

REFERENCE TITLE: state agency rulemaking; restrictions

State of Arizona  
House of Representatives  
Fifty-second Legislature  
First Regular Session  
2015

# HB 2297

Introduced by  
Representative Farnsworth E

AN ACT

AMENDING TITLE 41, CHAPTER 6, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING  
SECTION 41-1038; RELATING TO STATE AGENCY RULEMAKING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 41, chapter 6, article 3, Arizona Revised Statutes,  
3 is amended by adding section 41-1038, to read:

4 41-1038. Rules; restrictions; affirmative defense; fees and  
5 costs; exceptions

6 A. NOTWITHSTANDING ANY OTHER LAW, AN AGENCY MAY NOT ADOPT ANY NEW RULE  
7 THAT WOULD INCREASE EXISTING REGULATORY RESTRAINTS OR BURDENS ON THE FREE  
8 EXERCISE OF PROPERTY RIGHTS OR THE FREEDOM TO ENGAGE IN AN OTHERWISE LAWFUL  
9 BUSINESS OR OCCUPATION UNLESS THE RULE IS EITHER OF THE FOLLOWING:

10 1. A COMPONENT OF A COMPREHENSIVE EFFORT TO REDUCE REGULATORY  
11 RESTRAINTS OR BURDENS.

12 2. STRICTLY MINISTERIAL IN IMPLEMENTING LEGISLATIVE STANDARDS THAT  
13 MANIFEST A CLEAR LEGISLATIVE DETERMINATION OF ALL RELEVANT PUBLIC POLICIES.

14 B. ANY PERSON WHO IS SUBJECT TO A CIVIL OR CRIMINAL PROCEEDING ARISING  
15 FROM THE ENFORCEMENT OF A RULE IN VIOLATION OF SUBSECTION A OF THIS SECTION  
16 HAS AN AFFIRMATIVE DEFENSE TO THE ENFORCEMENT ACTION. ANY COURT OR  
17 ADMINISTRATIVE BODY CONSIDERING OR REVIEWING THE DEFENSE SHALL RULE ON ITS  
18 MERITS WITHOUT DEFERENCE TO ANY LEGISLATIVE, ADMINISTRATIVE OR EXECUTIVE  
19 FINDING CONCERNING THE RULE. THE COURT OR ADMINISTRATIVE BODY MAY AWARD THE  
20 PREVAILING PARTY, OTHER THAN THE AGENCY, ATTORNEY FEES AND COSTS.

21 C. THIS SECTION DOES NOT APPLY TO RULES THAT EITHER:

22 1. GOVERN PUBLIC EMPLOYEES.

23 2. ARE NECESSARY FOR HEALTH REGULATORY BOARDS ESTABLISHED PURSUANT TO  
24 TITLE 32 TO PROVIDE FOR PUBLIC SAFETY AND ENFORCE STANDARDS OF CARE.

25 D. FOR THE PURPOSES OF THIS SECTION, AGENCY DOES NOT INCLUDE ANY  
26 BOARD, COMMISSION, DEPARTMENT, OFFICER OR OTHER ADMINISTRATIVE UNIT OF THIS  
27 STATE ESTABLISHED UNDER THE AUTHORITY OF THE CONSTITUTION OF ARIZONA.