

State of Arizona  
House of Representatives  
Fifty-fourth Legislature  
First Regular Session  
2019

# HOUSE BILL 2724

AN ACT

AMENDING SECTION 41-1033, 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 may petition an agency to do either of the following:  
8 1. Make, amend or repeal a final rule.  
9 2. Review an existing agency practice or substantive policy  
10 statement that the petitioner alleges to constitute a rule.  
11 B. An agency shall prescribe the form of the petition and the  
12 procedures for the petition's submission, consideration and disposition.  
13 The person shall state on the petition the rulemaking to review or the  
14 agency practice or substantive policy statement to consider making into a  
15 rule.  
16 C. Not later than sixty days after submission of the petition, the  
17 agency shall either:  
18 1. Reject the petition and state its reasons in writing for ~~denial~~  
19 REJECTION to the petitioner.  
20 2. Initiate rulemaking proceedings in accordance with this chapter.  
21 3. If otherwise lawful, make a rule.  
22 D. The agency's response to the petition is open to public  
23 inspection.  
24 E. If an agency rejects a petition pursuant to subsection C of this  
25 section, the petitioner has thirty days to appeal to the council to review  
26 whether the existing agency practice or substantive policy statement  
27 constitutes a rule. The council chairperson shall place this appeal on  
28 the agenda of the council's next meeting if at least three council members  
29 make such a request of the council chairperson within two weeks after the  
30 filing of the appeal.  
31 F. A person may petition the council to request a review of a final  
32 rule based on the person's belief that the final rule does not meet the  
33 requirements prescribed in section 41-1030.  
34 G. A person may petition the council to request a review of an  
35 existing agency practice, substantive policy statement, final rule or  
36 regulatory licensing requirement that is not specifically authorized by  
37 statute pursuant to title 32 based on the person's belief that the  
38 existing agency practice, substantive policy statement, final rule or  
39 regulatory licensing requirement is unduly burdensome or is not  
40 demonstrated to be necessary to specifically fulfill a public health,  
41 safety or welfare concern. If the council determines that the existing  
42 agency practice, substantive policy statement, final rule or regulatory  
43 licensing requirement applies to a profession for which the average wage  
44 in that profession in this state does not exceed two hundred percent of  
45 the federal poverty guidelines for a family of four, the council shall  
46 review the existing agency practice, substantive policy statement, final

1 rule or regulatory licensing requirement as prescribed by this section.  
2 This subsection does not apply to an individual or institution that is  
3 subject to title 36, chapter 4, article 10 or chapter 20.

4 H. A PERSON MAY PETITION THE COUNCIL TO REQUEST A REVIEW OF AN  
5 EXISTING AGENCY PRACTICE, SUBSTANTIVE POLICY STATEMENT, ENFORCEMENT ACTION  
6 OR FINAL RULE OF AN AGENCY ESTABLISHED UNDER TITLE 16, CHAPTER 6 BASED ON  
7 THE PERSON'S BELIEF THAT THE EXISTING AGENCY PRACTICE, SUBSTANTIVE POLICY  
8 STATEMENT, ENFORCEMENT ACTION OR FINAL RULE DOES NOT MEET THE REQUIREMENTS  
9 OF CHAPTER 6 OF THIS TITLE, EXCEEDS THE AGENCY'S STATUTORY AUTHORITY OR  
10 VIOLATES THIS STATE'S CONSTITUTION OR THE UNITED STATES CONSTITUTION.

11 ~~H.~~ I. If the council receives information that indicates an  
12 existing agency practice or substantive policy statement may constitute a  
13 rule, that a final rule does not meet the requirements prescribed in  
14 section 41-1030, ~~or~~ that an existing agency practice, substantive policy  
15 statement, final rule or regulatory licensing requirement does not meet  
16 the guidelines prescribed in subsection G of this section ~~OR THAT AN~~  
17 ~~EXISTING AGENCY PRACTICE, SUBSTANTIVE POLICY STATEMENT, ENFORCEMENT ACTION~~  
18 ~~OR FINAL RULE OF AN AGENCY ESTABLISHED UNDER TITLE 16, CHAPTER 6 DOES NOT~~  
19 ~~MEET THE GUIDELINES PRESCRIBED IN SUBSECTION H OF THIS SECTION~~ and at  
20 least four council members request of the chairperson that the matter be  
21 heard in a public meeting:

22 1. Within ninety days after receipt of the fourth council member's  
23 request, the council shall determine whether:

24 (a) The agency practice or substantive policy statement constitutes  
25 a rule. ~~, whether~~

26 (b) The final rule meets the requirements prescribed in section  
27 41-1030. ~~or whether~~

28 (c) An existing agency practice, substantive policy statement,  
29 final rule or regulatory licensing requirement meets the guidelines  
30 prescribed in subsection G of this section.

31 (d) ~~AN EXISTING AGENCY PRACTICE, SUBSTANTIVE POLICY STATEMENT,~~  
32 ~~ENFORCEMENT ACTION OR FINAL RULE OF AN AGENCY ESTABLISHED UNDER TITLE 16,~~  
33 ~~CHAPTER 6 DOES NOT MEET THE GUIDELINES PRESCRIBED IN SUBSECTION H OF THIS~~  
34 ~~SECTION.~~

35 2. Within ten days after receipt of the fourth council member's  
36 request, the council shall notify the agency that the matter has been or  
37 will be placed on an agenda.

38 3. Not later than thirty days after receiving notice from the  
39 council, the agency shall submit a statement to the council that addresses  
40 whether:

41 (a) The existing agency practice, substantive policy statement  
42 constitutes a rule. ~~or whether~~

43 (b) The final rule meets the requirements prescribed in section  
44 41-1030. ~~or whether~~

1 (c) An existing agency practice, substantive policy statement,  
2 final rule or regulatory licensing requirement meets the guidelines  
3 prescribed in subsection G of this section.

4 (d) AN EXISTING AGENCY PRACTICE, SUBSTANTIVE POLICY STATEMENT,  
5 ENFORCEMENT ACTION OR FINAL RULE OF AN AGENCY ESTABLISHED UNDER TITLE 16,  
6 CHAPTER 6 DOES NOT MEET THE GUIDELINES PRESCRIBED IN SUBSECTION H OF THIS  
7 SECTION.

8 ~~I.~~ J. For the purposes of subsection ~~H~~ I of this section, the  
9 council meeting shall not be scheduled until the expiration of the agency  
10 response period prescribed in subsection ~~H~~ I, paragraph 3 of this  
11 section.

12 ~~J.~~ K. An agency practice, substantive policy statement, final rule  
13 or regulatory licensing requirement considered by the council pursuant to  
14 this section shall remain in effect while under consideration of the  
15 council. If the council ultimately decides the agency practice or  
16 substantive policy statement constitutes a rule or that the final rule  
17 does not meet the requirements prescribed in section 41-1030, the  
18 practice, policy statement or rule shall be considered void. If the  
19 council determines that the existing agency practice, substantive policy  
20 statement, final rule or regulatory licensing requirement is unduly  
21 burdensome or is not demonstrated to be necessary to specifically fulfill  
22 a public health, safety or welfare concern and meets the requirements of  
23 subsection G of this section, the council may modify, revise or declare  
24 void any such existing agency practice, substantive policy statement,  
25 final rule or regulatory licensing requirement. IF, BASED ON A PERSON'S  
26 BELIEF THAT THE EXISTING AGENCY PRACTICE, SUBSTANTIVE POLICY STATEMENT,  
27 ENFORCEMENT ACTION OR FINAL RULE DOES NOT MEET THE REQUIREMENTS OF CHAPTER  
28 6 OF THIS TITLE, EXCEEDS THE AGENCY'S STATUTORY AUTHORITY OR VIOLATES THIS  
29 STATE'S CONSTITUTION OR THE UNITED STATES CONSTITUTION, THE COUNCIL  
30 DETERMINES THAT THE EXISTING AGENCY PRACTICE, SUBSTANTIVE POLICY  
31 STATEMENT, ENFORCEMENT ACTION OR FINAL RULE OF AN AGENCY ESTABLISHED UNDER  
32 TITLE 16, CHAPTER 6 DOES NOT MEET THE GUIDELINES PRESCRIBED IN SUBSECTION  
33 H OF THIS SECTION, THE COUNCIL MAY MODIFY, REVISE OR DECLARE VOID ANY SUCH  
34 EXISTING AGENCY PRACTICE, SUBSTANTIVE POLICY STATEMENT, ENFORCEMENT ACTION  
35 OR FINAL RULE.

36 ~~K.~~ L. A council decision pursuant to this section shall include  
37 findings of fact and conclusions of law, separately stated. Conclusions  
38 of law shall specifically address the agency's authority to act consistent  
39 with section 41-1030.

40 ~~L.~~ M. A decision by the agency pursuant to this section is not  
41 subject to judicial review, except that, in addition to the procedure  
42 prescribed in this section or in lieu of the procedure prescribed in this  
43 section, a person may seek declaratory relief pursuant to section 41-1034.

44 ~~M.~~ N. Each agency and the secretary of state shall post  
45 prominently on their websites notice of an individual's right to petition  
46 the council for review pursuant to this section.