

State of Arizona
Senate
Fifty-third Legislature
Second Regular Session
2018

SENATE BILL 1273

AN ACT

AMENDING SECTIONS 41-1033 AND 41-1061, ARIZONA REVISED STATUTES; RELATING
TO ADMINISTRATIVE PROCEDURES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 41-1033, Arizona Revised Statutes, is amended to
3 read:

4 41-1033. Petition for a rule or review of an agency practice,
5 substantive policy statement, final rule or unduly
6 burdensome licensing requirement; notice

7 A. Any person, in a manner and form prescribed by the agency, may
8 petition an agency to request the making of a final rule or a review of an
9 existing agency practice or substantive policy statement that the
10 petitioner alleges to constitute a rule. The petition shall clearly state
11 the rule, agency practice or substantive policy statement that the person
12 wishes the agency to make or review. Within sixty days after submission
13 of a petition, the agency shall either deny the petition in writing,
14 stating its reasons for denial, initiate rulemaking proceedings in
15 accordance with this chapter or, if otherwise lawful, make a rule.

16 B. A person may appeal to the council the agency's final decision
17 within thirty days after the agency gives written notice pursuant to
18 subsection A of this section. The appeal shall be limited to whether an
19 existing agency practice or substantive policy statement constitutes a
20 rule. The council chairperson shall place this appeal on the agenda of
21 the council's next meeting if at least three council members make such a
22 request of the council chairperson within two weeks after the filing of
23 the appeal.

24 C. A person may petition the council to request a review of a final
25 rule based on the person's belief that the final rule does not meet the
26 requirements prescribed in section 41-1030.

27 D. A PERSON MAY PETITION THE COUNCIL TO REQUEST A REVIEW OF AN
28 EXISTING AGENCY PRACTICE, SUBSTANTIVE POLICY STATEMENT, FINAL RULE OR
29 REGULATORY LICENSING REQUIREMENT THAT IS NOT SPECIFICALLY AUTHORIZED BY
30 STATUTE PURSUANT TO TITLE 32 BASED ON THE PERSON'S BELIEF THAT THE
31 EXISTING AGENCY PRACTICE, SUBSTANTIVE POLICY STATEMENT, FINAL RULE OR
32 REGULATORY LICENSING REQUIREMENT IS UNDULY BURDENSOME OR IS NOT
33 DEMONSTRATED TO BE NECESSARY TO SPECIFICALLY FULFILL A PUBLIC HEALTH,
34 SAFETY OR WELFARE CONCERN. IF THE COUNCIL DETERMINES THAT THE EXISTING
35 AGENCY PRACTICE, SUBSTANTIVE POLICY STATEMENT, FINAL RULE OR REGULATORY
36 LICENSING REQUIREMENT APPLIES TO A PROFESSION FOR WHICH THE AVERAGE WAGE
37 IN THAT PROFESSION IN THIS STATE DOES NOT EXCEED TWO HUNDRED PERCENT OF
38 THE FEDERAL POVERTY GUIDELINES FOR A FAMILY OF FOUR, THE COUNCIL SHALL
39 REVIEW THE EXISTING AGENCY PRACTICE, SUBSTANTIVE POLICY STATEMENT, FINAL
40 RULE OR REGULATORY LICENSING REQUIREMENT AS PRESCRIBED BY THIS
41 SECTION. THIS SUBSECTION DOES NOT APPLY TO AN INDIVIDUAL OR INSTITUTION
42 THAT IS SUBJECT TO TITLE 36, CHAPTER 4, ARTICLE 10 OR CHAPTER 20.

43 ~~D.~~ E. If the council receives information indicating that an
44 existing agency practice or substantive policy statement may constitute a
45 rule, ~~or~~ that a final rule does not meet the requirements prescribed in

1 section 41-1030 OR THAT AN EXISTING AGENCY PRACTICE, SUBSTANTIVE POLICY
2 STATEMENT, FINAL RULE OR REGULATORY LICENSING REQUIREMENT DOES NOT MEET
3 THE GUIDELINES PRESCRIBED IN SUBSECTION D OF THIS SECTION and at least
4 four council members request of the chairperson that the matter be heard
5 in a public meeting:

6 1. Within ninety days ~~of~~ AFTER receipt of the fourth council member
7 request, the council shall determine whether the agency practice or
8 substantive policy statement constitutes a rule, ~~or~~ whether the final rule
9 meets the requirements prescribed in section 41-1030 OR WHETHER AN
10 EXISTING AGENCY PRACTICE, SUBSTANTIVE POLICY STATEMENT, FINAL RULE OR
11 REGULATORY LICENSING REQUIREMENT MEETS THE GUIDELINES PRESCRIBED IN
12 SUBSECTION D OF THIS SECTION.

13 2. Within ten days ~~of~~ AFTER receipt of the fourth council member
14 request, the council shall notify the agency that the matter has been or
15 will be placed on an agenda.

16 3. Within thirty days ~~of~~ AFTER receiving notice from the council,
17 the agency shall submit a statement that addresses whether the existing
18 agency practice or substantive policy statement constitutes a rule, ~~or~~
19 whether the final rule meets the requirements prescribed in section
20 41-1030 OR WHETHER AN EXISTING AGENCY PRACTICE, SUBSTANTIVE POLICY
21 STATEMENT, FINAL RULE OR REGULATORY LICENSING REQUIREMENT MEETS THE
22 GUIDELINES PRESCRIBED IN SUBSECTION D OF THIS SECTION.

23 ~~F.~~ F. For the purposes of subsection ~~D~~ E of this section, the
24 council meeting shall not be held until the expiration of the agency
25 response period prescribed in subsection ~~D~~ E, paragraph 3 of this
26 section.

27 ~~F.~~ G. An agency practice, substantive policy statement, ~~or~~ final
28 rule OR REGULATORY LICENSING REQUIREMENT considered by the council
29 pursuant to this section shall remain in effect while under consideration
30 of the council. If the council ultimately decides the agency practice or
31 substantive policy statement constitutes a rule or that the final rule
32 does not meet the requirements prescribed in section 41-1030, the
33 practice, policy statement or rule shall be considered void. IF THE
34 COUNCIL DETERMINES THAT THE EXISTING AGENCY PRACTICE, SUBSTANTIVE POLICY
35 STATEMENT, FINAL RULE OR REGULATORY LICENSING REQUIREMENT IS UNDULY
36 BURDENSOME OR IS NOT DEMONSTRATED TO BE NECESSARY TO SPECIFICALLY FULFILL
37 A PUBLIC HEALTH, SAFETY OR WELFARE CONCERN AND MEETS THE REQUIREMENTS OF
38 SUBSECTION D OF THIS SECTION, THE COUNCIL MAY MODIFY, REVISE OR DECLARE
39 VOID ANY SUCH EXISTING AGENCY PRACTICE, SUBSTANTIVE POLICY STATEMENT,
40 FINAL RULE OR REGULATORY LICENSING REQUIREMENT.

41 ~~G.~~ H. A council decision pursuant to this section shall include
42 findings of fact and conclusions of law, separately stated. Conclusions
43 of law shall specifically address the agency's authority to act consistent
44 with section 41-1030.

1 ~~H.~~ I. A decision by the agency pursuant to this section is not
2 subject to judicial review, except that, in addition to the procedure
3 prescribed in this section or in lieu of the procedure prescribed in this
4 section, a person may seek declaratory relief pursuant to section 41-1034.

5 ~~I.~~ J. Each agency and the secretary of state shall post
6 prominently on their ~~website~~ WEBSITES notice of an individual's right to
7 petition the council for review pursuant to this section.

8 Sec. 2. Section 41-1061, Arizona Revised Statutes, is amended to
9 read:

10 41-1061. Contested cases; notice; hearing; records

11 A. In a contested case, all parties shall be afforded an
12 opportunity for A hearing after reasonable notice. Unless otherwise
13 provided by law, the notice shall be given at least twenty days ~~prior to~~
14 BEFORE the date set for the hearing.

15 B. The notice shall include:

16 1. A statement of the time, place and nature of the hearing.

17 2. A statement of the legal authority and jurisdiction under which
18 the hearing is to be held.

19 3. A reference to the particular sections of the statutes and rules
20 involved.

21 4. A short and plain statement of the matters asserted. If the
22 agency or other party is unable to state the matters in detail at the time
23 the notice is served, the initial notice may be limited to a statement of
24 the issues involved. Thereafter ~~upon~~ ON application a more definite and
25 detailed statement shall be furnished.

26 C. OPPORTUNITY SHALL BE AFFORDED ALL PARTIES TO PARTICIPATE IN A
27 SETTLEMENT CONFERENCE OR MEDIATION UNLESS BOTH PARTIES OR THE HEARING
28 OFFICER DECLINE TO SET A SETTLEMENT CONFERENCE OR MEDIATION.

29 ~~E.~~ D. Opportunity shall be afforded all parties to respond and
30 present evidence and argument on all issues involved. IF THERE IS NO
31 GENUINE ISSUE OF MATERIAL FACT, A PARTY MAY SEEK DISPOSITION OF THE CASE
32 BY MOTION.

33 ~~D.~~ E. Unless precluded by law, and except as to claims for
34 compensation and benefits under ~~chapter 6 of~~ title 23, CHAPTER 6, informal
35 disposition may be made of any contested case by stipulation, agreed
36 settlement, consent order or default.

37 ~~E.~~ F. The record in a contested case shall include:

38 1. All pleadings, motions, ~~AND~~ AND interlocutory rulings.

39 2. Evidence received or considered.

40 3. A statement of matters officially noticed.

41 4. Objections and offers of proof and rulings thereon.

42 5. Proposed findings and exceptions.

43 6. Any decision, opinion or report by the officer presiding at the
44 hearing.

1 7. All staff memoranda, other than privileged communications, or
2 data submitted to the hearing officer or members of the agency in
3 connection with their consideration of the case.

4 ~~F.~~ G. Oral proceedings or any part ~~thereof~~ OF THE PROCEEDINGS
5 shall be recorded manually or by a recording device and shall be
6 transcribed on request of any party, unless otherwise provided by
7 law. The cost of ~~such~~ THE transcript shall be paid by the party making
8 the request, unless otherwise provided by law or unless assessment of the
9 cost is waived by the agency.

10 ~~G.~~ H. Findings of fact shall be based exclusively on the evidence
11 and on matters officially noticed.