

State of Arizona
House of Representatives
Fifty-fourth Legislature
Second Regular Session
2020

HOUSE BILL 2713

AN ACT

AMENDING SECTIONS 12-348, 41-1001, 41-1001.01, 41-1009, 41-1030, 41-1074
AND 41-1092, ARIZONA REVISED STATUTES; RELATING TO REGULATORY ACTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 12-348, Arizona Revised Statutes, is amended to
3 read:

4 12-348. Award of fees and other expenses against the state or
5 a city, town or county; reduction or denial of
6 award; application; basis for amount of award;
7 source of award; definitions

8 A. In addition to any costs that are awarded as prescribed by
9 statute, a court shall award fees and other expenses to any party other
10 than this state or a city, town or county that prevails by an adjudication
11 on the merits in any of the following:

12 1. A civil action brought by this state or a city, town or county
13 against the party.

14 2. A court proceeding to review a state agency decision pursuant to
15 chapter 7, article 6 of this title or any other statute authorizing
16 judicial review of agency, city, town or county decisions.

17 3. A proceeding pursuant to section 41-1034.

18 4. A special action proceeding brought by the party to challenge an
19 action by this state or a city, town or county against the party.

20 5. An appeal by this state to a court of law from a decision of the
21 personnel board under title 41, chapter 4, article 6.

22 6. A civil action brought by the party to challenge the seizure and
23 sale of personal property by this state or a city, town or county.

24 7. A civil action brought by the party to challenge a rule,
25 decision, guideline, enforcement policy or procedure of a state agency or
26 commission that is statutorily exempt from the rulemaking requirements of
27 title 41, chapter 6 on the grounds that the rule, decision, guideline,
28 enforcement policy or procedure is not authorized by statute or violates
29 the Constitution of the United States or this state.

30 B. In addition to any costs that are awarded as prescribed by
31 statute, except as provided in subsection C of this section, a court may
32 award fees and other expenses to any party, other than this state or a
33 city, town or county, that prevails by an adjudication on the merits in an
34 action brought by the party against this state or a city, town or county
35 challenging:

36 1. The assessment, collection or refund of taxes or in an action
37 brought by this state or a city, town or county against the party to
38 enforce the assessment or collection of taxes or the denial of a refund.

39 2. The adequacy or regularity of notice of delinquent taxes.

40 3. The regularity of sales of property for delinquent taxes.

41 C. The court in its discretion may deny the award provided for in
42 this section or may reduce the award if it finds that any of the following
43 applies:

44 1. During the course of the proceeding the prevailing party unduly
45 and unreasonably protracted the final resolution of the matter.

1 2. The reason that the party other than this state or a city, town
2 or county has prevailed is an intervening change in the applicable law.

3 3. The prevailing party refused an offer of civil settlement that
4 was at least as favorable to the party as the relief ultimately granted.

5 D. A party may apply pursuant to the applicable procedural rules
6 for an award of attorney fees and other expenses authorized under this
7 section and shall include as part of the application evidence of the
8 party's eligibility for the award and the amount sought, including an
9 itemized statement from the attorneys and experts stating the actual time
10 expended in representing the party and the rate at which the fees were
11 computed.

12 E. The court shall base any award of fees as provided in this
13 section on prevailing market rates for the kind and quality of the
14 services furnished, except that:

15 ~~1. An expert is not eligible for compensation at a rate in excess~~
16 ~~of the highest rate of compensation for experts paid by this state or a~~
17 ~~city, town or county except for awards made pursuant to subsection B of~~
18 ~~this section.~~

19 ~~2. Except for awards made pursuant to subsection B of this section,~~
20 ~~the award of attorney fees may not exceed the amount that the prevailing~~
21 ~~party has paid or has agreed to pay the attorney or a maximum amount of~~
22 ~~seventy-five dollars per hour unless the court determines that an increase~~
23 ~~in the cost of living or a special factor, such as the limited~~
24 ~~availability of qualified attorneys for the proceeding involved, justifies~~
25 ~~a higher fee.~~

26 ~~3. 1. For awards made pursuant to subsection B of this section,~~
27 The award of attorney fees may not exceed the amount that the prevailing
28 party has paid or agreed to pay the attorney or a maximum amount of ~~three~~
29 ~~hundred fifty dollars~~ \$350 per hour.

30 ~~4. Except for awards made pursuant to subsection B of this section,~~
31 ~~an award of fees against a city, town or county as provided in this~~
32 ~~section shall not exceed ten thousand dollars.~~

33 ~~5. 2. For awards made pursuant to subsection B of this section,~~ An
34 award of fees against this state or a city, town or county shall not
35 exceed ~~seventy-five thousand dollars~~ \$125,000 for fees incurred at each
36 level of judicial appeal.

37 ~~6. 3. For each calendar year beginning from and after December 31,~~
38 2015, the ATTORNEY GENERAL SHALL ADJUST THE income dollar amounts for
39 maximum awards made pursuant to subsection B of this section ~~shall be~~
40 ~~adjusted by the attorney general~~ according to the average annual change in
41 the metropolitan Phoenix consumer price index published by the United
42 States bureau of labor statistics. The revised dollar amounts shall be
43 raised to the nearest whole dollar. The income dollar amounts may not be
44 revised below the amounts prescribed in the prior calendar year.

1 F. The particular state agency over which a party prevails shall
2 pay the fees and expenses awarded as provided in this section from any
3 monies appropriated to the agency for that purpose. If no agency is
4 involved or if an agency fails or refuses to pay fees and other expenses
5 within thirty days after demand by a person who has received an award
6 pursuant to this section, and if no further review or appeals of the award
7 are pending, the person may file a claim for the fees and other expenses
8 with the department of administration, which shall pay the claim within
9 thirty days, in the same manner as an uninsured property loss under title
10 41, chapter 3.1, article 1. If, at the time the agency failed or refused
11 to pay the award, it had appropriated monies either designated or
12 assignable for the purpose of paying awards, the legislature shall reduce
13 the agency's operating appropriation for the following year by the amount
14 of the award and shall appropriate the amount of the reduction to the
15 department of administration as reimbursement for the loss.

16 G. A city, town or county shall pay fees and expenses awarded as
17 provided in this section within thirty days after demand by a party who
18 has received an award if no further review or appeal of the award is
19 pending.

20 H. This section does not:

21 1. Apply to an action arising from a proceeding before this state
22 or a city, town or county in which the role of this state or a city, town
23 or county was to determine the eligibility or entitlement of an individual
24 to a monetary benefit or its equivalent, to adjudicate a dispute or issue
25 between private parties or to establish or fix a rate.

26 2. Apply to proceedings brought by this state pursuant to title 13
27 or 28.

28 3. Entitle a party to obtain fees and other expenses incurred in
29 making an application for an award pursuant to this section for fees and
30 other expenses.

31 4. Apply to proceedings involving eminent domain, foreclosure,
32 collection of judgment debts or proceedings in which this state or a city,
33 town or county is a nominal party.

34 5. Personally obligate any officer or employee of this state or a
35 city, town or county for the payment of an award entered under this
36 section.

37 6. Apply, except as provided in subsection A, paragraph 5 of this
38 section, to proceedings involving the personnel board under title 41,
39 chapter 4, article 6.

40 7. Apply to proceedings brought by a city, town or county pursuant
41 to title 13 or 28.

42 8. Apply to proceedings brought by a city, town or county on
43 collection of taxes or pursuant to traffic ordinances or to criminal
44 proceedings brought by a city, town or county on ordinances ~~which~~ THAT
45 contain a criminal penalty or fine for violations of those ordinances.

1 I. For the purposes of this section:

2 1. "Fees and other expenses" means the reasonable expenses of
3 expert witnesses, the reasonable cost of any study, analysis, engineering
4 report, test or project ~~which~~ THAT the court finds to be directly related
5 to and necessary for the presentation of the party's case and reasonable
6 and necessary attorney fees, and in the case of an action to review an
7 agency decision pursuant to subsection A, paragraph 2 of this section, all
8 fees and other expenses that are incurred in the ~~contested case~~
9 proceedings in which the decision was rendered.

10 2. "Party" means an individual, partnership, corporation, limited
11 liability company, limited liability partnership, association or public or
12 private organization.

13 3. "State" means this state and any agency, officer, department,
14 board or commission of this state.

15 4. "Taxes" includes all taxes and related levies and assessments
16 addressed in section 12-163.

17 Sec. 2. Section 41-1001, Arizona Revised Statutes, is amended to
18 read:

19 ~~41-1001.~~ Definitions

20 In this chapter, unless the context otherwise requires:

21 1. "Agency" means any board, commission, department, officer or
22 other administrative unit of this state, including the agency head and one
23 or more members of the agency head or agency employees or other persons
24 directly or indirectly purporting to act on behalf or under the authority
25 of the agency head, whether created under the Constitution of Arizona or
26 by enactment of the legislature. Agency does not include the legislature,
27 the courts or the governor. Agency does not include a political
28 subdivision of this state or any of the administrative units of a
29 political subdivision, but does include any board, commission, department,
30 officer or other administrative unit created or appointed by joint or
31 concerted action of an agency and one or more political subdivisions of
32 this state or any of their units. To the extent an administrative unit
33 purports to exercise authority subject to this chapter, an administrative
34 unit otherwise qualifying as an agency must be treated as a separate
35 agency even if the administrative unit is located within or subordinate to
36 another agency.

37 2. "APPEALABLE AGENCY ACTION" HAS THE SAME MEANING PRESCRIBED IN
38 SECTION 41-1092.

39 ~~2.~~ 3. "Audit" means an audit, investigation or inspection pursuant
40 to title 23, chapter 2 or 4.

41 ~~3.~~ 4. "Code" means the Arizona administrative code, which is
42 published pursuant to section 41-1011.

43 ~~4.~~ 5. "Committee" means the administrative rules oversight
44 committee.

~~5-~~ 6. "Contested case" means any proceeding, including rate making, except rate making pursuant to article XV, Constitution of Arizona, price fixing and licensing, in which the legal rights, duties or privileges of a party are required or permitted by law, other than this chapter, to be determined by an agency after an opportunity for an administrative hearing.

~~6-~~ 7. "Council" means the governor's regulatory review council.

~~7-~~ 8. "Delegation agreement" means an agreement between an agency and a political subdivision that authorizes the political subdivision to exercise functions, powers or duties conferred on the delegating agency by a provision of law. Delegation agreement does not include intergovernmental agreements entered into pursuant to title 11, chapter 7, article 3.

~~8-~~ 9. "Emergency rule" means a rule that is made pursuant to section 41-1026.

~~9-~~ 10. "Fee" means a charge prescribed by an agency for an inspection or for obtaining a license.

~~10-~~ 11. "Final rule" means any rule filed with the secretary of state and made pursuant to an exemption from this chapter in section 41-1005, made pursuant to section 41-1026, approved by the council pursuant to section 41-1052 or 41-1053 or approved by the attorney general pursuant to section 41-1044. For purposes of judicial review, final rule includes expedited rules pursuant to section 41-1027.

~~11-~~ 12. "General permit" means a regulatory permit, license or agency authorization that is for facilities, activities or practices in a class that are substantially similar in nature and that is issued or granted by an agency to a qualified applicant to conduct identified operations or activities if the applicant meets the applicable requirements of the general permit, that requires less information than an individual or traditional permit, license or authorization and that does not require a public hearing.

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

~~13-~~ 14. "Licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, CHANGE, REDUCTION, MODIFICATION or amendment of a license, INCLUDING AN EXISTING PERMIT, CERTIFICATE, APPROVAL, REGISTRATION, CHARTER OR SIMILAR FORM OF PERMISSION, APPROVAL OR AUTHORIZATION OBTAINED FROM AN AGENCY BY THE HOLDER OF A LICENSE.

15. "LICENSING DECISION" MEANS ANY ACTION BY AN AGENCY TO GRANT OR DENY ANY REQUEST FOR PERMISSION, APPROVAL OR AUTHORIZATION ISSUED IN RESPONSE TO ANY REQUEST FROM AN APPLICANT FOR A LICENSE OR TO THE HOLDER OF A LICENSE TO EXERCISE AUTHORITY WITHIN THE SCOPE OF THE LICENSE.

1 ~~14.~~ 16. "Party" means each person or agency named or admitted as a
2 party or properly seeking and entitled as of right to be admitted as a
3 party.

4 ~~15.~~ 17. "Person" means an individual, partnership, corporation,
5 association, governmental subdivision or unit of a governmental
6 subdivision, a public or private organization of any character or another
7 agency.

8 ~~16.~~ 18. "Preamble" means:

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

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

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

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

16 (iv) A reference to any study relevant to the rule that the agency
17 reviewed and either proposes to rely on in its evaluation of or
18 justification for the rule or proposes not to rely on in its evaluation of
19 or justification for the rule, where the public may obtain or review each
20 study, all data underlying each study and any analysis of each study and
21 other supporting material.

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

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

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

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

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

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

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

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

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

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

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

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

14 ~~17.~~ 19. "Provision of law" means the whole or a part of the
15 federal or state constitution, or of any federal or state statute, rule of
16 court, executive order or rule of an administrative agency.

17 ~~18.~~ 20. "Register" means the Arizona administrative register,
18 which is:

19 (a) This state's official publication of rulemaking notices that
20 are filed with the office of secretary of state.

21 (b) Published pursuant to section 41-1011.

22 ~~19.~~ 21. "Rule" means an agency statement of general applicability
23 that implements, interprets or prescribes law or policy, or describes the
24 procedure or practice requirements of an agency. Rule includes
25 prescribing fees or the amendment or repeal of a prior rule but does not
26 include intraagency memoranda that are not delegation agreements.

27 ~~20.~~ 22. "Rulemaking" means the process to make a new rule or
28 amend, repeal or renumber a rule.

29 ~~21.~~ 23. "Small business" means a concern, including its
30 affiliates, which is independently owned and operated, which is not
31 dominant in its field and which employs fewer than one hundred full-time
32 employees or which had gross annual receipts of less than four million
33 dollars in its last fiscal year. For purposes of a specific rule, an
34 agency may define small business to include more persons if it finds that
35 such a definition is necessary to adapt the rule to the needs and problems
36 of small businesses and organizations.

37 ~~22.~~ 24. "Substantive policy statement" means a written expression
38 which informs the general public of an agency's current approach to, or
39 opinion of, the requirements of the federal or state constitution, federal
40 or state statute, administrative rule or regulation, or final judgment of
41 a court of competent jurisdiction, including, where appropriate, the
42 agency's current practice, procedure or method of action based upon that
43 approach or opinion. A substantive policy statement is advisory only. A
44 substantive policy statement does not include internal procedural
45 documents which only affect the internal procedures of the agency and does

1 not impose additional requirements or penalties on regulated parties,
2 confidential information or rules made in accordance with this chapter.

3 Sec. 3. Section 41-1001.01, Arizona Revised Statutes, is amended to
4 read:

5 41-1001.01. Regulatory bill of rights; small businesses

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

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

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

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

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

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

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

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

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

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

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

37 8. IS ENTITLED TO HAVE AN AGENCY NOT BASE A DECISION REGARDING ANY
38 FILING OR OTHER MATTER SUBMITTED TO AN AGENCY ON A REQUIREMENT OR
39 CONDITION THAT IS NOT SPECIFICALLY AUTHORIZED BY STATUTE, RULE OR STATE
40 TRIBAL GAMING COMPACT AS PROVIDED IN SECTION 41-1030, SUBSECTION C.

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

1 ~~9-~~ 10. May allege that an existing agency practice or substantive
2 policy statement constitutes a rule and have that agency practice or
3 substantive policy statement declared void because the practice or
4 substantive policy statement constitutes a rule as provided in section
5 41-1033.

6 ~~10-~~ 11. May file a complaint with the administrative rules
7 oversight committee concerning:

8 (a) A rule's, practice's or substantive policy statement's lack of
9 conformity with statute or legislative intent as provided in section
10 41-1047.

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

14 ~~11-~~ 12. May have the person's administrative hearing on contested
15 cases and appealable agency actions heard by an independent administrative
16 law judge as provided in articles 6 and 10 of this chapter.

17 ~~12-~~ 13. May have administrative hearings governed by uniform
18 administrative appeal procedures as provided in articles 6 and 10 of this
19 chapter and may appeal a final administrative decision by filing a notice
20 of appeal pursuant to title 12, chapter 7, article 6.

21 ~~13-~~ 14. May have an agency approve or deny the person's license
22 application within a predetermined period of time as provided in article
23 7.1 of this chapter.

24 ~~14-~~ 15. Is entitled to receive written notice from an agency on
25 denial of a license application:

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

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

30 ~~15-~~ 16. Is entitled to receive information regarding the license
31 application process before or at the time the person obtains an
32 application for a license as provided in sections 41-1001.02 and 41-1079.

33 ~~16-~~ 17. May receive public notice and participate in the adoption
34 or amendment of agreements to delegate agency functions, powers or duties
35 to political subdivisions as provided in section 41-1026.01 and article 8
36 of this chapter.

37 ~~17-~~ 18. May inspect all rules and substantive policy statements of
38 an agency, including a directory of documents, in the office of the agency
39 director as provided in section 41-1091.

40 ~~18-~~ 19. May file a complaint with the office of the
41 ombudsman-citizens aide to investigate administrative acts of agencies as
42 provided in chapter 8, article 5 of this title.

43 ~~19-~~ 20. Unless specifically authorized by statute, may expect state
44 agencies to avoid duplication of other laws that do not enhance regulatory

1 clarity and to avoid dual permitting to the extent practicable as
2 prescribed in section 41-1002.

3 ~~20.~~ 21. May have the person's administrative hearing on contested
4 cases pursuant to title 23, chapter 2 or 4 heard by an independent
5 administrative law judge as prescribed by title 23, chapter 2 or 4.

6 ~~21.~~ 22. Pursuant to section 41-1009, subsection E, may correct
7 deficiencies identified during an inspection unless otherwise provided by
8 law.

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

12 C. Each state agency that conducts audits, inspections or other
13 regulatory enforcement actions pursuant to section 41-1009 shall create
14 and clearly post on the agency's website a small business bill of rights.
15 The agency shall create the small business bill of rights by selecting the
16 applicable rights prescribed in this section and section 41-1009 and any
17 other agency-specific statutes and rules. The agency shall provide a
18 written document of the small business bill of rights to the authorized
19 on-site representative of the regulated small business. In addition to
20 the rights listed in this section and section 41-1009, the agency notice
21 of the small business bill of rights shall include the process by which a
22 small business may file a complaint with the agency employees who are
23 designated to assist members of the public or regulated community pursuant
24 to section 41-1006. The notice must provide the contact information of
25 the agency's designated employees. The agency notice must also state that
26 if the regulated person has already made a reasonable effort with the
27 agency to resolve the problem and still has not been successful, the
28 regulated person may contact the office of ombudsman-citizens aide.

29 Sec. 4. Section 41-1009, Arizona Revised Statutes, is amended to
30 read:

31 41-1009. Inspections and audits; applicability; exceptions

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

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

36 2. On initiation of the inspection or audit, state the purpose of
37 the inspection or audit and the legal authority for conducting the
38 inspection or audit.

39 3. Disclose any applicable inspection or audit fees.

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

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

2 (a) Copies of any original documents taken by the agency during the
3 inspection or audit if the agency is ~~permitted~~ ALLOWED by law to take
4 original documents.

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

8 (c) Copies of any analysis performed on samples taken during the
9 inspection.

10 (d) Copies of any documents to be relied on to determine compliance
11 with licensure or regulatory requirements if the agency is otherwise
12 ~~permitted~~ ALLOWED by law to do so.

13 6. Inform each person whose conversation with the agency inspector,
14 auditor or regulator during the inspection or audit is tape recorded that
15 the conversation is being tape recorded.

16 7. Inform each person who is interviewed during the inspection or
17 audit that:

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

20 (b) Participation in an interview is voluntary, unless the person
21 is legally compelled to participate in the interview.

22 (c) The person is allowed at least twenty-four hours to review and
23 revise any written witness statement that is drafted by the agency
24 inspector, auditor or regulator and on which the agency inspector, auditor
25 or regulator requests the person's signature.

26 (d) The agency inspector, auditor or regulator may not prohibit the
27 regulated person from having an attorney or any other experts in their
28 field present during the interview to represent or advise the regulated
29 person.

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

33 1. The rights described in subsection A of this section and section
34 41-1001.01, subsection C.

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

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

41 4. A statement that the agency inspector, auditor or regulator may
42 not take any adverse action, treat the regulated person less favorably or
43 draw any inference as a result of the regulated person's decision to be
44 represented by an attorney or advised by any other experts in their field.

1 5. A notice that if the information and documents provided to the
2 agency inspector, auditor or regulator become a public record, the
3 regulated person may redact trade secrets and proprietary and confidential
4 information unless the information and documents are confidential pursuant
5 to statute.

6 6. The time limit or statute of limitations applicable to the right
7 of the agency inspector, auditor or regulator to file a compliance action
8 against the regulated person arising from the inspection or audit, which
9 applies to both new and amended compliance actions.

10 C. An agency inspector, auditor or regulator shall obtain the
11 signature of the regulated person or on-site representative of the
12 regulated person on the writing prescribed in subsection B of this section
13 and section 41-1001.01, subsection C, if applicable, indicating that the
14 regulated person or on-site representative of the regulated person has
15 read the writing prescribed in subsection B of this section and section
16 41-1001.01, subsection C, if applicable, and is notified of the regulated
17 person's or on-site representative of the regulated person's inspection or
18 audit and due process rights. The agency inspector, auditor or regulator
19 may provide an electronic document of the writing prescribed in subsection
20 B of this section and section 41-1001.01, subsection C and, at the request
21 of the regulated person or on-site representative, obtain a receipt in the
22 form of an electronic signature. The agency shall maintain a copy of this
23 signature with the inspection or audit report and shall leave a copy with
24 the regulated person or on-site representative of the regulated person.
25 If a regulated person or on-site representative of the regulated person is
26 not at the site or refuses to sign the writing prescribed in subsection B
27 of this section and section 41-1001.01, subsection C, if applicable, the
28 agency inspector, auditor or regulator shall note that fact on the writing
29 prescribed in subsection B of this section and section 41-1001.01,
30 subsection C, if applicable.

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

- 34 1. At the time of the inspection.
35 2. Notwithstanding any other state law, within thirty working days
36 after the inspection.
37 3. As otherwise required by federal law.

38 E. The inspection report shall contain deficiencies identified
39 during an inspection. Unless otherwise provided by state or federal law,
40 the agency shall provide the regulated person an opportunity to correct
41 the deficiencies unless the agency documents in writing as part of the
42 inspection report that the deficiencies are:

- 43 1. Committed intentionally.
44 2. Not correctable within a reasonable period of time as determined
45 by the agency.

1 3. Evidence of a pattern of noncompliance.

2 4. A risk to any person, the public health, safety or welfare or
3 the environment.

4 F. If the agency is unsure whether a regulated person meets the
5 exemptions in subsection E of this section, the agency shall provide the
6 regulated person with an opportunity to correct THE DEFICIENCIES.

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

18 H. If the agency does not allow the regulated person an opportunity
19 to correct deficiencies pursuant to subsection E of this section, on the
20 request of the regulated person, the agency shall provide a detailed
21 written explanation of the reason that an opportunity to correct was not
22 allowed.

23 I. An agency decision pursuant to subsection E or G of this section
24 is not an appealable agency action.

25 J. At least once every month after the commencement of the
26 inspection, an agency shall provide a regulated person with an update on
27 the status of any agency action resulting from an inspection of the
28 regulated person. An agency is not required to provide an update after
29 the regulated person is notified that no agency action will result from
30 the agency inspection or after the completion of agency action resulting
31 from the agency inspection.

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

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

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

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

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

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

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

18 N. Except as otherwise provided in subsection L of this section,
19 this section applies only to inspections necessary for the issuance of a
20 license or to determine compliance with licensure or other regulatory
21 requirements applicable to a licensee and audits pursuant to enforcement
22 of title 23, chapters 2 and 4. This section does not apply:

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

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

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

31 4. To certificates of convenience and necessity that are issued by
32 the corporation commission pursuant to title 40, chapter 2.

33 O. If an agency inspector, auditor or regulator gathers evidence in
34 violation of this section, the violation may be a basis to exclude the
35 evidence in a civil or administrative proceeding.

36 P. Failure of an agency, board or commission employee to comply
37 with this section:

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

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

41 Q. An agency may make rules to implement subsection A, paragraph 5
42 of this section.

43 R. Nothing in this section shall be used to exclude evidence in a
44 criminal proceeding.

1 S. Subsection A, paragraph 7, subdivision (c) and subsection E of
2 this section do not apply to the department of health services for the
3 purposes of title 36, chapters 4 and 7.1.

4 T. Subsection B, paragraph 5 and subsection E of this section do
5 not apply to the corporation commission for the purposes of title 44,
6 chapters 12 and 13.

7 U. EXCEPT AS OTHERWISE PRESCRIBED BY THIS SECTION AND
8 NOTWITHSTANDING ANY OTHER LAW:

9 1. THIS SECTION APPLIES TO ALL STATE AGENCIES THAT CONDUCT
10 INSPECTIONS AND AUDITS.

11 2. IF A CONFLICT ARISES BETWEEN THE RIGHTS AFFORDED A REGULATED
12 PERSON PURSUANT TO THIS SECTION AND THE RIGHTS AFFORDED A REGULATED PERSON
13 PURSUANT TO ANOTHER STATUTE, THIS SECTION GOVERNS.

14 Sec. 5. Section 41-1030, Arizona Revised Statutes, is amended to
15 read:

16 41-1030. Invalidity of rules not made according to this
17 chapter; prohibited agency action; prohibited acts
18 by state employees; enforcement; notice

19 A. A rule is invalid unless it is made and approved in substantial
20 compliance with sections 41-1021 through 41-1029 and articles 4, 4.1 and 5
21 of this chapter, unless otherwise provided by law.

22 B. An agency shall not base a licensing decision in whole or in
23 part on a licensing requirement or condition that is not specifically
24 authorized by statute, rule or state tribal gaming compact. A general
25 grant of authority in statute does not constitute a basis for imposing a
26 licensing requirement or condition unless a rule is made pursuant to that
27 general grant of authority that specifically authorizes the requirement or
28 condition.

29 C. AN AGENCY SHALL NOT BASE A DECISION REGARDING ANY FILING OR
30 OTHER MATTER SUBMITTED BY A LICENSEE ON A REQUIREMENT OR CONDITION THAT IS
31 NOT SPECIFICALLY AUTHORIZED BY STATUTE, RULE OR STATE TRIBAL GAMING
32 COMPACT. A GENERAL GRANT OF AUTHORITY IN STATUTE DOES NOT CONSTITUTE A
33 BASIS FOR IMPOSING A REQUIREMENT OR CONDITION FOR APPROVAL OF A DECISION
34 ON ANY FILING OR OTHER MATTER SUBMITTED BY A LICENSEE UNLESS A RULE IS
35 MADE PURSUANT TO THAT GENERAL GRANT OF AUTHORITY THAT SPECIFICALLY
36 AUTHORIZES THE REQUIREMENT OR CONDITION.

37 ~~E.~~ D. An agency shall not:

38 1. Make a rule under a specific grant of rulemaking authority that
39 exceeds the subject matter areas listed in the specific statute
40 authorizing the rule.

41 2. Make a rule under a general grant of rulemaking authority to
42 supplement a more specific grant of rulemaking authority.

43 ~~D.~~ E. This section may be enforced in a private civil action and
44 relief may be awarded against the state. The court may award reasonable
45 attorney fees, damages and all fees associated with the license

1 application to a party that prevails in an action against the state for a
2 violation of this section.

3 ~~F.~~ F. A state employee may not intentionally or knowingly violate
4 this section. A violation of this section is cause for disciplinary
5 action or dismissal pursuant to the agency's adopted personnel policy.

6 ~~F.~~ G. This section does not abrogate the immunity provided by
7 section 12-820.01 or 12-820.02.

8 ~~G.~~ H. An agency shall prominently print the provisions of
9 subsections B, ~~D~~, E, ~~and~~ F AND G of this section on all license
10 applications, except license applications processed by the corporation
11 commission.

12 ~~H.~~ I. The ~~licensing~~ LICENSE application may be in either print or
13 electronic format.

14 Sec. 6. Section 41-1074, Arizona Revised Statutes, is amended to
15 read:

16 41-1074. Compliance with administrative completeness review
17 time frame

18 A. An agency shall issue a written notice of administrative
19 completeness or deficiencies to an applicant for a license within the
20 administrative completeness review time frame.

21 B. If an agency determines that an application for a license is not
22 administratively complete, the agency shall include a comprehensive list
23 of the specific deficiencies in the written notice provided pursuant to
24 subsection A OF THIS SECTION. If the agency issues a written notice of
25 deficiencies within the administrative completeness time frame, the
26 administrative completeness review time frame and the overall time frame
27 are suspended from the date the notice is issued until the date that the
28 agency receives the missing information from the applicant.

29 C. If an agency does not issue a written notice of administrative
30 completeness or deficiencies within the administrative completeness review
31 time frame, the application is deemed administratively complete. If an
32 agency issues a timely written notice of deficiencies, an application
33 ~~shall~~ IS not ~~be~~ complete until THE AGENCY RECEIVES all requested
34 information ~~has been received by the agency~~.

35 D. A DETERMINATION BY AN AGENCY THAT AN APPLICATION IS NOT
36 ADMINISTRATIVELY COMPLETE IS AN APPEALABLE AGENCY ACTION, WHICH IF TIMELY
37 INITIATED, ENTITLES THE APPLICANT TO AN ADJUDICATION ON THE MERITS OF THE
38 ADMINISTRATIVE COMPLETENESS OF THE APPLICATION.

39 Sec. 7. Section 41-1092, Arizona Revised Statutes, is amended to
40 read:

41 41-1092. Definitions

42 In this article, unless the context otherwise requires:

43 1. "Administrative law judge" means an individual or an agency
44 head, board or commission that sits as an administrative law judge, that
45 conducts administrative hearings in a contested case or an appealable

1 agency action and that makes decisions regarding the contested case or
2 appealable agency action.

3 2. "Administrative law judge decision" means the findings of fact,
4 conclusions of law and recommendations or decisions issued by an
5 administrative law judge.

6 3. "Appealable agency action" means an action that determines the
7 legal rights, duties or privileges of a party, **INCLUDING THE**
8 **ADMINISTRATIVE COMPLETENESS OF AN APPLICATION**, and that is not a contested
9 case. Appealable agency actions do not include interim orders by
10 self-supporting regulatory boards, rules, orders, standards or statements
11 of policy of general application issued by an administrative agency to
12 implement, interpret or make specific the legislation enforced or
13 administered by it or clarifications of interpretation, nor does it mean
14 or include rules concerning the internal management of the agency that do
15 not affect private rights or interests. For the purposes of this
16 paragraph, administrative hearing does not include a public hearing held
17 for the purpose of receiving public comment on a proposed agency action.

18 4. "Director" means the director of the office of administrative
19 hearings.

20 5. "Final administrative decision" means a decision by an agency
21 that is subject to judicial review pursuant to title 12, chapter 7,
22 article 6.

23 6. "Office" means the office of administrative hearings.

24 7. "Self-supporting regulatory board" means any one of the
25 following:

- 26 (a) The Arizona state board of accountancy.
- 27 (b) The board of barbers.
- 28 (c) The board of behavioral health examiners.
- 29 (d) The Arizona state boxing and mixed martial arts commission.
- 30 (e) The state board of chiropractic examiners.
- 31 (f) The board of cosmetology.
- 32 (g) The state board of dental examiners.
- 33 (h) The state board of funeral directors and embalmers.
- 34 (i) The Arizona game and fish commission.
- 35 (j) The board of homeopathic and integrated medicine examiners.
- 36 (k) The Arizona medical board.
- 37 (l) The naturopathic physicians medical board.
- 38 (m) The **ARIZONA** state board of nursing.
- 39 (n) The board of examiners of nursing care institution
40 administrators and ~~adult care home~~ **ASSISTED LIVING FACILITY** managers.
- 41 (o) The board of occupational therapy examiners.
- 42 (p) The state board of dispensing opticians.
- 43 (q) The state board of optometry.
- 44 (r) The Arizona board of osteopathic examiners in medicine and
45 surgery.

- 1 (s) The Arizona peace officer standards and training board.
- 2 (t) The Arizona state board of pharmacy.
- 3 (u) The board of physical therapy.
- 4 (v) The state board of podiatry examiners.
- 5 (w) The state board for private postsecondary education.
- 6 (x) The state board of psychologist examiners.
- 7 (y) The board of respiratory care examiners.
- 8 (z) The state board of technical registration.
- 9 (aa) The Arizona state veterinary medical examining board.
- 10 (bb) The acupuncture board of examiners.
- 11 (cc) The Arizona regulatory board of physician assistants.
- 12 (dd) The board of athletic training.
- 13 (ee) The board of massage therapy.

14 Sec. 8. Applicability

15 Section 12-348, Arizona Revised Statutes, as amended by this act,
16 applies to all proceedings described in section 12-348, Arizona Revised
17 Statutes, as amended by this act, that are pending on or filed after the
18 effective date of this act.