

House Engrossed

occupational licenses; criminal offense; prohibition

State of Arizona
House of Representatives
Fifty-sixth Legislature
Second Regular Session
2024

HOUSE BILL 2308

AN ACT

AMENDING SECTIONS 41-1033 AND 41-1093.04, ARIZONA REVISED STATUTES;
AMENDING TITLE 41, CHAPTER 6, ARTICLE 11, ARIZONA REVISED STATUTES, BY
ADDING SECTION 41-1093.08; RELATING TO BOARD LICENSURE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 41-1033, Arizona Revised Statutes, is amended to
3 read:

4 41-1033. Petition for a rule or review of an agency practice,
5 substantive policy statement, final rule, unduly
6 burdensome licensing requirement or license or
7 certificate denial, suspension or revocation;
8 notice; definitions

9 A. Any person may petition an agency to do either of the following:

10 1. Make, amend or repeal a final rule.

11 2. Review an existing agency practice or substantive policy
12 statement that the petitioner alleges to constitute a rule.

13 B. An agency shall prescribe the form of the petition and the
14 procedures for the petition's submission, consideration and disposition.
15 The person shall state on the petition the rulemaking to review or the
16 agency practice or substantive policy statement to consider revising,
17 repealing or making into a rule.

18 C. Not later than sixty days after submission of the petition, the
19 agency shall either:

20 1. Reject the petition and state its reasons in writing for
21 rejection to the petitioner.

22 2. Initiate rulemaking proceedings in accordance with this chapter.

23 3. If otherwise lawful, make a rule.

24 D. The agency's response to the petition is open to public
25 inspection.

26 E. If an agency rejects a petition pursuant to subsection C of this
27 section, the petitioner has thirty days to appeal to the council to review
28 whether the existing agency practice or substantive policy statement
29 constitutes a rule. The petitioner's appeal may not be more than five
30 double-spaced pages.

31 F. A person may petition the council to request a review of a final
32 rule based on the person's belief that the final rule does not meet the
33 requirements prescribed in section 41-1030. A petition submitted under
34 this subsection may not be more than five double-spaced pages.

35 G. A person may petition the council to request a review of an
36 existing agency practice, substantive policy statement, final rule or
37 regulatory licensing requirement that the petitioner alleges is not
38 specifically authorized by statute, exceeds the agency's statutory
39 authority, is unduly burdensome or is not demonstrated to be necessary to
40 specifically fulfill a public health, safety or welfare concern. On
41 receipt of a properly submitted petition pursuant to this section, the
42 council shall review the existing agency practice, substantive policy
43 statement, final rule or regulatory licensing requirement as prescribed by
44 this section. A petition submitted under this subsection may not be more
45 than five double-spaced pages. This subsection does not apply to an

1 individual or institution that is subject to title 36, chapter 4, article
2 10 or chapter 20.

3 H. A PERSON MAY PETITION THE COUNCIL TO REQUEST A REVIEW OF AN
4 OCCUPATIONAL OR PROFESSIONAL LICENSING BOARD'S OR HEALTH PROFESSION
5 REGULATORY BOARD'S DENIAL, SUSPENSION OR REVOCATION OF A LICENSE,
6 REGISTRATION OR CERTIFICATE FOR A PRIOR CRIMINAL OFFENSE PURSUANT TO
7 SECTION 41-1093.08. ON RECEIPT OF A PROPERLY SUBMITTED PETITION PURSUANT
8 TO THIS SUBSECTION, THE COUNCIL SHALL REVIEW THE DENIAL, SUSPENSION OR
9 REVOCATION AND INDEPENDENTLY DETERMINE WHETHER THE OFFENSE IS
10 SUBSTANTIALLY RELATED TO THE APPLICANT'S, LICENSEE'S, REGISTRANT'S OR
11 CERTIFICATE HOLDER'S OCCUPATION OR IF APPROVING OR NOT IMPOSING A
12 DISCIPLINARY ACTION AGAINST THE LICENSE, REGISTRATION OR CERTIFICATE WOULD
13 POSE A REASONABLE THREAT TO PUBLIC HEALTH AND SAFETY. A PETITION
14 SUBMITTED UNDER THIS SUBSECTION MAY NOT BE MORE THAN FIVE DOUBLE-SPACED
15 PAGES.

16 ~~H.~~ I. If the council receives information that alleges an existing
17 agency practice or substantive policy statement may constitute a rule,
18 that a final rule does not meet the requirements prescribed in section
19 41-1030 or that an existing agency practice, substantive policy statement,
20 final rule or regulatory licensing requirement exceeds the agency's
21 statutory authority, is not specifically authorized by statute or does not
22 meet the guidelines prescribed in subsection G of this section, or if the
23 council receives an appeal under subsection E of this section, and at
24 least three council members request of the chairperson that the matter be
25 heard in a public meeting:

26 1. Within ninety days after receiving the third council member's
27 request, the council shall determine whether any of the following applies:

28 (a) The agency practice or substantive policy statement constitutes
29 a rule.

30 (b) The final rule meets the requirements prescribed in section
31 41-1030.

32 (c) An existing agency practice, substantive policy statement,
33 final rule or regulatory licensing requirement exceeds the agency's
34 statutory authority, is not specifically authorized by statute or ~~meets~~
35 DOES NOT MEET the guidelines prescribed in subsection G of this section.

36 2. Within ten days after receiving the third council member's
37 request, the council shall notify the agency that the matter has been or
38 will be placed on the council's agenda for consideration on the merits.

39 3. Not later than thirty days after receiving notice from the
40 council, the agency shall submit a statement of not more than five
41 double-spaced pages to the council that addresses whether any of the
42 following applies:

43 (a) The existing agency practice or substantive policy statement
44 constitutes a rule.

1 (b) The final rule meets the requirements prescribed in section
2 41-1030.

3 (c) An existing agency practice, substantive policy statement,
4 final rule or regulatory licensing requirement exceeds the agency's
5 statutory authority, is not specifically authorized by statute or meets
6 the guidelines prescribed in subsection G of this section.

7 ~~J.~~ J. At the hearing, the council shall allocate the petitioner
8 and the agency an equal amount of time for oral comments, not including
9 any time spent answering questions raised by council members. The council
10 may also allocate time for members of the public who have an interest in
11 the issue to provide oral comments.

12 ~~K.~~ K. For the purposes of subsection ~~I~~ I of this section, the
13 council meeting shall not be scheduled until the expiration of the agency
14 response period prescribed in subsection ~~I~~ I, paragraph 3 of this
15 section.

16 ~~L.~~ L. An agency practice, substantive policy statement, final rule
17 or regulatory licensing requirement considered by the council pursuant to
18 this section shall remain in effect while under consideration of the
19 council. If the council determines that the agency practice, substantive
20 policy statement or regulatory licensing requirement exceeds the agency's
21 statutory authority, is not authorized by statute or constitutes a rule or
22 that the final rule does not meet the requirements prescribed in section
23 41-1030, the practice, policy statement, rule or regulatory licensing
24 requirement shall be void. If the council determines that the existing
25 agency practice, substantive policy statement, final rule or regulatory
26 licensing requirement is unduly burdensome or is not demonstrated to be
27 necessary to specifically fulfill a public health, safety or welfare
28 concern, the council shall modify, revise or declare void any such
29 existing agency practice, substantive policy statement, final rule or
30 regulatory licensing requirement. If an agency decides to further pursue
31 a practice, substantive policy statement or regulatory licensing
32 requirement that has been declared void or has been modified or revised by
33 the council, the agency may do so only pursuant to a new rulemaking.

34 ~~M.~~ M. A council decision pursuant to this section shall be made by
35 a majority of the council members who are present and voting on the
36 issue. Notwithstanding any other law, the council may not base any
37 decision concerning an agency's compliance with the requirements of
38 section 41-1030 in issuing a final rule or substantive policy statement on
39 whether any party or person commented on the rulemaking or substantive
40 policy statement.

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

1 ~~N~~. 0. Each agency and the secretary of state shall post
2 prominently on their websites notice of an individual's right to petition
3 the council for review pursuant to this section.

4 P. FOR THE PURPOSES OF THIS SECTION:

5 1. "REASONABLE THREAT" HAS THE SAME MEANING PRESCRIBED IN SECTION
6 41-1093.08.

7 2. "SUBSTANTIALLY RELATED" HAS THE SAME MEANING PRESCRIBED IN
8 SECTION 41-1093.08.

9 Sec. 2. Section 41-1093.04, Arizona Revised Statutes, is amended to
10 read:

11 41-1093.04. Occupational license, permit or certificate or
12 other state recognition rights; petition for
13 review of criminal record; annual report

14 A. A person with a criminal record may petition an agency, at any
15 time, including before obtaining any required education or experience,
16 taking any examination or paying any fee, for a determination of whether
17 the person's criminal record disqualifies the person from obtaining a
18 license, permit, certificate or other state recognition.

19 B. In the petition, the person shall include:

20 1. The person's complete criminal history record or authorization
21 for the agency to obtain the person's criminal history record.

22 2. Any additional information about the person's current
23 circumstances, including the time since the offense was committed and the
24 sentence was completed, the payment of any court-ordered restitution,
25 evidence of rehabilitation, testimonials, employment history and
26 employment aspirations.

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

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

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

40 (a) A felony offense.

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

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

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

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

6 (b) A dangerous offense as defined in section 13-105, a serious
7 offense as defined in section 13-706, a dangerous crime against children
8 as defined in section 13-705 or an offense included in title 13, chapter
9 14 or 35.1, and the conviction has not been set aside.

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

15 1. The specific offense that the person was convicted of:

16 (a) FOR AN OCCUPATIONAL OR PROFESSIONAL LICENSING BOARD OR A HEALTH
17 PROFESSION REGULATORY BOARD, SUBSTANTIALLY RELATES TO THE OCCUPATION OR
18 APPROVAL WOULD POSE A REASONABLE THREAT TO PUBLIC HEALTH AND SAFETY AS
19 PRESCRIBED BY SECTION 41-1093.08.

20 (b) FOR ALL OTHER AGENCIES, substantially relates to the state's
21 interest and specifically and directly relates to the duties and
22 responsibilities of the occupation, except offenses involving moral
23 turpitude.

24 2. The person, based on the nature of the specific offense that the
25 person was convicted of and the person's current circumstances, including
26 the passage of time since the person committed the ~~crime~~ OFFENSE and any
27 evidence of rehabilitation or treatment, is more likely to reoffend by
28 virtue of having the license, permit, certificate or other state
29 recognition than if the person did not have the license, permit,
30 certificate or other state recognition.

31 F. In determining if a person's criminal record disqualifies the
32 person from obtaining a license, permit, certificate or other state
33 recognition, the agency may not consider negatively any of the following:

34 1. Nonconviction information, including information related to a
35 deferred adjudication, participation in a diversion program or an arrest
36 that was not followed by a conviction.

37 2. A conviction that has been sealed, dismissed, expunged or
38 pardoned.

39 3. A juvenile adjudication.

40 4. A nonviolent misdemeanor.

41 G. The agency shall issue a determination on the petition within
42 ninety days after the agency receives the petition. The determination on
43 the petition must be in writing and include all of the following:

- 1 1. Findings of fact and conclusions of law.
- 2 2. The grounds and reasons for the determination if the person's
- 3 criminal history disqualifies the person.
- 4 H. If the agency determines that the state's interest to protect
- 5 public safety is superior to the person's right, the agency may advise the
- 6 person of the actions that the person may take to remedy the
- 7 disqualification, including:
 - 8 1. An appeal of the determination as provided in title 12, chapter
 - 9 7, article 6.
 - 10 2. The earliest date the person may submit a new petition to the
 - 11 agency, which must be not later than two years after the final
 - 12 determination of the initial petition.
 - 13 I. **SUBJECT TO SECTION 41-1093.08, IF APPLICABLE**, the agency shall
 - 14 rescind the determination any time after the determination is made but
 - 15 before issuing a license, permit, certificate or other state recognition
 - 16 if the person is convicted of an additional offense that is included in
 - 17 subsection D of this section.
 - 18 J. Subsection D and subsection F, paragraphs 1, 2 and 4 of this
 - 19 section do not apply to any of the following:
 - 20 1. Any law enforcement agency or the Arizona peace officer
 - 21 standards and training board.
 - 22 2. Any license or registration certificate that is issued pursuant
 - 23 to title 32, chapter 24 or 26.
 - 24 3. Any certification, license or permit that is issued pursuant to
 - 25 title 15.
 - 26 4. Statutory requirements for a fingerprint clearance card issued
 - 27 pursuant to chapter 12, article 3.1 of this title.
 - 28 5. Any criteria for license, permit or certificate eligibility that
 - 29 is established by an interstate compact.
 - 30 K. Each agency shall submit a report on or before July 1 of each
 - 31 year to the governor and the legislature and provide a copy of this report
 - 32 to the secretary of state. The report shall include the following
 - 33 information for the previous calendar year:
 - 34 1. The number of applicants who petitioned the agency for a
 - 35 determination.
 - 36 2. The number of petitions that were granted and the types of
 - 37 offenses at issue.
 - 38 3. The number of petitions that were denied and the types of
 - 39 offenses at issue.
 - 40 4. The number of determinations that were rescinded.
 - 41 L. An agency shall adopt forms for petitions as prescribed in
 - 42 subsections A and B of this section.

1 Sec. 3. Title 41, chapter 6, article 11, Arizona Revised Statutes,
2 is amended by adding section 41-1093.08, to read:

3 41-1093.08. Occupational or professional licensing boards;
4 health profession regulatory boards; denial,
5 suspension or revocation; prior criminal
6 offense; definitions

7 A. NOTWITHSTANDING ANY OTHER LAW, AN OCCUPATIONAL OR PROFESSIONAL
8 LICENSING BOARD OR HEALTH PROFESSION REGULATORY BOARD MAY NOT DENY,
9 SUSPEND OR REVOKE A LICENSE, REGISTRATION OR CERTIFICATE FOR AN
10 APPLICANT'S, LICENSEE'S, REGISTRANT'S OR CERTIFICATE HOLDER'S PRIOR
11 CRIMINAL OFFENSE UNLESS EITHER:

12 1. THE OFFENSE IS SUBSTANTIALLY RELATED TO THE OCCUPATION.

13 2. APPROVING OR NOT IMPOSING DISCIPLINARY ACTION AGAINST THE
14 LICENSE, REGISTRATION OR CERTIFICATE WOULD POSE A REASONABLE THREAT TO
15 PUBLIC HEALTH AND SAFETY.

16 B. IN ADDITION TO OTHER AVAILABLE REMEDIES, AN APPLICANT, LICENSEE,
17 REGISTRANT OR CERTIFICATE HOLDER MAY PETITION THE GOVERNOR'S REGULATORY
18 REVIEW COUNCIL PURSUANT TO SECTION 41-1033, SUBSECTION H TO REQUEST A
19 REVIEW OF A DENIAL, SUSPENSION OR REVOCATION OF A LICENSE, REGISTRATION OR
20 CERTIFICATE.

21 C. THIS SECTION DOES NOT IMPACT A PERSON'S RIGHT TO PETITION AN
22 AGENCY FOR A CRIMINAL RECORD REVIEW PURSUANT TO SECTION 41-1093.04 OR AN
23 AGENCY'S REQUIREMENT TO DETERMINE WHETHER THE PERSON'S CRIMINAL RECORD
24 DISQUALIFIES THE PERSON FROM OBTAINING A LICENSE, PERMIT, CERTIFICATE OR
25 OTHER STATE RECOGNITION.

26 D. FOR THE PURPOSES OF THIS SECTION:

27 1. "HEALTH PROFESSION REGULATORY BOARD" HAS THE SAME MEANING
28 PRESCRIBED IN SECTION 32-3201.

29 2. "REASONABLE THREAT" MEANS THE CRIMINAL CONDUCT THE PERSON WAS
30 CONVICTED OF INVOLVED AN ACT OR THREAT OF HARM AGAINST ANOTHER PERSON AND
31 HAS A DIRECT BEARING ON THE PERSON'S ABILITY TO SAFELY SERVE THE PUBLIC OR
32 WORK WITH OTHERS IN THE OCCUPATION.

33 3. "SUBSTANTIALLY RELATED" MEANS HAS A DIRECT BEARING ON THE
34 ABILITY TO PERFORM ANY DUTIES OR RESPONSIBILITIES RELATED TO THE
35 OCCUPATION.