

House Engrossed

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

# **HOUSE BILL 2213**

AN ACT

AMENDING SECTIONS 41-1001, 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, 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  
7 other administrative unit of this state, including the agency head and one  
8 or more members of the agency head or agency employees or other persons  
9 directly or indirectly purporting to act on behalf or under the authority  
10 of the agency head, whether created under the Constitution of Arizona or  
11 by enactment of the legislature. Agency does not include the legislature,  
12 the courts, **THE CORPORATION COMMISSION** or the governor. Agency does not  
13 include a political subdivision of this state or any of the administrative  
14 units of a political subdivision, but does include any board, commission,  
15 department, officer or other administrative unit created or appointed by  
16 joint or concerted action of an agency and one or more political  
17 subdivisions of this state or any of their units. To the extent an  
18 administrative unit purports to exercise authority subject to this  
19 chapter, an administrative unit otherwise qualifying as an agency must be  
20 treated as a separate agency even if the administrative unit is located  
21 within or subordinate to another agency.

22       2. "Audit" means an audit, investigation or inspection pursuant to  
23 title 23, chapter 2 or 4.

24       3. "Code" means the Arizona administrative code.

25       4. "Committee" means the administrative rules oversight committee.

26       5. "Contested case" means any proceeding, including rate making,  
27 except rate making pursuant to article XV, Constitution of Arizona, price  
28 fixing and licensing, in which the legal rights, duties or privileges of a  
29 party are required or permitted by law, other than this chapter, to be  
30 determined by an agency after an opportunity for an administrative  
31 hearing.

32       6. "Council" means the governor's regulatory review council.

33       7. "Delegation agreement" means an agreement between an agency and  
34 a political subdivision that authorizes the political subdivision to  
35 exercise functions, powers or duties conferred on the delegating agency by  
36 a provision of law. Delegation agreement does not include  
37 intergovernmental agreements entered into pursuant to title 11, chapter 7,  
38 article 3.

39       8. "Emergency rule" means a rule that is made pursuant to section  
40 41-1026.

41       9. "Fee" means a charge prescribed by an agency for an inspection  
42 or for obtaining a license.

43       10. "Final rule" means any rule filed with the secretary of state  
44 and made pursuant to an exemption from this chapter in section 41-1005,  
45 made pursuant to section 41-1026, approved by the council pursuant to

1 section 41-1052 or 41-1053 or approved by the attorney general pursuant to  
2 section 41-1044. For purposes of judicial review, final rule includes  
3 expedited rules pursuant to section 41-1027.

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

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

16       13. "Licensing" includes the agency process respecting the grant,  
17 denial, renewal, revocation, suspension, annulment, withdrawal or  
18 amendment of a license.

19       14. "Party" means each person or agency named or admitted as a party  
20 or properly seeking and entitled as of right to be admitted as a party.

21       15. "Person" means an individual, partnership, corporation,  
22 association, governmental subdivision or unit of a governmental  
23 subdivision, a public or private organization of any character or another  
24 agency.

25       16. "Preamble" means:

26           (a) For any rulemaking subject to this chapter, a statement  
27 accompanying the rule that includes:

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

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

31              (iii) An explanation of the rule, including the agency's reasons  
32 for initiating the rulemaking.

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

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

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

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

4               (b) In addition to the information set forth in subdivision (a) of  
5 this paragraph, for a proposed rule, the preamble also shall include a  
6 list of all previous notices appearing in the register addressing the  
7 proposed rule, a statement of the time, place and nature of the  
8 proceedings for the making, amendment or repeal of the rule and where,  
9 when and how persons may request an oral proceeding on the proposed rule  
10 if the notice does not provide for one.

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

16               (d) For a final rule, except an emergency rule, the preamble also  
17 shall include, in addition to the information set forth in subdivision (a)  
18 **OF THIS PARAGRAPH**, the following information:

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

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

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

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

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

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

32               17. "Provision of law" means the whole or a part of the federal or  
33 state constitution, or of any federal or state statute, rule of court,  
34 executive order or rule of an administrative agency.

35               18. "Register" means the Arizona administrative register.

36               19. "Rule" means an agency statement of general applicability that  
37 implements, interprets or prescribes law or policy, or describes the  
38 procedure or practice requirements of an agency. Rule includes  
39 prescribing fees or the amendment or repeal of a prior rule but does not  
40 include intraagency memoranda that are not delegation agreements.

41               20. "Rulemaking" means the process for formulation and finalization  
42 of a rule.

43               21. "Small business" means a concern, including its affiliates,  
44 which is independently owned and operated, which is not dominant in its  
45 field and which employs fewer than one hundred full-time employees or

1 which had gross annual receipts of less than four million dollars in its  
2 last fiscal year. For purposes of a specific rule, an agency may define  
3 small business to include more persons if it finds that such a definition  
4 is necessary to adapt the rule to the needs and problems of small  
5 businesses and organizations.

6       22. "Substantive policy statement" means a written expression which  
7 informs the general public of an agency's current approach to, or opinion  
8 of, the requirements of the federal or state constitution, federal or  
9 state statute, administrative rule or regulation, or final judgment of a  
10 court of competent jurisdiction, including, where appropriate, the  
11 agency's current practice, procedure or method of action based upon that  
12 approach or opinion. A substantive policy statement is advisory only. A  
13 substantive policy statement does not include internal procedural  
14 documents which only affect the internal procedures of the agency and does  
15 not impose additional requirements or penalties on regulated parties,  
16 confidential information or rules made in accordance with this chapter.

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

19           41-1001.01. Regulatory bill of rights: small businesses

20       A. To ensure fair and open regulation by state agencies, a person:  
21           1. Is eligible for reimbursement of fees and other expenses if the  
22 person prevails by adjudication on the merits against an agency in a court  
23 proceeding regarding an agency decision as provided in section 12-348.

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

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

30           4. Is entitled to receive the information and notice regarding  
31 inspections and audits prescribed in section 41-1009.

32           5. May review the full text or summary of all rulemaking activity,  
33 the summary of substantive policy statements and the full text of  
34 executive orders in the register as provided in article 2 of this chapter.

35           6. May participate in the rulemaking process as provided in  
36 articles 3, 4, 4.1 and 5 of this chapter, including:

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

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

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

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

8       8. Is entitled to have an agency not make a rule under a specific  
9 grant of rulemaking authority that exceeds the subject matter areas listed  
10 in the specific statute or not make a rule under a general grant of  
11 rulemaking authority to supplement a more specific grant of rulemaking  
12 authority as provided in section 41-1030, subsection C.

13       9. May allege that an existing agency practice or substantive  
14 policy statement constitutes a rule and have that agency practice or  
15 substantive policy statement declared void because the practice or  
16 substantive policy statement constitutes a rule as provided in section  
17 41-1033.

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

20       (a) A rule's, practice's or substantive policy statement's lack of  
21 conformity with statute or legislative intent as provided in section  
22 41-1047.

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

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

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

33       13. May have an agency approve or deny the person's license  
34 application within a predetermined period of time as provided in article  
35 7.1 of this chapter.

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

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

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

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

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

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

8       18. May file a complaint with the office of the ombudsman-citizens  
9 aide to investigate administrative acts of agencies as provided in chapter  
10 8, article 5 of this title.

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

15      20. May have the person's administrative hearing on contested cases  
16 pursuant to title 23, chapter 2 or 4 heard by an independent  
17 administrative law judge as prescribed by title 23, chapter 2 or 4.

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

21      B. The enumeration of the rights listed in subsection A of this  
22 section does not grant any additional rights that are not prescribed in  
23 the sections referenced in subsection A of this section.

24      C. Each state agency that conducts audits, inspections or other  
25 regulatory enforcement actions pursuant to section 41-1009 shall create  
26 and clearly post on the agency's website a small business bill of rights.  
27 The agency shall create the small business bill of rights by selecting the  
28 applicable rights prescribed in this section and section 41-1009 and any  
29 other agency-specific statutes and rules. ~~At the request of an authorized~~  
30 ~~on-site representative of the regulated small business,~~ The agency shall  
31 provide a written document of the small business bill of rights **TO THE**  
32 **AUTHORIZED ON-SITE REPRESENTATIVE OF THE REGULATED SMALL BUSINESS.** In  
33 addition to the rights listed in this section and section 41-1009, the  
34 agency notice of the small business bill of rights shall include the  
35 process by which a small business may file a complaint with the agency  
36 employees who are designated to assist members of the public or regulated  
37 community pursuant to section 41-1006. The notice must provide the  
38 contact information of the agency's designated employees. The agency  
39 notice must also state that if the regulated person has already made a  
40 reasonable effort with the agency to resolve the problem and still has not  
41 been successful, the regulated person may contact the office of  
42 ombudsman-citizens aide.

1        Sec. 3. Section 41-1009, Arizona Revised Statutes, is amended to  
2 read:

3              **41-1009. Inspections and audits; applicability; annual report**

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

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

8              2. On initiation of the inspection or audit, state the purpose of  
9 the inspection or audit and the legal authority for conducting the  
10 inspection or audit.

11              3. Disclose any applicable inspection or audit fees.

12              4. Afford an opportunity to have an authorized on-site  
13 representative of the regulated person accompany the agency inspector,  
14 auditor or regulator on the premises, except during confidential  
15 interviews.

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

17              (a) Copies of any original documents taken by the agency during the  
18 inspection or audit if the agency is permitted by law to take original  
19 documents.

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

23              (c) Copies of any analysis performed on samples taken during the  
24 inspection.

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

28              6. Inform each person whose conversation with the agency inspector,  
29 auditor or regulator during the inspection or audit is tape recorded that  
30 the conversation is being tape recorded.

31              7. Inform each person **WHO IS** interviewed during the inspection or  
32 audit that:

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

35              (b) **PARTICIPATION IN AN INTERVIEW IS VOLUNTARY, UNLESS THE PERSON**  
36 **IS LEGALLY COMPELLED TO PARTICIPATE IN THE INTERVIEW.**

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

41              (d) **THE INSPECTOR, AUDITOR OR REGULATOR MAY NOT PROHIBIT THE**  
42 **REGULATED PERSON FROM HAVING AN ATTORNEY PRESENT DURING THE INTERVIEW TO**  
43 **REPRESENT THE REGULATED PERSON.**

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

4           1. The rights described in subsection A of this section and section  
5 41-1001.01, subsection C.

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

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

12          4. A STATEMENT THAT THE AGENCY INSPECTOR, AUDITOR OR REGULATOR MAY  
13 NOT TAKE ANY ADVERSE ACTION, TREAT THE REGULATED PERSON LESS FAVORABLY OR  
14 DRAW ANY INFERENCE AS A RESULT OF THE REGULATED PERSON'S DECISION TO BE  
15 REPRESENTED BY AN ATTORNEY.

16          5. A NOTICE THAT IF THE INFORMATION AND DOCUMENTS PROVIDED TO THE  
17 AGENCY INSPECTOR, AUDITOR OR REGULATOR BECOME A PUBLIC RECORD, THE  
18 REGULATED PERSON MAY REDACT TRADE SECRETS AND PROPRIETARY AND CONFIDENTIAL  
19 INFORMATION UNLESS THE INFORMATION AND DOCUMENTS ARE CONFIDENTIAL PURSUANT  
20 TO STATUTE.

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

25       C. An agency inspector, auditor or regulator shall obtain the  
26 signature of the regulated person or on-site representative of the  
27 regulated person on the writing prescribed in subsection B of this section  
**AND SECTION 41-1001.01, SUBSECTION C, IF APPLICABLE**, indicating that the  
29 regulated person or on-site representative of the regulated person has  
30 read the writing prescribed in subsection B of this section **AND SECTION**  
31 **41-1001.01, SUBSECTION C, IF APPLICABLE**, and is notified of the regulated  
32 person's or on-site representative of the regulated person's inspection or  
33 audit and due process rights. **THE AGENCY INSPECTOR, AUDITOR OR REGULATOR**  
34 **MAY PROVIDE AN ELECTRONIC DOCUMENT OF THE WRITING PRESCRIBED IN SUBSECTION**  
35 **B OF THIS SECTION AND SECTION 41-1001.01, SUBSECTION C AND, AT THE REQUEST**  
36 **OF THE REGULATED PERSON OR ON-SITE REPRESENTATIVE, OBTAIN A RECEIPT IN THE**  
37 **FORM OF AN ELECTRONIC SIGNATURE.** The agency shall maintain a copy of this  
38 signature with the inspection or audit report and shall leave a copy with  
39 the regulated person or on-site representative of the regulated person.  
40 If a regulated person or on-site representative of the regulated person is  
41 not at the site or refuses to sign the writing prescribed in subsection B  
42 of this section **AND SECTION 41-1001.01, SUBSECTION C, IF APPLICABLE**, the  
43 agency inspector, auditor or regulator shall note that fact on the writing  
44 prescribed in subsection B of this section **AND SECTION 41-1001.01,**  
45 **SUBSECTION C, IF APPLICABLE.**

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

4           1. At the time of the inspection.

5           2. Notwithstanding any other state law, within thirty working days  
6 after the inspection.

7           3. As otherwise required by federal law.

8       E. The inspection report shall contain deficiencies identified  
9 during an inspection. Unless otherwise provided by **STATE OR FEDERAL** law,  
10 the agency ~~may~~ **SHALL** provide the regulated person an opportunity to  
11 correct the deficiencies unless the agency determines that the  
12 deficiencies are:

13           1. Committed intentionally.

14           2. Not correctable within a reasonable period of time as determined  
15 by the agency.

16           3. Evidence of a pattern of noncompliance.

17           4. A risk to any person, the public health, safety or welfare or  
18 the environment.

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

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

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

37       I. At least once every month after the commencement of the  
38 inspection, an agency shall provide a regulated person with an update on  
39 the status of any agency action resulting from an inspection of the  
40 regulated person. An agency is not required to provide an update after  
41 the regulated person is notified that no agency action will result from  
42 the agency inspection or after the completion of agency action resulting  
43 from the agency inspection.

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

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

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

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

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

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

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

30       M. Except as otherwise provided in subsection K of this section,  
31 this section applies only to inspections necessary for the issuance of a  
32 license or to determine compliance with licensure or other regulatory  
33 requirements applicable to a licensee and audits pursuant to enforcement  
34 of title 23, 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  
39 to 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  
43 violation of this section, the violation may be a basis to exclude the  
44 evidence in a civil or administrative proceeding.

- 1        0. Failure of an agency, board or commission employee to comply
- 2 with 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
  - 7 of this section.
  - 8        Q. Nothing in this section shall be used to exclude evidence in a
  - 9 criminal proceeding.