

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

**CHAPTER 192**  
**HOUSE BILL 2213**

AN ACT

AMENDING SECTIONS 41-1001.01 AND 41-1009, 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 rulemaking activity, the  
18 summary of substantive policy statements and the full text of executive  
19 orders in the register as provided in article 2 of this chapter.  
20 6. May participate in the rulemaking process as provided in articles  
21 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 rulemaking authority that exceeds the subject matter areas listed in  
38 the specific statute or not make a rule under a general grant of rulemaking  
39 authority to supplement a more specific grant of rulemaking authority as  
40 provided in section 41-1030, subsection C.  
41 9. May allege that an existing agency practice or substantive policy  
42 statement constitutes a rule and have that agency practice or substantive  
43 policy statement declared void because the practice or substantive policy  
44 statement constitutes a rule as provided in section 41-1033.  
45 10. May file a complaint with the administrative rules oversight  
46 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 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 20. May have the person's administrative hearing on contested cases  
40 pursuant to title 23, chapter 2 or 4 heard by an independent administrative  
41 law judge as prescribed by title 23, chapter 2 or 4.

42 21. PURSUANT TO SECTION 41-1009, SUBSECTION E, MAY CORRECT DEFICIENCIES  
43 IDENTIFIED DURING AN INSPECTION UNLESS OTHERWISE PROVIDED BY LAW.

44 B. The enumeration of the rights listed in subsection A of this  
45 section does not grant any additional rights that are not prescribed in the  
46 sections referenced in subsection A of this section.

1 C. Each state agency that conducts audits, inspections or other  
2 regulatory enforcement actions pursuant to section 41-1009 shall create and  
3 clearly post on the agency's website a small business bill of rights. The  
4 agency shall create the small business bill of rights by selecting the  
5 applicable rights prescribed in this section and section 41-1009 and any  
6 other agency-specific statutes and rules. ~~At the request of an authorized~~  
7 ~~on-site representative of the regulated small business,~~ The agency shall  
8 provide a written document of the small business bill of rights **TO THE**  
9 **AUTHORIZED ON-SITE REPRESENTATIVE OF THE REGULATED SMALL BUSINESS.** In  
10 addition to the rights listed in this section and section 41-1009, the agency  
11 notice of the small business bill of rights shall include the process by  
12 which a small business may file a complaint with the agency employees who are  
13 designated to assist members of the public or regulated community pursuant to  
14 section 41-1006. The notice must provide the contact information of the  
15 agency's designated employees. The agency notice must also state that if the  
16 regulated person has already made a reasonable effort with the agency to  
17 resolve the problem and still has not been successful, the regulated person  
18 may contact the office of ombudsman-citizens aide.

19 Sec. 2. Section 41-1009, Arizona Revised Statutes, is amended to read:  
20 41-1009. Inspections and audits; applicability; annual report;  
21 exception

22 A. An agency inspector, auditor or regulator who enters any premises  
23 of a regulated person for the purpose of conducting an inspection or audit  
24 shall, unless otherwise provided by law:

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

1           6. Inform each person whose conversation with the agency inspector,  
2 auditor or regulator during the inspection or audit is tape recorded that the  
3 conversation is being tape recorded.

4           7. Inform each person WHO IS interviewed during the inspection or  
5 audit that:

6           (a) Statements made by the person may be included in the inspection or  
7 audit report.

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

10          (c) THE PERSON IS ALLOWED AT LEAST TWENTY-FOUR HOURS TO REVIEW AND  
11 REVISE ANY WRITTEN WITNESS STATEMENT THAT IS DRAFTED BY THE AGENCY INSPECTOR,  
12 AUDITOR OR REGULATOR AND ON WHICH THE AGENCY INSPECTOR, AUDITOR OR REGULATOR  
13 REQUESTS THE PERSON'S SIGNATURE.

14          (d) THE INSPECTOR, AUDITOR OR REGULATOR MAY NOT PROHIBIT THE REGULATED  
15 PERSON FROM HAVING AN ATTORNEY OR ANY OTHER EXPERTS IN THEIR FIELD PRESENT  
16 DURING THE INTERVIEW TO REPRESENT OR ADVISE THE REGULATED PERSON.

17          B. On initiation of an audit or an inspection of any premises of a  
18 regulated person, an agency inspector, auditor or regulator shall provide the  
19 following in writing:

20           1. The rights described in subsection A of this section and section  
21 41-1001.01, subsection C.

22           2. The name and telephone number of a contact person who is available  
23 to answer questions regarding the inspection or audit.

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

28           4. A STATEMENT THAT THE AGENCY INSPECTOR, AUDITOR OR REGULATOR MAY NOT  
29 TAKE ANY ADVERSE ACTION, TREAT THE REGULATED PERSON LESS FAVORABLY OR DRAW  
30 ANY INFERENCE AS A RESULT OF THE REGULATED PERSON'S DECISION TO BE  
31 REPRESENTED BY AN ATTORNEY OR ADVISED BY ANY OTHER EXPERTS IN THEIR FIELD.

32           5. A NOTICE THAT IF THE INFORMATION AND DOCUMENTS PROVIDED TO THE  
33 AGENCY INSPECTOR, AUDITOR OR REGULATOR BECOME A PUBLIC RECORD, THE REGULATED  
34 PERSON MAY REDACT TRADE SECRETS AND PROPRIETARY AND CONFIDENTIAL INFORMATION  
35 UNLESS THE INFORMATION AND DOCUMENTS ARE CONFIDENTIAL PURSUANT TO STATUTE.

36           6. THE TIME LIMIT OR STATUTE OF LIMITATIONS APPLICABLE TO THE RIGHT OF  
37 THE AGENCY INSPECTOR, AUDITOR OR REGULATOR TO FILE A COMPLIANCE ACTION  
38 AGAINST THE REGULATED PERSON ARISING FROM THE INSPECTION OR AUDIT, WHICH  
39 APPLIES TO BOTH NEW AND AMENDED COMPLIANCE ACTIONS.

40          C. An agency inspector, auditor or regulator shall obtain the  
41 signature of the regulated person or on-site representative of the regulated  
42 person on the writing prescribed in subsection B of this section AND SECTION  
43 41-1001.01, SUBSECTION C, IF APPLICABLE, indicating that the regulated person  
44 or on-site representative of the regulated person has read the writing  
45 prescribed in subsection B of this section AND SECTION 41-1001.01, SUBSECTION  
46 C, IF APPLICABLE, and is notified of the regulated person's or on-site

1 representative of the regulated person's inspection or audit and due process  
2 rights. THE AGENCY INSPECTOR, AUDITOR OR REGULATOR MAY PROVIDE AN ELECTRONIC  
3 DOCUMENT OF THE WRITING PRESCRIBED IN SUBSECTION B OF THIS SECTION AND  
4 SECTION 41-1001.01, SUBSECTION C AND, AT THE REQUEST OF THE REGULATED PERSON  
5 OR ON-SITE REPRESENTATIVE, OBTAIN A RECEIPT IN THE FORM OF AN ELECTRONIC  
6 SIGNATURE. The agency shall maintain a copy of this signature with the  
7 inspection or audit report and shall leave a copy with the regulated person  
8 or on-site representative of the regulated person. If a regulated person or  
9 on-site representative of the regulated person is not at the site or refuses  
10 to sign the writing prescribed in subsection B of this section AND SECTION  
11 41-1001.01, SUBSECTION C, IF APPLICABLE, the agency inspector, auditor or  
12 regulator shall note that fact on the writing prescribed in subsection B of  
13 this section AND SECTION 41-1001.01, SUBSECTION C, IF APPLICABLE.

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

- 17 1. At the time of the inspection.
- 18 2. Notwithstanding any other state law, within thirty working days  
19 after the inspection.
- 20 3. As otherwise required by federal law.

21 E. The inspection report shall contain deficiencies identified during  
22 an inspection. Unless otherwise provided by STATE OR FEDERAL law, the agency  
23 ~~may~~ SHALL provide the regulated person an opportunity to correct the  
24 deficiencies unless the agency determines that the deficiencies are:

- 25 1. Committed intentionally.
- 26 2. Not correctable within a reasonable period of time as determined by  
27 the agency.
- 28 3. Evidence of a pattern of noncompliance.
- 29 4. A risk to any person, the public health, safety or welfare or the  
30 environment.

31 F. If the agency allows the regulated person an opportunity to correct  
32 the deficiencies pursuant to subsection E of this section, the regulated  
33 person shall notify the agency when the deficiencies have been corrected.  
34 Within thirty days after receipt of notification from the regulated person  
35 that the deficiencies have been corrected, the agency shall determine if the  
36 regulated person is in substantial compliance and notify the regulated person  
37 whether or not the regulated person is in substantial compliance. If the  
38 regulated person fails to correct the deficiencies or the agency determines  
39 the deficiencies have not been corrected within a reasonable period of time,  
40 the agency may take any enforcement action authorized by law for the  
41 deficiencies.

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

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

3 I. At least once every month after the commencement of the inspection,  
4 an agency shall provide a regulated person with an update on the status of  
5 any agency action resulting from an inspection of the regulated person. An  
6 agency is not required to provide an update after the regulated person is  
7 notified that no agency action will result from the agency inspection or  
8 after the completion of agency action resulting from the agency inspection.

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

14 1. A citation to the statute, regulation, license or permit condition  
15 on which the allegation of noncompliance is based, including the specific  
16 provisions in the statute, regulation, license or permit condition that are  
17 alleged to be violated.

18 2. Identification of any documents relied on as a basis for the  
19 allegation of noncompliance.

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

22 4. Instructions for obtaining a timely opportunity to discuss the  
23 alleged violation with the agency.

24 K. Subsection J of this section applies only to inspections necessary  
25 for the issuance of a license or to determine compliance with licensure or  
26 other regulatory requirements. Subsection J of this section does not apply  
27 to an action taken pursuant to section 11-871, 11-876, 11-877, 49-457.01,  
28 49-457.03 or 49-474.01. Issuance of a notice under subsection J of this  
29 section is not a prerequisite to otherwise lawful agency actions seeking an  
30 injunction or issuing an order if the agency determines that the action is  
31 necessary on an expedited basis to abate an imminent and substantial  
32 endangerment to public health or the environment and documents the basis for  
33 that determination in the documents initiating the action.

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

36 M. Except as otherwise provided in subsection K of this section, this  
37 section applies only to inspections necessary for the issuance of a license  
38 or to determine compliance with licensure or other regulatory requirements  
39 applicable to a licensee and audits pursuant to enforcement of title 23,  
40 chapters 2 and 4. This section does not apply:

41 1. To criminal investigations, investigations under tribal state  
42 gaming compacts and undercover investigations that are generally or  
43 specifically authorized by law.

44 2. If the inspector, auditor or regulator has reasonable suspicion to  
45 believe that the regulated person may be engaged in criminal activity.

- 1           3. To the Arizona peace officer standards and training board  
2 established by section 41-1821.
- 3           4. TO CERTIFICATES OF CONVENIENCE AND NECESSITY THAT ARE ISSUED BY THE  
4 CORPORATION COMMISSION PURSUANT TO TITLE 40, CHAPTER 2.
- 5           N. If an inspector, auditor or regulator gathers evidence in violation  
6 of this section, the violation may be a basis to exclude the evidence in a  
7 civil or administrative proceeding.
- 8           O. Failure of an agency, board or commission employee to comply with  
9 this section:
- 10           1. May subject the employee to disciplinary action or dismissal.  
11           2. Shall be considered by the judge and administrative law judge as  
12 grounds for reduction of any fine or civil penalty.
- 13           P. An agency may make rules to implement subsection A, paragraph 5 of  
14 this section.
- 15           Q. Nothing in this section shall be used to exclude evidence in a  
16 criminal proceeding.
- 17           R. SUBSECTION A, PARAGRAPH 7, SUBDIVISION (c) AND SUBSECTION E OF THIS  
18 SECTION DO NOT APPLY TO THE DEPARTMENT OF HEALTH SERVICES FOR THE PURPOSES OF  
19 TITLE 36, CHAPTERS 4 AND 7.1.
- 20           S. SUBSECTION B, PARAGRAPH 5 AND SUBSECTION E OF THIS SECTION DO NOT  
21 APPLY TO THE CORPORATION COMMISSION FOR THE PURPOSES OF TITLE 44, CHAPTERS 12  
22 AND 13.

APPROVED BY THE GOVERNOR APRIL 2, 2015.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 2, 2015.