

Senate Engrossed House Bill

occupational regulation; good character; definition

State of Arizona
House of Representatives
Fifty-fifth Legislature
First Regular Session
2021

CHAPTER 269

HOUSE BILL 2787

AN ACT

AMENDING SECTIONS 1-215 AND 41-1093.04, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 6, ARTICLE 11, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-1093.06; RELATING TO OCCUPATIONAL REGULATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 1-215, Arizona Revised Statutes, is amended to
3 read:

4 1-215. Definitions

5 In the statutes and laws of this state, unless the context otherwise
6 requires:

7 1. "Action" includes any matter or proceeding in a court, civil or
8 criminal.

9 2. "Adopted rule" means a final rule as defined in section 41-1001.

10 3. "Adult" means a person who has attained eighteen years of age.

11 4. "Alternative fuel" means:

12 (a) Electricity.

13 (b) Solar energy.

14 (c) Liquefied petroleum gas, natural gas, hydrogen or a blend of
15 hydrogen with liquefied petroleum or natural gas that complies with any of
16 the following:

17 (i) Is used in an engine that is certified to meet at a minimum the
18 United States environmental protection agency low emission vehicle
19 standard pursuant to 40 Code of Federal Regulations section 88.104-94 or
20 88.105-94.

21 (ii) Is used in an engine that is certified by the engine modifier
22 to meet the addendum to memorandum 1-A of the United States environmental
23 protection agency as printed in the federal register, volume 62, number
24 207, October 27, 1997, pages 55635 through 55637.

25 (iii) Is used in an engine that is the subject of a waiver for that
26 specific engine application from the United States environmental
27 protection agency's memorandum 1-A addendum requirements and that waiver
28 is documented to the reasonable satisfaction of the director of the
29 department of environmental quality.

30 (d) Only for vehicles that use alcohol fuels before August 21,
31 1998, alcohol fuels that contain not less than eighty-five ~~per cent~~
32 PERCENT alcohol by volume.

33 (e) A combination of at least seventy ~~per cent~~ PERCENT alternative
34 fuel and ~~no~~ NOT more than thirty ~~per cent~~ PERCENT petroleum based fuel
35 that operates in an engine that meets the United States environmental
36 protection agency low emission vehicle standard pursuant to 40 Code of
37 Federal Regulations section 88.104-94 or 88.105-94 and that is certified
38 by the engine manufacturer to consume at least seventy ~~per cent~~ PERCENT
39 alternative fuel during normal vehicle operations.

40 5. "Bribe" means anything of value or advantage, present or
41 prospective, asked, offered, given, accepted or promised with a corrupt
42 intent to influence, unlawfully, the person to whom it is given in that
43 person's action, vote or opinion, in any public or official capacity.

44 6. "Child" or "children" as used in reference to age of persons
45 means persons under eighteen years of age.

1 7. "Clean burning fuel" means:

2 (a) An emulsion of water-phased hydrocarbon fuel that contains not
3 less than twenty ~~per cent~~ PERCENT water by volume and that complies with
4 any of the following:

5 (i) Is used in an engine that is certified to meet at a minimum the
6 United States environmental protection agency low emission vehicle
7 standard pursuant to 40 Code of Federal Regulations section 88.104-94 or
8 88.105-94.

9 (ii) Is used in an engine that is certified by the engine modifier
10 to meet the addendum to memorandum 1-A of the United States environmental
11 protection agency as printed in the federal register, volume 62, number
12 207, October 27, 1997, pages 55635 through 55637.

13 (iii) Is used in an engine that is the subject of a waiver for that
14 specific engine application from the United States environmental
15 protection agency's memorandum 1-A addendum requirements and that waiver
16 is documented to the reasonable satisfaction of the director of the
17 department of environmental quality.

18 (b) A diesel fuel substitute that is produced from nonpetroleum
19 renewable resources if the qualifying volume of the nonpetroleum renewable
20 resources meets the standards for California diesel fuel as adopted by the
21 California air resources board pursuant to 13 California Code of
22 Regulations sections 2281 and 2282 in effect on January 1, 2000, the
23 diesel fuel substitute meets the registration requirement for fuels and
24 additives established by the United States environmental protection agency
25 pursuant to section 211 of the clean air act as defined in section
26 49-401.01 and the use of the diesel fuel substitute complies with the
27 requirements listed in 10 Code of Federal Regulations part 490, as printed
28 in the federal register, volume 64, number 96, May 19, 1999.

29 (c) A diesel fuel that complies with all of the following:

30 (i) Contains a maximum of fifteen parts per million by weight of
31 sulfur.

32 (ii) Meets ASTM D975.

33 (iii) Meets the registration requirements for fuels and additives
34 established by the United States environmental protection agency pursuant
35 to section 211 of the clean air act as defined in section 49-401.01.

36 (iv) Is used in an engine that is equipped or has been retrofitted
37 with a device that has been certified by the California air resources
38 board diesel emission control strategy verification procedure, the United
39 States environmental protection agency voluntary diesel retrofit program
40 or the United States environmental protection agency verification protocol
41 for retrofit catalyst, particulate filter and engine modification control
42 technologies for highway and nonroad use diesel engines.

43 (d) A blend of unleaded gasoline that contains at minimum
44 eighty-five ~~per cent~~ PERCENT ethanol by volume or eighty-five ~~per cent~~
45 PERCENT methanol by volume.

1 (e) Neat methanol.

2 (f) Neat ethanol.

3 8. "Corruptly" means a wrongful design to acquire or cause some
4 pecuniary or other advantage to the person guilty of the act or omission
5 referred to, or to some other person.

6 9. "Daytime" means the period between sunrise and sunset.

7 10. "Depose" includes every manner of written statement under oath
8 or affirmation.

9 11. "Federal poverty guidelines" means the poverty guidelines as
10 updated annually in the federal register by the United States department
11 of health and human services.

12 12. "Grantee" includes every person to whom an estate or interest
13 in real property passes, in or by a deed.

14 13. "Grantor" includes every person from or by whom an estate or
15 interest in real property passes, in or by a deed.

16 14. "Includes" or "including" means not limited to and is not a
17 term of exclusion.

18 15. "Inhabitant" means a resident of a city, town, village,
19 district, county or precinct.

20 16. "Issue" as used in connection with descent of estates includes
21 all lawful, lineal descendants of the ancestor.

22 17. "Knowingly":

23 (a) Means only a knowledge that the facts exist that bring the act
24 or omission within the provisions of the statute using such word.

25 (b) Does not require any knowledge of the unlawfulness of the act
26 or omission.

27 18. "Magistrate" means an officer having power to issue a warrant
28 for the arrest of a person charged with a public offense and includes the
29 chief justice and justices of the supreme court, judges of the superior
30 court, judges of the court of appeals, justices of the peace and judges of
31 a municipal court.

32 19. "Majority" or "age of majority" as used in reference to **THE** age
33 of persons means eighteen years of age or more.

34 20. "Malice" and "maliciously" mean a wish to vex, annoy or injure
35 another person, or an intent to do a wrongful act, established either by
36 proof or presumption of law.

37 21. "Minor" means a person under ~~the age of~~ eighteen years **OF AGE**.

38 22. "Minor children" means persons under ~~the age of~~ eighteen years
39 **OF AGE**.

40 23. "Month" means a calendar month unless otherwise expressed.

41 24. **"MORAL TURPITUDE" MEANS AN OFFENSE, WHETHER A MISDEMEANOR OR**
42 **FELONY, THAT IS RELATED TO EXTORTION, BURGLARY, LARCENY, BRIBERY,**
43 **EMBEZZLEMENT, ROBBERY, RACKETEERING, MONEY LAUNDERING, FORGERY, FRAUD,**
44 **MURDER, VOLUNTARY MANSLAUGHTER OR A SEXUAL OFFENSE THAT REQUIRES THE**
45 **INDIVIDUAL TO REGISTER PURSUANT TO SECTION 13-3821.**

1 ~~24.~~ 25. "Neglect", "negligence", "negligent" and "negligently"
2 import a want of such attention to the nature or probable consequence of
3 the act or omission as a prudent man ordinarily bestows in acting in his
4 own concerns.

5 ~~25.~~ 26. "Nighttime" means the period between sunset and sunrise.

6 ~~26.~~ 27. "Oath" includes an affirmation or declaration.

7 ~~27.~~ 28. "Peace officers" means sheriffs of counties, constables,
8 marshals, policemen of cities and towns, commissioned personnel of the
9 department of public safety, personnel who are employed by the state
10 department of corrections and the department of juvenile corrections and
11 who have received a certificate from the Arizona peace officer standards
12 and training board, peace officers who are appointed by a multicounty
13 water conservation district and who have received a certificate from the
14 Arizona peace officer standards and training board, police officers who
15 are appointed by community college district governing boards and who have
16 received a certificate from the Arizona peace officer standards and
17 training board, police officers who are appointed by the Arizona board of
18 regents and who have received a certificate from the Arizona peace officer
19 standards and training board, police officers who are appointed by the
20 governing body of a public airport pursuant to section 28-8426 and who
21 have received a certificate from the Arizona peace officer standards and
22 training board, peace officers who are appointed by a private
23 postsecondary institution pursuant to section 15-1897 and who have
24 received a certificate from the Arizona peace officer standards and
25 training board and special agents from the office of the attorney general,
26 or of a county attorney, and who have received a certificate from the
27 Arizona peace officer standards and training board.

28 ~~28.~~ 29. "Person" includes a corporation, company, partnership,
29 firm, association or society, as well as a natural person. When the word
30 "person" is used to designate the party whose property may be the subject
31 of a criminal or public offense, the term includes the United States, this
32 state, or any territory, state or country, or any political subdivision of
33 this state that may lawfully own any property, or a public or private
34 corporation, or partnership or association. When the word "person" is
35 used to designate the violator or offender of any law, it includes A
36 corporation, A partnership or any association of persons.

37 ~~29.~~ 30. "Personal property" includes money, goods, chattels,
38 things in action and evidences of debt.

39 ~~30.~~ 31. "Population" means the population according to the most
40 recent United States decennial census.

41 ~~31.~~ 32. "Process" means a citation, writ or summons issued in the
42 course of judicial proceedings.

43 ~~32.~~ 33. "Property" includes both real and personal property.

44 ~~33.~~ 34. "Real property" is coextensive with lands, tenements and
45 hereditaments.

1 ~~34.~~ 35. "Registered mail" includes certified mail.
2 ~~35.~~ 36. "Seal" as used in reference to a paper issuing from a
3 court or public office to which the seal of such court or office is
4 required to be affixed means an impression of the seal on that paper, an
5 impression of the seal affixed to that paper by a wafer or wax, a stamped
6 seal, a printed seal, a screened seal or a computer generated seal.
7 ~~36.~~ 37. "Signature" or "subscription" includes a mark, if a person
8 cannot write, with the person's name written near it and witnessed by a
9 person who writes the person's own name as witness.
10 ~~37.~~ 38. "State", as applied to the different parts of the United
11 States, includes the District of Columbia, this state and the territories.
12 ~~38.~~ 39. "Testify" includes every manner of oral statement under
13 oath or affirmation.
14 ~~39.~~ 40. "United States" includes the District of Columbia and the
15 territories.
16 ~~40.~~ 41. "Vessel", as used in reference to shipping, includes ships
17 of all kinds, steamboats, steamships, barges, canal boats and every
18 structure adapted to navigation from place to place for the transportation
19 of persons or property.
20 ~~41.~~ 42. "Wilfully" means, with respect to conduct or to a
21 circumstance described by a statute defining an offense, that a person is
22 aware or believes that the person's conduct is of that nature or that the
23 circumstance exists.
24 ~~42.~~ 43. "Will" includes codicils.
25 ~~43.~~ 44. "Workers' compensation" means workmen's compensation as
26 used in article XVIII, section 8, Constitution of Arizona.
27 ~~44.~~ 45. "Writ" means an order or precept in writing issued in the
28 name of the state or by a court or judicial officer.
29 ~~45.~~ 46. "Writing" includes printing.
30 Sec. 2. Section 41-1093.04, Arizona Revised Statutes, is amended to
31 read:
32 41-1093.04. Occupational license, permit or certificate or
33 other state recognition rights; petition for
34 review of criminal record; annual report
35 A. A person with a criminal record may petition an agency, at any
36 time, including before obtaining any required education or experience,
37 taking any examination or paying any fee, for a determination of whether
38 the person's criminal record disqualifies the person from obtaining a
39 license, permit, certificate or other state recognition.
40 B. In the petition, the person shall include:
41 1. The person's complete criminal history record OR AUTHORIZATION
42 FOR THE AGENCY TO OBTAIN THE PERSON'S CRIMINAL HISTORY RECORD.
43 2. Any additional information about the person's current
44 circumstances, including the time since the offense was committed and the
45 sentence was completed, the payment of any court-ordered restitution,

1 evidence of rehabilitation, testimonials, employment history and
2 employment aspirations.

3 C. The agency shall determine whether the person's criminal record
4 disqualifies the person from obtaining a license, permit, certificate or
5 other state recognition.

6 D. Notwithstanding any other law or rule, the agency may determine
7 that the person's criminal record disqualifies the person from obtaining a
8 license, permit, certificate or other state recognition only if the agency
9 concludes that the state has an important interest in protecting public
10 safety that is superior to the person's right and either of the following
11 applies:

12 1. The person was convicted of any of the following, the conviction
13 occurred within seven years before the date of the petition, excluding any
14 period of time that the person was imprisoned in the custody of the state
15 department of corrections, and the conviction has not been set aside:

16 (a) A felony offense.

17 (b) A violent crime as defined in section 13-901.03.

18 (c) An offense included in title 13, chapter 20, 21 or 22 or
19 section 13-2310 or 13-2311 if the license, permit, certificate or other
20 state recognition is for an occupation in which the applicant would owe a
21 fiduciary duty to a client.

22 2. The person was, at any time, convicted of either of the
23 following:

24 (a) An offense that a law specifically requires the agency to
25 consider when issuing a license, permit, certificate or other state
26 recognition and the conviction has not been set aside.

27 (b) A dangerous offense as defined in section 13-105, a serious
28 offense as defined in section 13-706, a dangerous crime against children
29 as defined in section 13-705 or an offense included in title 13, chapter
30 14 or 35.1, and the conviction has not been set aside.

31 E. To conclude that the state has an important interest in
32 protecting public safety that is superior to the person's right, as
33 required by subsection D of this section, the agency must determine by
34 clear and convincing evidence at the time of the petition that both of the
35 following apply:

36 1. The specific offense that the person was convicted of ~~is~~
37 substantially ~~related~~ RELATES to the state's interest AND SPECIFICALLY AND
38 DIRECTLY RELATES TO THE DUTIES AND RESPONSIBILITIES OF THE OCCUPATION,
39 EXCEPT OFFENSES INVOLVING MORAL TURPITUDE.

40 2. The person, based on the nature of the specific offense that the
41 person was convicted of and the person's current circumstances, INCLUDING
42 THE PASSAGE OF TIME SINCE THE PERSON COMMITTED THE CRIME AND ANY EVIDENCE
43 OF REHABILITATION OR TREATMENT, is more likely to reoffend by virtue of
44 having the license, permit, certificate or other state recognition than if

1 the person did not have the license, permit, certificate or other state
2 recognition.

3 F. IN DETERMINING IF A PERSON'S CRIMINAL RECORD DISQUALIFIES THE
4 PERSON FROM OBTAINING A LICENSE, PERMIT, CERTIFICATE OR OTHER STATE
5 RECOGNITION, THE AGENCY MAY NOT CONSIDER NEGATIVELY ANY OF THE FOLLOWING:

6 1. NONCONVICTION INFORMATION, INCLUDING INFORMATION RELATED TO A
7 DEFERRED ADJUDICATION, PARTICIPATION IN A DIVERSION PROGRAM OR AN ARREST
8 THAT WAS NOT FOLLOWED BY A CONVICTION.

9 2. A CONVICTION THAT HAS BEEN SEALED, DISMISSED, EXPUNGED OR
10 PARDONED.

11 3. A JUVENILE ADJUDICATION.

12 4. A NONVIOLENT MISDEMEANOR.

13 ~~F.~~ G. The agency shall issue a determination on the petition
14 within ninety days after the agency receives the petition. The
15 determination on the petition must be in writing and include ALL OF THE
16 FOLLOWING:

17 1. Findings of fact and conclusions of law.

18 2. THE GROUNDS AND REASONS FOR THE DETERMINATION IF THE PERSON'S
19 CRIMINAL HISTORY DISQUALIFIES THE PERSON.

20 ~~G.~~ H. If the agency determines that the state's interest TO
21 PROTECT PUBLIC SAFETY is superior to the person's right, the agency may
22 advise the person of the actions that the person may take to remedy the
23 disqualification, including:

24 1. An appeal of the determination as provided in title 12, chapter
25 7, article 6.

26 2. The ~~submission of~~ EARLIEST DATE THE PERSON MAY SUBMIT a new
27 petition to the ~~same~~ agency ~~at any time within two years after the final~~
28 ~~determination of the initial petition,~~ WHICH MUST BE NOT LATER THAN TWO
29 YEARS AFTER THE FINAL DETERMINATION OF THE INITIAL PETITION.

30 ~~H.~~ I. The agency shall rescind the determination any time after
31 the determination is made but before issuing a license, permit,
32 certificate or other state recognition if the person is convicted of an
33 additional offense that is included in subsection D, ~~paragraph 1~~ of this
34 section.

35 ~~I.~~ J. Subsection D AND SUBSECTION F, PARAGRAPHS 1, 2 AND 4 of this
36 section ~~does~~ DO not apply to any of the following:

37 1. Any law enforcement agency or the Arizona peace officer
38 standards and training board.

39 2. Any license or registration certificate that is issued pursuant
40 to title 32, chapter 24 or 26.

41 3. Any certification, license or permit that is issued pursuant to
42 title 15.

43 4. Statutory requirements for a fingerprint clearance card issued
44 pursuant to chapter 12, article 3.1 of this title.

1 5. Any criteria for license, permit or certificate eligibility that
2 is established by an interstate compact.

3 ~~J.~~ K. Each agency shall submit a report on or before July 1 of
4 each year to the governor and the legislature and provide a copy of this
5 report to the secretary of state. The report shall include the following
6 information for the previous calendar year:

7 1. The number of applicants who ~~petition~~ PETITIONED the agency for
8 a determination.

9 2. The number of petitions that were granted and the types of
10 offenses at issue.

11 3. The number of petitions that were denied and the types of
12 offenses at issue.

13 4. The number of determinations that were rescinded.

14 L. AN AGENCY SHALL ADOPT FORMS FOR PETITIONS AS PRESCRIBED IN
15 SUBSECTIONS A AND B OF THIS SECTION.

16 Sec. 3. Title 41, chapter 6, article 11, Arizona Revised Statutes,
17 is amended by adding section 41-1093.06, to read:

18 41-1093.06. Private employers; effect of article

19 THIS ARTICLE DOES NOT:

20 1. REQUIRE A PRIVATE EMPLOYER TO GRANT OR DENY EMPLOYMENT TO ANY
21 INDIVIDUAL.

22 2. IMPAIR THE RIGHT OF PRIVATE EMPLOYERS TO ESTABLISH AND ENFORCE
23 ELIGIBILITY CRITERIA, ETHICS CODES OR DISCIPLINARY POLICIES.

24 Sec. 4. Conforming legislation

25 The legislative council staff shall prepare proposed legislation
26 conforming the Arizona Revised Statutes to the provisions of this act for
27 consideration in the fifty-fifth legislature, second regular session.

APPROVED BY THE GOVERNOR APRIL 20, 2021.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 20, 2021.