

REFERENCE TITLE: department of health services; rulemaking

State of Arizona
House of Representatives
Fifty-sixth Legislature
First Regular Session
2023

HB 2001

Introduced by
Representative Cook

AN ACT

AMENDING SECTION 41-1005, ARIZONA REVISED STATUTES; RELATING TO
ADMINISTRATIVE PROCEDURE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 41-1005, Arizona Revised Statutes, is amended to
3 read:
4 41-1005. Exemptions
5 A. This chapter does not apply to any:
6 1. Rule that relates to the use of public works, including streets
7 and highways, under the jurisdiction of an agency if the effect of the
8 order is indicated to the public by means of signs or signals.
9 2. Order or rule of the Arizona game and fish commission that does
10 the following:
11 (a) Opens, closes or alters seasons or establishes bag or
12 possession limits for wildlife.
13 (b) Establishes a fee pursuant to section 5-321, 5-322 or 5-327.
14 (c) Establishes a license classification, fee or application fee
15 pursuant to title 17, chapter 3, article 2.
16 (d) Limits the number or use of licenses or permits that are issued
17 to nonresidents pursuant to section 17-332.
18 3. Rule relating to section 28-641 or to any rule regulating motor
19 vehicle operation that relates to speed, parking, standing, stopping or
20 passing enacted pursuant to title 28, chapter 3.
21 4. Rule concerning only the internal management of an agency that
22 does not directly and substantially affect the procedural or substantive
23 rights or duties of any segment of the public.
24 5. Rule that only establishes specific prices to be charged for
25 particular goods or services sold by an agency.
26 6. Rule concerning only the physical servicing, maintenance or care
27 of agency owned or operated facilities or property.
28 7. Rule or substantive policy statement concerning inmates or
29 committed youths of a correctional or detention facility in secure custody
30 or patients admitted to a hospital if made by the state department of
31 corrections, the department of juvenile corrections, the board of
32 executive clemency or the department of health services or a facility or
33 hospital under the jurisdiction of the state department of corrections,
34 the department of juvenile corrections or the department of health
35 services.
36 8. Form whose contents or substantive requirements are prescribed
37 by rule or statute and instructions for the execution or use of the form.
38 9. Capped fee-for-service schedule adopted by the Arizona health
39 care cost containment system administration pursuant to title 36,
40 chapter 29.
41 10. Fees prescribed by section 6-125.
42 11. Order of the director of water resources adopting or modifying
43 a management plan pursuant to title 45, chapter 2, article 9.
44 12. Fees established under section 3-1086.
45 13. Fees established under sections 41-4010 and 41-4042.

- 1 14. Rule or other matter relating to agency contracts.
- 2 15. Fees established under section 32-2067 or 32-2132.
- 3 16. Rules made pursuant to section 5-111, subsection A.
- 4 17. Rules made by the Arizona state parks board concerning the
5 operation of the Tonto natural bridge state park, the facilities located
6 in the Tonto natural bridge state park and the entrance fees to the Tonto
7 natural bridge state park.
- 8 18. Fees or charges established under section 41-511.05.
- 9 19. Emergency medical services protocols except as provided in
10 section 36-2205, subsection B.
- 11 20. Fee schedules established pursuant to section 36-3409.
- 12 21. Procedures of the state transportation board as prescribed in
13 section 28-7048.
- 14 22. Rules made by the state department of corrections.
- 15 23. Fees prescribed pursuant to section 32-1527.
- 16 24. Rules made by the department of economic security pursuant to
17 section 46-805.
- 18 25. Schedule of fees prescribed by section 23-908.
- 19 26. Procedure that is established pursuant to title 23, chapter 6,
20 article 6.
- 21 27. Rules, administrative policies, procedures and guidelines
22 adopted for any purpose by the Arizona commerce authority pursuant to
23 chapter 10 of this title if the authority provides, as appropriate under
24 the circumstances, for notice of an opportunity for comment on the
25 proposed rules, administrative policies, procedures and guidelines.
- 26 28. Rules made by a marketing commission or marketing committee
27 pursuant to section 3-414.
- 28 29. Administration of public assistance program monies authorized
29 for liabilities that are incurred for disasters declared pursuant to
30 sections 26-303 and 35-192.
- 31 30. User charges, tolls, fares, rents, advertising and sponsorship
32 charges, services charges or similar charges established pursuant to
33 section 28-7705.
- 34 31. Administration and implementation of the hospital assessment
35 pursuant to section 36-2901.08, except that the Arizona health care cost
36 containment system administration must provide notice and an opportunity
37 for public comment at least thirty days before establishing or
38 implementing the administration of the assessment.
- 39 32. Rules made by the Arizona department of agriculture to adopt
40 and implement the provisions of the federal milk ordinance as prescribed
41 by section 3-605.
- 42 33. Rules made by the Arizona department of agriculture to adopt,
43 implement and administer the United States food and drug administration
44 produce safety rule (21 Code of Federal Regulations part 112) and any
45 other federal produce safety regulation, order or guideline or other

1 requirement adopted pursuant to the FDA food safety modernization act
2 (P.L. 111-353; 21 United States Code sections 2201 through 2252) as
3 provided by title 3, chapter 3, article 4.1.

4 34. Calculations that are performed by the department of economic
5 security and that are associated with the adjustment of the sliding fee
6 scale and formula for determining child care assistance pursuant to
7 section 46-805.

8 35. Rules made by the Arizona department of agriculture to
9 implement and administer the livestock operator fire and flood assistance
10 grant program established by section 3-109.03.

11 36. RULES MADE BY THE DEPARTMENT OF HEALTH SERVICES IF ALL OF THE
12 FOLLOWING APPLY:

13 (a) THE RULES REDUCE A REGULATORY BURDEN WITHOUT JEOPARDIZING
14 HEALTH AND SAFETY.

15 (b) THE RULES DO NOT INCREASE COSTS TO PERSONS WHO ARE REGULATED BY
16 THE RULE.

17 (c) BEFORE THE RULES ARE ADOPTED, THE PUBLIC IS GIVEN AT LEAST
18 FIFTEEN DAYS TO COMMENT ON THE RULES.

19 B. Notwithstanding subsection A, paragraph 21 of this section, if
20 the federal highway administration authorizes the privatization of rest
21 areas, the state transportation board shall make rules governing the lease
22 or license by the department of transportation to a private entity for the
23 purposes of privatization of a rest area.

24 C. Coincident with the making of a final rule pursuant to an
25 exemption from the applicability of this chapter under this section,
26 another statute or session law, the agency shall:

27 1. Prepare a notice and follow formatting guidelines prescribed by
28 the secretary of state.

29 2. Prepare the rulemaking exemption notices pursuant to chapter 6.2
30 of this title.

31 3. File a copy of the rule with the secretary of state for
32 publication pursuant to section 41-1012 and provide a copy to the council.

33 D. Unless otherwise required by law, articles 2, 3, 4 and 5 of this
34 chapter do not apply to the Arizona board of regents and the institutions
35 under its jurisdiction, except that the Arizona board of regents shall
36 make policies or rules for the board and the institutions under its
37 jurisdiction that provide, as appropriate under the circumstances, for
38 notice of and opportunity for comment on the policies or rules proposed.

39 E. Unless otherwise required by law, articles 2, 3, 4 and 5 of this
40 chapter do not apply to the Arizona state schools for the deaf and the
41 blind, except that the board of directors of all the state schools for the
42 deaf and the blind shall adopt policies for the board and the schools
43 under its jurisdiction that provide, as appropriate under the
44 circumstances, for notice of and opportunity for comment on the policies
45 proposed for adoption.

1 F. Unless otherwise required by law, articles 2, 3, 4 and 5 of this
2 chapter do not apply to the state board of education, except that the
3 state board of education shall adopt policies or rules for the board and
4 the institutions under its jurisdiction that provide, as appropriate under
5 the circumstances, for notice of and opportunity for comment on the
6 policies or rules proposed for adoption. In order to implement or change
7 any rule, the state board of education shall provide at least two
8 opportunities for public comment. The state board of education shall
9 consider the fiscal impact of any proposed rule pursuant to this
10 subsection.

11 G. Unless otherwise required by law, articles 2, 3, 4 and 5 of this
12 chapter do not apply to the state board for charter schools, except that
13 the board shall adopt policies or rules for the board and the charter
14 schools sponsored by the board that provide, as appropriate under the
15 circumstances, for notice of and opportunity for comment on the policies
16 or rules proposed for adoption. In order to implement or change any
17 policy or rule, the board shall provide at least two opportunities for
18 public comment. The state board for charter schools shall consider the
19 fiscal impact of any proposed rule pursuant to this subsection.