

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

HOUSE BILL 2260

AN ACT

AMENDING SECTIONS 41-1001, 41-1001.01, 41-1009, 41-1376 AND 41-1376.01,
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, Arizona Revised Statutes, is amended to
3 read:
4 41-1001. Definitions
5 In this chapter, unless the context otherwise requires:
6 1. "Agency" means any board, commission, department, officer or other
7 administrative unit of this state, including the agency head and one or more
8 members of the agency head or agency employees or other persons directly or
9 indirectly purporting to act on behalf or under the authority of the agency
10 head, whether created under the Constitution of Arizona or by enactment of
11 the legislature. Agency does not include the legislature, the courts or the
12 governor. Agency does not include a political subdivision of this state or
13 any of the administrative units of a political subdivision, but does include
14 any board, commission, department, officer or other administrative unit
15 created or appointed by joint or concerted action of an agency and one or
16 more political subdivisions of this state or any of their units. To the
17 extent an administrative unit purports to exercise authority subject to this
18 chapter, an administrative unit otherwise qualifying as an agency must be
19 treated as a separate agency even if the administrative unit is located
20 within or subordinate to another agency.
21 2. "AUDIT" MEANS AN AUDIT, INVESTIGATION OR INSPECTION PURSUANT TO
22 TITLE 23, CHAPTER 2 OR 4.
23 ~~2-~~ 3. "Code" means the Arizona administrative code.
24 ~~3-~~ 4. "Committee" means the administrative rules oversight committee.
25 ~~4-~~ 5. "Contested case" means any proceeding, including rate making,
26 EXCEPT RATE MAKING PURSUANT TO ARTICLE XV, CONSTITUTION OF ARIZONA, price
27 fixing and licensing, in which the legal rights, duties or privileges of a
28 party are required or permitted by law, other than this chapter, to be
29 determined by an agency after an opportunity for an administrative hearing.
30 ~~5-~~ 6. "Council" means the governor's regulatory review council.
31 ~~6-~~ 7. "Delegation agreement" means an agreement between an agency and
32 a political subdivision that authorizes the political subdivision to exercise
33 functions, powers or duties conferred on the delegating agency by a provision
34 of law. Delegation agreement does not include intergovernmental agreements
35 entered into pursuant to title 11, chapter 7, article 3.
36 ~~7-~~ 8. "Emergency rule" means a rule that is made pursuant to section
37 41-1026.
38 ~~8-~~ 9. "Fee" means a charge prescribed by an agency for an inspection
39 or for obtaining a license.
40 ~~9-~~ 10. "Final rule" means any rule filed with the secretary of state
41 and made pursuant to an exemption from this chapter in section 41-1005, made
42 pursuant to section 41-1026, approved by the council pursuant to section
43 41-1052 or 41-1053 or approved by the attorney general pursuant to section
44 41-1044. For purposes of judicial review, final rule includes expedited
45 rules pursuant to section 41-1027.

1 ~~10.~~ 11. "General permit" means a regulatory permit, license or agency
2 authorization that is for facilities, activities or practices in a class that
3 are substantially similar in nature and that is issued or granted by an
4 agency to a qualified applicant to conduct identified operations or
5 activities if the applicant meets the applicable requirements of the general
6 permit, that requires less information than an individual or traditional
7 permit, license or authorization and that does not require a public hearing.

8 ~~11.~~ 12. "License" includes the whole or part of any agency permit,
9 certificate, approval, registration, charter or similar form of permission
10 required by law, but does not include a license required solely for revenue
11 purposes.

12 ~~12.~~ 13. "Licensing" includes the agency process respecting the grant,
13 denial, renewal, revocation, suspension, annulment, withdrawal or amendment
14 of a license.

15 ~~13.~~ 14. "Party" means each person or agency named or admitted as a
16 party or properly seeking and entitled as of right to be admitted as a party.

17 ~~14.~~ 15. "Person" means an individual, partnership, corporation,
18 association, governmental subdivision or unit of a governmental subdivision,
19 a public or private organization of any character or another agency.

20 ~~15.~~ 16. "Preamble" means:

21 (a) For any ~~rule-making~~ RULEMAKING subject to this chapter, a
22 statement accompanying the rule that includes:

23 (i) Reference to the specific statutory authority for the rule.

24 (ii) The name and address of agency personnel with whom persons may
25 communicate regarding the rule.

26 (iii) An explanation of the rule, including the agency's reasons for
27 initiating the ~~rule-making~~ RULEMAKING.

28 (iv) A reference to any study relevant to the rule that the agency
29 reviewed and either proposes to rely on in its evaluation of or justification
30 for the rule or proposes not to rely on in its evaluation of or justification
31 for the rule, where the public may obtain or review each study, all data
32 underlying each study and any analysis of each study and other supporting
33 material.

34 (v) The economic, small business and consumer impact summary, or in
35 the case of a proposed rule, a preliminary summary and a solicitation of
36 input on the accuracy of the summary.

37 (vi) A showing of good cause why the rule is necessary to promote a
38 statewide interest if the rule will diminish a previous grant of authority of
39 a political subdivision of this state.

40 (vii) Such other matters as are prescribed by statute and that are
41 applicable to the specific agency or to any specific rule or class of rules.

42 (b) In addition to the information set forth in subdivision (a) of
43 this paragraph, for a proposed rule, the preamble also shall include a list
44 of all previous notices appearing in the register addressing the proposed
45 rule, a statement of the time, place and nature of the proceedings for the

1 making, amendment or repeal of the rule and where, when and how persons may
2 request an oral proceeding on the proposed rule if the notice does not
3 provide for one.

4 (c) In addition to the information set forth in subdivision (a) of
5 this paragraph, for an expedited rule, the preamble also shall include a
6 statement of the time, place and nature of the proceedings for the making,
7 amendment or repeal of the rule and an explanation of why expedited
8 proceedings are justified.

9 (d) For a final rule, except an emergency rule, the preamble also
10 shall include, in addition to the information set forth in subdivision (a),
11 the following information:

12 (i) A list of all previous notices appearing in the register
13 addressing the final rule.

14 (ii) A description of the changes between the proposed rules,
15 including supplemental notices and final rules.

16 (iii) A summary of the comments made regarding the rule and the agency
17 response to them.

18 (iv) A summary of the council's action on the rule.

19 (v) A statement of the rule's effective date.

20 (e) In addition to the information set forth in subdivision (a) of
21 this paragraph, for an emergency rule, the preamble also shall include an
22 explanation of the situation justifying the rule being made as an emergency
23 rule, the date of the attorney general's approval of the rule and a statement
24 of the emergency rule's effective date.

25 ~~16-~~ 17. "Provision of law" means the whole or a part of the federal or
26 state constitution, or of any federal or state statute, rule of court,
27 executive order or rule of an administrative agency.

28 ~~17-~~ 18. "Register" means the Arizona administrative register.

29 ~~18-~~ 19. "Rule" means an agency statement of general applicability that
30 implements, interprets or prescribes law or policy, or describes the
31 procedure or practice requirements of an agency. Rule includes prescribing
32 fees or the amendment or repeal of a prior rule but does not include
33 intraagency memoranda that are not delegation agreements.

34 ~~19-~~ 20. "~~Rule-making~~ RULEMAKING" means the process for formulation and
35 finalization of a rule.

36 ~~20-~~ 21. "Small business" means a concern, including its affiliates,
37 which is independently owned and operated, which is not dominant in its field
38 and which employs fewer than one hundred full-time employees or which had
39 gross annual receipts of less than four million dollars in its last fiscal
40 year. For purposes of a specific rule, an agency may define small business
41 to include more persons if it finds that such a definition is necessary to
42 adapt the rule to the needs and problems of small businesses and
43 organizations.

44 ~~21-~~ 22. "Substantive policy statement" means a written expression
45 which informs the general public of an agency's current approach to, or

1 opinion of, the requirements of the federal or state constitution, federal or
2 state statute, administrative rule or regulation, or final judgment of a
3 court of competent jurisdiction, including, where appropriate, the agency's
4 current practice, procedure or method of action based upon that approach or
5 opinion. A substantive policy statement is advisory only. A substantive
6 policy statement does not include internal procedural documents which only
7 affect the internal procedures of the agency and does not impose additional
8 requirements or penalties on regulated parties, confidential information or
9 rules made in accordance with this chapter.

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

12 41-1001.01. Regulatory bill of rights; small businesses

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

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

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

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

23 4. Is entitled to receive the information and notice regarding
24 inspections **AND AUDITS** prescribed in section 41-1009.

25 5. May review the full text or summary of all ~~rule-making~~ **RULEMAKING**
26 activity, the summary of substantive policy statements and the full text of
27 executive orders in the register as provided in article 2 of this chapter.

28 6. May participate in the ~~rule-making~~ **RULEMAKING** process as provided
29 in articles 3, 4, 4.1 and 5 of this chapter, including:

30 (a) Providing written comments or testimony on proposed rules to an
31 agency as provided in section 41-1023 and having the agency adequately
32 address those comments as provided in section 41-1052, subsection D,
33 including comments or testimony concerning the information contained in the
34 economic, small business and consumer impact statement.

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

37 (c) Providing written comments or testimony on rules to the governor's
38 regulatory review council during the mandatory sixty-day comment period as
39 provided in article 5 of this chapter.

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

44 8. Is entitled to have an agency not make a rule under a specific
45 grant of ~~rule-making~~ **RULEMAKING** authority that exceeds the subject matter

1 areas listed in the specific statute or not make a rule under a general grant
2 of ~~rule-making~~ RULEMAKING authority to supplement a more specific grant of
3 ~~rule-making~~ RULEMAKING authority as provided in section 41-1030,
4 subsection C.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 20. MAY HAVE THE PERSON'S ADMINISTRATIVE HEARING ON CONTESTED CASES
6 PURSUANT TO TITLE 23, CHAPTER 2 OR 4 HEARD BY AN INDEPENDENT ADMINISTRATIVE
7 LAW JUDGE AS PRESCRIBED BY TITLE 23, CHAPTER 2 OR 4.

8 B. The enumeration of the rights listed in subsection A of this
9 section does not grant any additional rights that are not prescribed in the
10 sections referenced in subsection A of this section.

11 C. EACH STATE AGENCY THAT CONDUCTS AUDITS, INSPECTIONS OR OTHER
12 REGULATORY ENFORCEMENT ACTIONS PURSUANT TO SECTION 41-1009 SHALL CREATE AND
13 CLEARLY POST ON THE AGENCY'S WEBSITE A SMALL BUSINESS BILL OF RIGHTS. THE
14 AGENCY SHALL CREATE THE SMALL BUSINESS BILL OF RIGHTS BY SELECTING THE
15 APPLICABLE RIGHTS PRESCRIBED IN THIS SECTION AND SECTION 41-1009 AND ANY
16 OTHER AGENCY-SPECIFIC STATUTES AND RULES. AT THE REQUEST OF AN AUTHORIZED
17 ON-SITE REPRESENTATIVE OF THE REGULATED SMALL BUSINESS, THE AGENCY SHALL
18 PROVIDE A WRITTEN DOCUMENT OF THE SMALL BUSINESS BILL OF RIGHTS. IN ADDITION
19 TO THE RIGHTS LISTED IN THIS SECTION AND SECTION 41-1009, THE AGENCY NOTICE
20 OF THE SMALL BUSINESS BILL OF RIGHTS SHALL INCLUDE THE PROCESS BY WHICH A
21 SMALL BUSINESS MAY FILE A COMPLAINT WITH THE AGENCY EMPLOYEES WHO ARE
22 DESIGNATED TO ASSIST MEMBERS OF THE PUBLIC OR REGULATED COMMUNITY PURSUANT TO
23 SECTION 41-1006. THE NOTICE MUST PROVIDE THE CONTACT INFORMATION OF THE
24 AGENCY'S DESIGNATED EMPLOYEES. THE AGENCY NOTICE MUST ALSO STATE THAT IF THE
25 REGULATED PERSON HAS ALREADY MADE A REASONABLE EFFORT WITH THE AGENCY TO
26 RESOLVE THE PROBLEM AND STILL HAS NOT BEEN SUCCESSFUL, THE REGULATED PERSON
27 MAY CONTACT THE OFFICE OF OMBUDSMAN-CITIZENS AIDE.

28 Sec. 3. Section 41-1009, Arizona Revised Statutes, is amended to read:
29 41-1009. Inspections and audits; applicability; annual report

30 A. An agency inspector, AUDITOR or regulator who enters any premises
31 of a regulated person for the purpose of conducting an inspection OR AUDIT
32 shall, UNLESS OTHERWISE PROVIDED BY LAW:

33 1. Present photo identification on entry of the premises.

34 2. On initiation of the inspection OR AUDIT, state the purpose of the
35 inspection OR AUDIT and the legal authority for conducting the inspection OR
36 AUDIT.

37 3. Disclose any applicable inspection OR AUDIT fees.

38 4. Afford an opportunity to have an authorized on-site representative
39 of the regulated person accompany the agency inspector, AUDITOR or regulator
40 on the premises, except during confidential interviews.

41 5. Provide notice of the right to have on request:

42 (a) Copies of any original documents taken by the agency during the
43 inspection OR AUDIT if the agency is permitted by law to take original
44 documents.

1 (b) A split of any samples taken during the inspection if the split of
2 any samples would not prohibit an analysis from being conducted or render an
3 analysis inconclusive.

4 (c) Copies of any analysis performed on samples taken during the
5 inspection.

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

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

12 7. Inform each person interviewed during the inspection OR AUDIT that
13 statements made by the person may be included in the inspection OR AUDIT
14 report.

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

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

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

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

26 C. An agency inspector, AUDITOR or regulator shall obtain the
27 signature of the regulated person or on-site representative of the regulated
28 person on the writing prescribed in subsection B of this section indicating
29 that the regulated person or on-site representative of the regulated person
30 has read the writing prescribed in subsection B of this section and is
31 notified of the regulated person's or on-site representative of the regulated
32 person's inspection OR AUDIT and due process rights. The agency shall
33 maintain a copy of this signature with the inspection OR AUDIT report and
34 shall leave a copy with the regulated person or on-site representative of the
35 regulated person. If a regulated person or on-site representative of the
36 regulated person is not at the site or refuses to sign the writing prescribed
37 in subsection B of this section, the agency inspector, AUDITOR or regulator
38 shall note that fact on the writing prescribed in subsection B of this
39 section.

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

43 1. At the time of the inspection.

44 2. Notwithstanding any other state law, within thirty working days
45 after the inspection.

1 3. As otherwise required by federal law.

2 E. The inspection report shall contain deficiencies identified during
3 an inspection. Unless otherwise provided by law, the agency may provide the
4 regulated person an opportunity to correct the deficiencies unless the agency
5 determines that the deficiencies are:

6 1. Committed intentionally.

7 2. Not correctable within a reasonable period of time as determined by
8 the agency.

9 3. Evidence of a pattern of noncompliance.

10 4. A risk to any person, the public health, safety or welfare or the
11 environment.

12 F. If the agency allows the regulated person an opportunity to correct
13 the deficiencies pursuant to subsection E of this section, the regulated
14 person shall notify the agency when the deficiencies have been corrected.
15 Within thirty days ~~of~~ AFTER receipt of notification from the regulated person
16 that the deficiencies have been corrected, the agency shall determine if the
17 regulated person is in substantial compliance and notify the regulated person
18 whether or not the regulated person is in substantial compliance. If the
19 regulated person fails to correct the deficiencies or the agency determines
20 the deficiencies have not been corrected within a reasonable period of time,
21 the agency may take any enforcement action authorized by law for the
22 deficiencies.

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

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

30 I. At least once every month after the commencement of the inspection,
31 an agency shall provide a regulated person with an update on the status of
32 any agency action resulting from an inspection of the regulated person. An
33 agency is not required to provide an update after the regulated person is
34 notified that no agency action will result from the agency inspection or
35 after the completion of agency action resulting from the agency inspection.

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

41 1. A citation to the statute, regulation, license or permit condition
42 on which the allegation of noncompliance is based, including the specific
43 provisions in the statute, regulation, license or permit condition that are
44 alleged to be violated.

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

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

5 4. Instructions for obtaining a timely opportunity to discuss the
6 alleged violation with the agency.

7 K. Subsection J of this section applies only to inspections necessary
8 for the issuance of a license or to determine compliance with licensure or
9 other regulatory requirements. Subsection J of this section does not apply
10 to an action taken pursuant to section 11-871, 11-876, 11-877, 49-457.01,
11 49-457.03 or 49-474.01. Issuance of a notice under subsection J of this
12 section is not a prerequisite to otherwise lawful agency actions seeking an
13 injunction or issuing an order if the agency determines that the action is
14 necessary on an expedited basis to abate an imminent and substantial
15 endangerment to public health or the environment and documents the basis for
16 that determination in the documents initiating the action.

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

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

24 1. To criminal investigations, investigations under tribal state
25 gaming compacts and undercover investigations that are generally or
26 specifically authorized by law.

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

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

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

34 O. Failure of an agency, board or commission employee to comply with
35 this section:

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

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

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

41 Q. Nothing in this section shall be used to exclude evidence in a
42 criminal proceeding.

43 Sec. 4. Section 41-1376, Arizona Revised Statutes, is amended to read:
44 41-1376. Powers and duties

45 A. The ombudsman-citizens aide shall:

1 1. Investigate the administrative acts of agencies pursuant to section
2 41-1377, subsections A and B except as provided in section 41-1377,
3 subsections C, D and E. The ombudsman-citizens aide shall investigate the
4 administrative acts of an agency without regard to the finality of the
5 administrative act.

6 2. Annually before January 1 prepare a written report to the governor,
7 the legislature and the public that contains a summary of the
8 ombudsman-citizens aide's activities during the previous fiscal year. The
9 ombudsman-citizens aide shall semiannually present this report before the
10 legislative council AND DISTRIBUTE COPIES OF THE REPORT TO THE DIRECTOR OF
11 THE GOVERNOR'S OFFICE OF STRATEGIC PLANNING AND BUDGETING, THE CHAIRPERSON OF
12 THE JOINT LEGISLATIVE BUDGET COMMITTEE AND THE COCHAIRPERSONS OF THE
13 ADMINISTRATIVE RULES OVERSIGHT COMMITTEE. This report shall include:

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

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

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

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

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

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

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

24 4. Appoint a deputy ombudsman and prescribe the duties of employees
25 or, subject to appropriation, contract for the services of independent
26 contractors necessary to administer the duties of the office of
27 ombudsman-citizens aide. All staff serves at the pleasure of the
28 ombudsman-citizens aide, and they are exempt from chapter 4, articles 5 and 6
29 of this title. All staff shall be subject to the conflict of interest
30 provisions of title 38, chapter 3, article 8.

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

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

39 7. Appoint an assistant to help the ombudsman-citizens aide
40 investigate complaints relating to child protective services in the
41 department of economic security. The assistant shall have expertise in child
42 protective services procedures and laws. Notwithstanding any law to the
43 contrary, the ombudsman-citizens aide and the assistant have access to child
44 protective services records and to any automated case management system used
45 by child protective services in the department of economic security.

1 B. After the conclusion of an investigation and notice to the head of
2 the agency pursuant to section 41-1379, the ombudsman-citizens aide may
3 present the ombudsman-citizens aide's opinion and recommendations to the
4 governor, the legislature, the office of the appropriate prosecutor or the
5 public, or any combination of these persons. The ombudsman-citizens aide
6 shall include in the opinion the reply of the agency, including those issues
7 that were resolved as a result of the ombudsman-citizens aide's preliminary
8 opinion or recommendation.

9 Sec. 5. Section 41-1376.01, Arizona Revised Statutes, is amended to
10 read:

11 41-1376.01. Additional powers and duties; definitions

12 A. In addition to the powers and duties prescribed in section 41-1376,
13 the ombudsman-citizens aide shall appoint two assistants, one of whom shall
14 be an attorney, to help the ombudsman-citizens aide investigate complaints
15 relating to public access laws involving an agency **AND COMPLAINTS AND**
16 **COMPLIANCE WITH REPORTING REQUIREMENTS PURSUANT TO THIS ARTICLE.** The
17 assistants shall train public officials and educate the public on the rights
18 of the public and the responsibilities of public agencies under the public
19 access laws. The assistants shall prepare interpretive and educational
20 materials and programs in cooperation with the ombudsman-citizens aide and
21 shall distribute to elected or appointed public officials the public access
22 laws and educational materials concerning the public access laws.

23 B. The annual report of the ombudsman-citizens aide shall include the
24 following information about public access:

25 1. The number of inquiries that are received from the public, the
26 media and government agencies.

27 2. The number of inquiries that are received about state agencies,
28 county agencies, city or town agencies, school districts and other local
29 jurisdictions.

30 3. The number of requests that are received concerning public records
31 and public meetings.

32 4. The number of investigations that are conducted and the results of
33 the investigations.

34 C. For investigations made pursuant to this section, the
35 ombudsman-citizens aide may:

36 1. Make inquiries and obtain information considered necessary subject
37 to the restrictions in section 41-1377.

38 2. Enter without notice to inspect agency premises with agency staff
39 on the premises.

40 3. Hold hearings.

41 4. Notwithstanding any other law, have access to all agency records,
42 including confidential records, except:

43 (a) Sealed court records without a subpoena.

44 (b) Active criminal investigation records.

1 (c) Records that could lead to the identity of confidential police
2 informants.

3 (d) Attorney work product and communications that are protected under
4 attorney-client privilege.

5 (e) Confidential information as defined in section 42-2001, except as
6 provided in section 42-2003, subsection M.

7 (f) Information protected by section 6103(d), 6103(p) or 7213 of the
8 internal revenue code.

9 (g) Confidential information relating to section 36-2903, subsection
10 I, section 36-2917, section 36-2932, subsection F or section 36-2972.

11 (h) Confidential information relating to sections 36-507, 36-509 and
12 36-2220.

13 (i) Documents that are protected by section 214 of the critical
14 infrastructure information act of 2002 (6 United States Code section ~~133a~~
15 133(a)) or by 49 Code of Federal Regulations part 1520.

16 (j) Information that is protected by section 214 of the critical
17 infrastructure information act of 2002 (6 United States Code section ~~133a~~
18 133(a)) or 49 Code of Federal Regulations part 1520 or critical
19 infrastructure information as defined by section 41-1801 on government owned
20 facilities that are classified as critical infrastructure by the federal
21 government or as defined by section 41-1801.

22 5. Issue subpoenas if necessary to compel the attendance and testimony
23 of witnesses and the production of books, records, documents and other
24 evidence to which the ombudsman-citizens aide may have access pursuant to
25 paragraph 4 of this subsection. The ombudsman-citizens aide may only issue a
26 subpoena if the ombudsman-citizens aide has previously requested testimony or
27 evidence and the person or agency to which the request was made has failed to
28 comply with the request in a reasonable amount of time.

29 D. It is contrary to the public policy of this state for any agency or
30 any individual acting for an agency to take any adverse action against an
31 individual in retaliation because the individual cooperated with or provided
32 information to the ombudsman-citizens aide or the ombudsman-citizens aide's
33 staff.

34 E. For the purposes of this section:

35 1. "Agency" has the same meaning prescribed in section 41-1371 but
36 includes a public body as defined in section 39-121.01, subsection A,
37 paragraph 2.

38 2. "Public access laws" means:

39 (a) Title 39, chapter 1.

40 (b) Title 38, chapter 3, article 3.1.

41 (c) Any other state statute or rule governing access to public
42 meetings or public records.