH CONTAINING
4 THE APPLICABLE RIGHTS PRESCRIBED IN THIS SECTION, SECTION 41-1009 AND ANY
5 OTHER AGENCY-SPECIFIC STATUTORY RIGHTS. THE AGENCY SHALL PROVIDE EACH
6 REGULATED SMALL BUSINESS WITH A WRITTEN COPY OF THE SMALL BUSINESS BILL OF
7 RIGHTS BEFORE THE AGENCY INITIATES AN INSPECTION, AUDIT OR OTHER REGULATORY
8 ENFORCEMENT ACTION. THE AGENCY INSPECTOR, AUDITOR OR REGULATOR SHALL OBTAIN
9 THE SIGNATURE OF AN AUTHORIZED ON-SITE REPRESENTATIVE OF THE REGULATED SMALL
10 BUSINESS INDICATING THAT THE REPRESENTATIVE RECEIVED A COPY OF THE SMALL
11 BUSINESS BILL OF RIGHTS. AT THE REQUEST OF AN AUTHORIZED ON-SITE
12 REPRESENTATIVE OF THE REGULATED SMALL BUSINESS, THE AGENCY MAY PROVIDE AN
13 ELECTRONIC DOCUMENT OF THE SMALL BUSINESS BILL OF RIGHTS AND AT THE REQUEST
14 OF THE REPRESENTATIVE OBTAIN RECEIPT IN THE FORM OF AN ELECTRONIC SIGNATURE.
15 IF AN AUTHORIZED ON-SITE REPRESENTATIVE REFUSES TO SIGN RECEIPT, THE AGENCY
16 INSPECTOR, AUDITOR OR REGULATOR SHALL DOCUMENT THE REFUSAL AND PROCEED WITH
17 THE ENFORCEMENT ACTION. IN ADDITION TO THE RIGHTS LISTED IN THIS SECTION AND
18 SECTION 41-1009, THE SMALL BUSINESS BILL OF RIGHTS SHALL INCLUDE THE PROCESS
19 BY WHICH A SMALL BUSINESS MAY FILE A COMPLAINT WITH THE OFFICE OF
20 OMBUDSMAN-CITIZENS AIDE OR ANY APPROPRIATE STATE GOVERNMENT OMBUDSMAN TO
21 INVESTIGATE ADMINISTRATIVE ACTS OF AGENCIES.

22 Sec. 2. Section 41-1009, Arizona Revised Statutes, is amended to read:
23 41-1009. Inspections and audits; applicability; annual report

24 A. An agency inspector, AUDITOR or regulator who enters any premises
25 of a regulated person for the purpose of conducting an inspection OR AUDIT
26 shall:

- 27 1. Present photo identification on entry of the premises.
- 28 2. On initiation of the inspection OR AUDIT, state the purpose of the
29 inspection OR AUDIT and the legal authority for conducting the inspection OR
30 AUDIT.
- 31 3. Disclose any applicable inspection OR AUDIT fees.
- 32 4. Afford an opportunity to have an authorized on-site representative
33 of the regulated person accompany the agency inspector, AUDITOR or regulator
34 on the premises, except during confidential interviews.
- 35 5. Provide notice of the right to have on request:
 - 36 (a) Copies of any original documents taken by the agency during the
37 inspection OR AUDIT if the agency is permitted by law to take original
38 documents.
 - 39 (b) A split of any samples taken during the inspection if the split of
40 any samples would not prohibit an analysis from being conducted or render an
41 analysis inconclusive.
 - 42 (c) Copies of any analysis performed on samples taken during the
43 inspection.

1 (d) Copies of any documents to be relied on to determine compliance
2 with licensure or regulatory requirements if the agency is otherwise
3 permitted by law to do so.

4 6. Inform each person whose conversation with the agency inspector,
5 AUDITOR or regulator during the inspection OR AUDIT is tape recorded that the
6 conversation is being tape recorded.

7 7. Inform each person interviewed during the inspection OR AUDIT that:

8 (a) Statements made by the person may be included in the inspection OR
9 AUDIT report AND MAY BECOME A PUBLIC RECORD.

10 (b) PARTICIPATION IN AN INTERVIEW IS VOLUNTARY, UNLESS THE PERSON IS
11 LEGALLY COMPELLED TO PARTICIPATE IN THE INTERVIEW.

12 (c) THE PERSON WILL BE ALLOWED AT LEAST TWENTY-FOUR HOURS TO REVIEW
13 AND REVISE ANY WRITTEN STATEMENT THAT THEY ARE ASKED TO SIGN BY THE AGENCY.

14 (d) THE PERSON HAS THE RIGHT TO HAVE AN ATTORNEY REPRESENTING THE
15 PERSON OR REPRESENTING THE REGULATED PERSON PRESENT DURING THE INTERVIEW.

16 B. On initiation of an AUDIT OR AN inspection of any premises of a
17 regulated person, an agency inspector, AUDITOR or regulator shall provide the
18 following in writing:

19 1. The rights described in subsection A of this section AND SECTION
20 41-1001.01, SUBSECTION C.

21 2. The name and telephone number of a contact person WHO IS available
22 to answer questions regarding the inspection OR AUDIT.

23 3. The due process rights relating to an appeal of a final decision of
24 an agency based on the results of the inspection OR AUDIT, including the name
25 and telephone number of a person to contact within the agency and any
26 appropriate state government ombudsman.

27 4. THE REGULATED PERSON HAS THE RIGHT TO BE REPRESENTED BY AN
28 ATTORNEY, AND THAT THE AGENCY SHALL NOT TAKE ANY ADVERSE ACTION, TREAT THE
29 REGULATED PERSON LESS FAVORABLY OR DRAW ANY INFERENCE AS A RESULT OF THE
30 REGULATED PERSON'S EXERCISE OF THE RIGHT TO BE REPRESENTED BY AN ATTORNEY.

31 5. THE INFORMATION AND DOCUMENTS PROVIDED TO THE AGENCY MAY BECOME A
32 PUBLIC RECORD, AND THE REGULATED PARTY MAY REDACT TRADE SECRET, PROPRIETARY
33 AND CONFIDENTIAL INFORMATION.

34 6. THE EXPIRATION DATE OR STATUTE OF LIMITATIONS APPLICABLE TO THE
35 AGENCY'S RIGHT TO FILE A COMPLIANCE ACTION AGAINST THE REGULATED PERSON
36 ARISING FROM THE INSPECTION OR AUDIT, WHICH SHALL BE APPLICABLE TO BOTH NEW
37 AND AMENDED COMPLIANCE ACTIONS.

38 C. An agency inspector, AUDITOR or regulator shall obtain the
39 signature of the regulated person or on-site representative of the regulated
40 person on the writing prescribed in subsection B of this section indicating
41 that the regulated person or on-site representative of the regulated person
42 has read the writing prescribed in subsection B of this section and is
43 notified of the regulated person's or on-site representative of the regulated
44 person's inspection OR AUDIT and due process rights. The agency shall
45 maintain a copy of this signature with the inspection OR AUDIT report and

1 shall leave a copy with the regulated person or on-site representative of the
2 regulated person. If a regulated person or on-site representative of the
3 regulated person is not at the site or refuses to sign the writing prescribed
4 in subsection B of this section, the agency inspector, **AUDITOR** or regulator
5 shall note that fact on the writing prescribed in subsection B of this
6 section.

7 D. An agency that conducts an inspection shall give a copy of the
8 inspection report to the regulated person or on-site representative of the
9 regulated person either:

10 1. At the time of the inspection.

11 2. Notwithstanding any other state law, within thirty working days
12 after the inspection.

13 3. As otherwise required by federal law.

14 E. The inspection report shall contain deficiencies identified during
15 an inspection. Unless otherwise provided by law, the agency may provide the
16 regulated person an opportunity to correct the deficiencies unless the agency
17 determines that the deficiencies are:

18 1. Committed intentionally.

19 2. Not correctable within a reasonable period of time as determined by
20 the agency.

21 3. Evidence of a pattern of noncompliance.

22 4. A risk to any person, the public health, safety or welfare or the
23 environment.

24 F. If the agency allows the regulated person an opportunity to correct
25 the deficiencies pursuant to subsection E of this section, the regulated
26 person shall notify the agency when the deficiencies have been corrected.
27 Within thirty days ~~of~~ **AFTER** receipt of notification from the regulated person
28 that the deficiencies have been corrected, the agency shall determine if the
29 regulated person is in substantial compliance and notify the regulated person
30 whether or not the regulated person is in substantial compliance. If the
31 regulated person fails to correct the deficiencies or the agency determines
32 the deficiencies have not been corrected within a reasonable period of time,
33 the agency may take any enforcement action authorized by law for the
34 deficiencies.

35 G. For agencies with authority under title 49, if the agency does not
36 allow the regulated person an opportunity to correct deficiencies pursuant to
37 subsection E of this section, on the request of the regulated person, the
38 agency shall provide a written explanation of the reason that an opportunity
39 to correct was not allowed.

40 H. An agency decision pursuant to subsection E or F of this section is
41 not an appealable agency action.

42 I. At least once every month after the commencement of the inspection,
43 an agency shall provide a regulated person with an update on the status of
44 any agency action resulting from an inspection of the regulated person. An
45 agency is not required to provide an update after the regulated person is

1 notified that no agency action will result from the agency inspection or
2 after the completion of agency action resulting from the agency inspection.

3 J. For agencies with authority under title 49, if, as a result of an
4 inspection or any other investigation, an agency alleges that a regulated
5 person is not in compliance with licensure or other applicable regulatory
6 requirements, the agency shall provide written notice of that allegation to
7 the regulated person. The notice shall contain the following information:

8 1. A citation to the statute, regulation, license or permit condition
9 on which the allegation of noncompliance is based, including the specific
10 provisions in the statute, regulation, license or permit condition that are
11 alleged to be violated.

12 2. Identification of any documents relied on as a basis for the
13 allegation of noncompliance.

14 3. An explanation stated with reasonable specificity of the regulatory
15 and factual basis for the allegation of noncompliance.

16 4. Instructions for obtaining a timely opportunity to discuss the
17 alleged violation with the agency.

18 K. Subsection J of this section applies only to inspections necessary
19 for the issuance of a license or to determine compliance with licensure or
20 other regulatory requirements. Subsection J of this section does not apply
21 to an action taken pursuant to section 11-871, 11-876, 11-877, 49-457.01,
22 49-457.03 or 49-474.01. Issuance of a notice under subsection J of this
23 section is not a prerequisite to otherwise lawful agency actions seeking an
24 injunction or issuing an order if the agency determines that the action is
25 necessary on an expedited basis to abate an imminent and substantial
26 endangerment to public health or the environment and documents the basis for
27 that determination in the documents initiating the action.

28 L. This section does not authorize an inspection or any other act that
29 is not otherwise authorized by law.

30 M. Except as otherwise provided in subsection K of this section, this
31 section applies only to inspections necessary for the issuance of a license
32 or to determine compliance with licensure or other regulatory requirements
33 applicable to a licensee AND AUDITS PURSUANT TO ENFORCEMENT OF TITLE 23,
34 CHAPTERS 2 AND 4. This section does not apply:

35 1. To criminal investigations, investigations under tribal state
36 gaming compacts and undercover investigations that are generally or
37 specifically authorized by law.

38 2. If the inspector, AUDITOR or regulator has reasonable suspicion to
39 believe that the regulated person may be engaged in criminal activity.

40 3. To the Arizona peace officer standards and training board
41 established by section 41-1821.

42 N. If an inspector, AUDITOR or regulator gathers evidence in violation
43 of this section, the violation may be a basis to exclude the evidence in a
44 civil or administrative proceeding.

1 0. Failure of an agency, board or commission employee to comply with
2 this section:

3 1. May subject the employee to disciplinary action or dismissal.

4 2. Shall be considered by the judge and administrative law judge as
5 grounds for reduction of any fine or civil penalty.

6 P. An agency may make rules to implement subsection A, paragraph 5 of
7 this section.

8 Q. Nothing in this section shall be used to exclude evidence in a
9 criminal proceeding.

10 R. EACH AGENCY SHALL REPORT ANNUALLY TO THE OMBUDSMAN-CITIZENS AIDE ON
11 OR BEFORE APRIL 1 THE FOLLOWING INFORMATION REGARDING COMPLAINTS FILED
12 AGAINST THE AGENCY DURING THE PRECEDING CALENDAR YEAR:

13 1. THE NUMBER AND DISPOSITION OF PETITIONS FOR THE MAKING OF A RULE OR
14 A REVIEW OF AN EXISTING AGENCY PRACTICE OR SUBSTANTIVE POLICY PURSUANT TO
15 SECTION 41-1033.

16 2. THE NUMBER AND DISPOSITION OF COMPLAINTS FILED WITH THE
17 ADMINISTRATIVE RULES OVERSIGHT COMMITTEE.

18 3. THE NUMBER AND DISPOSITION OF MOTIONS FILED PURSUANT TO ARTICLE 6
19 OR 10 OF THIS CHAPTER AND TITLE 12, CHAPTER 7, ARTICLE 6.

20 Sec. 3. Section 41-1376, Arizona Revised Statutes, is amended to read:

21 41-1376. Powers and duties

22 A. The ombudsman-citizens aide shall:

23 1. Investigate the administrative acts of agencies pursuant to section
24 41-1377, subsections A and B except as provided in section 41-1377,
25 subsections C, D and E. The ombudsman-citizens aide shall investigate the
26 administrative acts of an agency without regard to the finality of the
27 administrative act.

28 2. Annually before January 1 prepare a written report to the governor,
29 the legislature and the public that contains a summary of the
30 ombudsman-citizens aide's activities during the previous fiscal year. The
31 ombudsman-citizens aide shall semiannually present this report before the
32 legislative council. This report shall include:

33 (a) The ombudsman-citizens aide's mission statement.

34 (b) The number of matters that were within each of the categories
35 specified in section 41-1379, subsection B.

36 (c) Legislative issues affecting the ombudsman-citizens aide.

37 (d) Selected case studies that illustrate the ombudsman-citizens
38 aide's work and reasons for complaints.

39 (e) Ombudsman-citizens aide's contact statistics.

40 (f) Ombudsman-citizens aide's staff.

41 3. Before conducting the first investigation, adopt rules that ensure
42 that confidential information that is gathered will not be disclosed.

43 4. Appoint a deputy ombudsman and prescribe the duties of employees
44 or, subject to appropriation, contract for the services of independent
45 contractors necessary to administer the duties of the office of

1 ombudsman-citizens aide. All staff serves at the pleasure of the
2 ombudsman-citizens aide, and they are exempt from chapter 4, articles 5 and 6
3 of this title. All staff shall be subject to the conflict of interest
4 provisions of title 38, chapter 3, article 8.

5 5. Before conducting the first investigation, adopt rules that
6 establish procedures for receiving and processing complaints, including
7 guidelines to ensure each complainant has exhausted all reasonable
8 alternatives within the agency, conducting investigations, incorporating
9 agency responses into recommendations and reporting findings.

10 6. Notify the chief executive or administrative officer of the agency
11 in writing of the intention to investigate unless notification would unduly
12 hinder the investigation or make the investigation ineffectual.

13 7. Appoint an assistant to help the ombudsman-citizens aide
14 investigate complaints relating to child protective services in the
15 department of economic security. The assistant shall have expertise in child
16 protective services procedures and laws. Notwithstanding any law to the
17 contrary, the ombudsman-citizens aide and the assistant have access to child
18 protective services records and to any automated case management system used
19 by child protective services in the department of economic security.

20 8. ANNUALLY ON OR BEFORE SEPTEMBER 1, PREPARE AND SUBMIT TO THE
21 DIRECTOR OF THE GOVERNOR'S OFFICE OF STRATEGIC PLANNING AND BUDGETING, THE
22 CHAIRPERSON OF THE JOINT LEGISLATIVE BUDGET COMMITTEE AND THE COCHAIRPERSONS
23 OF THE ADMINISTRATIVE RULES OVERSIGHT COMMITTEE A WRITTEN REPORT ON THE SCOPE
24 AND SEVERITY OF REPORTED VIOLATIONS OF THE SMALL BUSINESS BILL OF RIGHTS
25 PURSUANT TO SECTION 41-1001.01 BY STATE AGENCIES DURING THE PRECEDING
26 CALENDAR YEAR.

27 B. After the conclusion of an investigation and notice to the head of
28 the agency pursuant to section 41-1379, the ombudsman-citizens aide may
29 present the ombudsman-citizens aide's opinion and recommendations to the
30 governor, the legislature, the office of the appropriate prosecutor or the
31 public, or any combination of these persons. The ombudsman-citizens aide
32 shall include in the opinion the reply of the agency, including those issues
33 that were resolved as a result of the ombudsman-citizens aide's preliminary
34 opinion or recommendation.