

House Engrossed

agency actions; procedures; fee awards

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

HOUSE BILL 2242

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.

1 ~~5.~~ 6. "Contested case" means any proceeding, including rate
2 making, except rate making pursuant to article XV, Constitution of
3 Arizona, price fixing and licensing, in which the legal rights, duties or
4 privileges of a party are required or permitted by law, other than this
5 chapter, to be determined by an agency after an opportunity for an
6 administrative hearing.

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

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

14 ~~8.~~ 9. "Emergency rule" means a rule that is made pursuant to
15 section 41-1026.

16 ~~9.~~ 10. "Fee" means a charge prescribed by an agency for an
17 inspection or for obtaining a license.

18 ~~10.~~ 11. "Final rule" means any rule filed with the secretary of
19 state and made pursuant to an exemption from this chapter in section
20 41-1005, made pursuant to section 41-1026, approved by the council
21 pursuant to section 41-1052 or 41-1053 or approved by the attorney general
22 pursuant to section 41-1044. For purposes of judicial review, final rule
23 includes expedited rules pursuant to section 41-1027.

24 ~~11.~~ 12. "General permit" means a regulatory permit, license or
25 agency authorization that is for facilities, activities or practices in a
26 class that are substantially similar in nature and that is issued or
27 granted by an agency to a qualified applicant to conduct identified
28 operations or activities if the applicant meets the applicable
29 requirements of the general permit, that requires less information than an
30 individual or traditional permit, license or authorization and that does
31 not require a public hearing.

32 ~~12.~~ 13. "License" includes the whole or part of any agency permit,
33 certificate, approval, registration, charter or similar form of permission
34 required by law, but does not include a license required solely for
35 revenue purposes.

36 ~~13.~~ 14. "Licensing" includes the agency process respecting the
37 grant, denial, renewal, revocation, suspension, annulment, withdrawal,
38 CHANGE, REDUCTION, MODIFICATION or amendment of a license, INCLUDING AN
39 EXISTING PERMIT, CERTIFICATE, APPROVAL, REGISTRATION, CHARTER OR SIMILAR
40 FORM OF PERMISSION, APPROVAL OR AUTHORIZATION OBTAINED FROM AN AGENCY BY
41 THE HOLDER OF A LICENSE.

42 15. "LICENSING DECISION" MEANS ANY ACTION BY AN AGENCY TO GRANT OR
43 DENY ANY REQUEST FOR PERMISSION, APPROVAL OR AUTHORIZATION ISSUED IN
44 RESPONSE TO ANY REQUEST FROM AN APPLICANT FOR A LICENSE OR TO THE HOLDER
45 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 A STATUTE, RULE, FEDERAL
40 LAW OR REGULATION OR STATE TRIBAL GAMING COMPACT AS PROVIDED IN SECTION
41 41-1030, SUBSECTION C.

42 ~~8-~~ 9. Is entitled to have an agency not make a rule under a
43 specific grant of rulemaking authority that exceeds the subject matter
44 areas listed in the specific statute or not make a rule under a general

1 grant of rulemaking authority to supplement a more specific grant of
2 rulemaking authority as provided in section 41-1030, subsection ~~C~~ D.
3 ~~9.~~ 10. May allege that an existing agency practice or substantive
4 policy statement constitutes a rule and have that agency practice or
5 substantive policy statement declared void because the practice or
6 substantive policy statement constitutes a rule as provided in section
7 41-1033.
8 ~~10.~~ 11. May file a complaint with the administrative rules
9 oversight committee concerning:
10 (a) A rule's, practice's or substantive policy statement's lack of
11 conformity with statute or legislative intent as provided in section
12 41-1047.
13 (b) An existing statute, rule, practice alleged to constitute a
14 rule or substantive policy statement that is alleged to be duplicative or
15 onerous as provided in section 41-1048.
16 ~~11.~~ 12. May have the person's administrative hearing on contested
17 cases and appealable agency actions heard by an independent administrative
18 law judge as provided in articles 6 and 10 of this chapter.
19 ~~12.~~ 13. May have administrative hearings governed by uniform
20 administrative appeal procedures as provided in articles 6 and 10 of this
21 chapter and may appeal a final administrative decision by filing a notice
22 of appeal pursuant to title 12, chapter 7, article 6.
23 ~~13.~~ 14. May have an agency approve or deny the person's license
24 application within a predetermined period of time as provided in article
25 7.1 of this chapter.
26 ~~14.~~ 15. Is entitled to receive written notice from an agency on
27 denial of a license application:
28 (a) That justifies the denial with references to the statutes or
29 rules on which the denial is based as provided in section 41-1076.
30 (b) That explains the applicant's right to appeal the denial as
31 provided in section 41-1076.
32 ~~15.~~ 16. Is entitled to receive information regarding the license
33 application process before or at the time the person obtains an
34 application for a license as provided in sections 41-1001.02 and 41-1079.
35 ~~16.~~ 17. May receive public notice and participate in the adoption
36 or amendment of agreements to delegate agency functions, powers or duties
37 to political subdivisions as provided in section 41-1026.01 and article 8
38 of this chapter.
39 ~~17.~~ 18. May inspect all rules and substantive policy statements of
40 an agency, including a directory of documents, in the office of the agency
41 director as provided in section 41-1091.
42 ~~18.~~ 19. May file a complaint with the office of the
43 ombudsman-citizens aide to investigate administrative acts of agencies as
44 provided in chapter 8, article 5 of this title.

1 ~~19.~~ 20. Unless specifically authorized by statute, may expect state
2 agencies to avoid duplication of other laws that do not enhance regulatory
3 clarity and to avoid dual permitting to the extent practicable as
4 prescribed in section 41-1002.

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

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

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

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

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

33 41-1009. Inspections and audits; applicability; exceptions

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

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

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

41 3. Disclose any applicable inspection or audit fees.
42 Notwithstanding any other law, a regulated person being inspected or
43 audited is responsible for only the direct and reasonable costs of the
44 inspection or audit and is entitled to receive a detailed billing
45 statement as described in paragraph 5, subdivision (e) of this subsection.

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

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

6 (a) Copies of any original documents taken by the agency during the
7 inspection or audit if the agency is allowed by law to take original
8 documents.

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

12 (c) Copies of any analysis performed on samples taken during the
13 inspection.

14 (d) Copies of any documents to be relied on to determine compliance
15 with licensure or regulatory requirements if the agency is otherwise
16 allowed by law to do so.

17 (e) A detailed billing statement that provides reasonable
18 specificity of the inspection or audit fees imposed pursuant to paragraph
19 3 of this subsection and that cites the statute or rule that authorizes
20 the fees being charged.

21 6. Inform each person whose conversation with the agency inspector,
22 auditor or regulator during the inspection or audit is tape recorded that
23 the conversation is being tape recorded.

24 7. Inform each person who is interviewed during the inspection or
25 audit that:

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

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

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

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

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

41 1. The rights described in subsection A of this section and section
42 41-1001.01, subsection C.

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

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

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

9 5. A notice that if the information and documents provided to the
10 agency inspector, auditor or regulator become a public record, the
11 regulated person may redact trade secrets and proprietary and confidential
12 information unless the information and documents are confidential pursuant
13 to statute.

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

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

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

- 42 1. At the time of the inspection.
- 43 2. Notwithstanding any other state law, within thirty working days
44 after the inspection.
- 45 3. As otherwise required by federal law.

1 E. The inspection report shall contain deficiencies identified
2 during an inspection. Unless otherwise provided by state or federal law,
3 the agency shall provide the regulated person an opportunity to correct
4 the deficiencies unless the agency documents in writing as part of the
5 inspection report that the deficiencies are:

6 1. Committed intentionally.

7 2. Not correctable within a reasonable period of time as determined
8 by the agency.

9 3. Evidence of a pattern of noncompliance.

10 4. A risk to any person, the public health, safety or welfare or
11 the environment.

12 F. If the agency is unsure whether a regulated person meets the
13 exemptions in subsection E of this section, the agency shall provide the
14 regulated person with an opportunity to correct the deficiencies.

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

26 H. If the agency does not allow the regulated person an opportunity
27 to correct deficiencies pursuant to subsection E of this section, on the
28 request of the regulated person, the agency shall provide a detailed
29 written explanation of the reason that an opportunity to correct was not
30 allowed.

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

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

40 K. For agencies with authority under title 49, if, as a result of
41 an inspection or any other investigation, an agency alleges that a
42 regulated person is not in compliance with licensure or other applicable
43 regulatory requirements, the agency shall provide written notice of that
44 allegation to the regulated person. The notice shall contain the
45 following information:

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

5 2. Identification of any documents relied on as a basis for the
6 allegation of noncompliance.

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

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

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

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

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

29 1. To criminal investigations, investigations under tribal state
30 gaming compacts and undercover investigations that are generally or
31 specifically authorized by law.

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

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

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

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

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

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

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

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

5 R. Nothing in this section shall be used to exclude evidence in a
6 criminal proceeding.

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

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

13 U. EXCEPT AS OTHERWISE PRESCRIBED BY THIS SECTION AND
14 NOTWITHSTANDING ANY OTHER LAW:

15 1. THIS SECTION APPLIES TO ALL STATE AGENCIES THAT CONDUCT
16 INSPECTIONS AND AUDITS.

17 2. IF A CONFLICT ARISES BETWEEN THE RIGHTS AFFORDED A REGULATED
18 PERSON PURSUANT TO THIS SECTION AND THE RIGHTS AFFORDED A REGULATED PERSON
19 PURSUANT TO ANOTHER STATUTE, THIS SECTION GOVERNS.

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

22 41-1030. Invalidity of rules not made according to this
23 chapter; prohibited agency action; prohibited acts
24 by state employees; enforcement; notice

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

28 B. An agency shall not base a licensing decision in whole or in
29 part on a licensing requirement or condition that is not specifically
30 authorized by statute, rule or state tribal gaming compact. A general
31 grant of authority in statute does not constitute a basis for imposing a
32 licensing requirement or condition unless a rule is made pursuant to that
33 general grant of authority that specifically authorizes the requirement or
34 condition.

35 C. AN AGENCY SHALL NOT BASE A DECISION REGARDING ANY FILING OR
36 OTHER MATTER SUBMITTED BY A LICENSEE ON A REQUIREMENT OR CONDITION THAT IS
37 NOT SPECIFICALLY AUTHORIZED BY A STATUTE, RULE, FEDERAL LAW OR REGULATION
38 OR STATE TRIBAL GAMING COMPACT. A GENERAL GRANT OF AUTHORITY IN STATUTE
39 DOES NOT CONSTITUTE A BASIS FOR IMPOSING A REQUIREMENT OR CONDITION FOR
40 APPROVAL OF A DECISION ON ANY FILING OR OTHER MATTER SUBMITTED BY A
41 LICENSEE UNLESS A RULE IS MADE PURSUANT TO THAT GENERAL GRANT OF AUTHORITY
42 THAT SPECIFICALLY AUTHORIZES THE REQUIREMENT OR CONDITION.

1 ~~C.~~ D. An agency shall not:

2 1. Make a rule under a specific grant of rulemaking authority that
3 exceeds the subject matter areas listed in the specific statute
4 authorizing the rule.

5 2. Make a rule under a general grant of rulemaking authority to
6 supplement a more specific grant of rulemaking authority.

7 ~~D.~~ E. This section may be enforced in a private civil action and
8 relief may be awarded against the state. The court may award reasonable
9 attorney fees, damages and all fees associated with the license
10 application to a party that prevails in an action against the state for a
11 violation of this section.

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

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

17 ~~G.~~ H. An agency shall prominently print the provisions of
18 subsections B, ~~D~~, E, ~~and~~ F AND G of this section on all license
19 applications, except license applications processed by the corporation
20 commission.

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

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

25 41-1074. Compliance with administrative completeness review
26 time frame

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

30 B. If an agency determines that an application for a license is not
31 administratively complete, the agency shall include a comprehensive list
32 of the specific deficiencies in the written notice provided pursuant to
33 subsection A OF THIS SECTION. If the agency issues a written notice of
34 deficiencies within the administrative completeness time frame, the
35 administrative completeness review time frame and the overall time frame
36 are suspended from the date the notice is issued until the date that the
37 agency receives the missing information from the applicant.

38 C. If an agency does not issue a written notice of administrative
39 completeness or deficiencies within the administrative completeness review
40 time frame, the application is deemed administratively complete. If an
41 agency issues a timely written notice of deficiencies, an application
42 ~~shall~~ IS not ~~be~~ complete until THE AGENCY RECEIVES all requested
43 information ~~has been received by the agency~~.

44 D. EXCEPT FOR AN APPLICATION SUBMITTED TO THE DEPARTMENT OF WATER
45 RESOURCES PURSUANT TO TITLE 45, A DETERMINATION BY AN AGENCY THAT AN

1 APPLICATION IS NOT ADMINISTRATIVELY COMPLETE IS AN APPEALABLE AGENCY
2 ACTION, WHICH IF TIMELY INITIATED, ENTITLES THE APPLICANT TO AN
3 ADJUDICATION ON THE MERITS OF THE ADMINISTRATIVE COMPLETENESS OF THE
4 APPLICATION.

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

7 41-1092. Definitions

8 In this article, unless the context otherwise requires:

9 1. "Administrative law judge" means an individual or an agency
10 head, board or commission that sits as an administrative law judge, that
11 conducts administrative hearings in a contested case or an appealable
12 agency action and that makes decisions regarding the contested case or
13 appealable agency action.

14 2. "Administrative law judge decision" means the findings of fact,
15 conclusions of law and recommendations or decisions issued by an
16 administrative law judge.

17 3. "Appealable agency action" means an action that determines the
18 legal rights, duties or privileges of a party, INCLUDING THE
19 ADMINISTRATIVE COMPLETENESS OF AN APPLICATION OTHER THAN AN APPLICATION
20 SUBMITTED TO THE DEPARTMENT OF WATER RESOURCES PURSUANT TO TITLE 45, and
21 that is not a contested case. Appealable agency actions do not include
22 interim orders by self-supporting regulatory boards, rules, orders,
23 standards or statements of policy of general application issued by an
24 administrative agency to implement, interpret or make specific the
25 legislation enforced or administered by it or clarifications of
26 interpretation, nor does it mean or include rules concerning the internal
27 management of the agency that do not affect private rights or
28 interests. For the purposes of this paragraph, administrative hearing
29 does not include a public hearing held for the purpose of receiving public
30 comment on a proposed agency action.

31 4. "Director" means the director of the office of administrative
32 hearings.

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

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

37 7. "Self-supporting regulatory board" means any one of the
38 following:

- 39 (a) The Arizona state board of accountancy.
- 40 (b) The board of barbers.
- 41 (c) The board of behavioral health examiners.
- 42 (d) The Arizona state boxing and mixed martial arts commission.
- 43 (e) The state board of chiropractic examiners.
- 44 (f) The board of cosmetology.
- 45 (g) The state board of dental examiners.

- 1 (h) The state board of funeral directors and embalmers.
- 2 (i) The Arizona game and fish commission.
- 3 (j) The board of homeopathic and integrated medicine examiners.
- 4 (k) The Arizona medical board.
- 5 (l) The naturopathic physicians medical board.
- 6 (m) The ARIZONA state board of nursing.
- 7 (n) The board of examiners of nursing care institution
- 8 administrators and ~~adult care home~~ ASSISTED LIVING FACILITY managers.
- 9 (o) The board of occupational therapy examiners.
- 10 (p) The state board of dispensing opticians.
- 11 (q) The state board of optometry.
- 12 (r) The Arizona board of osteopathic examiners in medicine and
- 13 surgery.
- 14 (s) The Arizona peace officer standards and training board.
- 15 (t) The Arizona state board of pharmacy.
- 16 (u) The board of physical therapy.
- 17 (v) The state board of podiatry examiners.
- 18 (w) The state board for private postsecondary education.
- 19 (x) The state board of psychologist examiners.
- 20 (y) The board of respiratory care examiners.
- 21 (z) The state board of technical registration.
- 22 (aa) The Arizona state veterinary medical examining board.
- 23 (bb) The acupuncture board of examiners.
- 24 (cc) The Arizona regulatory board of physician assistants.
- 25 (dd) The board of athletic training.
- 26 (ee) The board of massage therapy.

27 Sec. 8. Applicability

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