

REFERENCE TITLE: notice; violation; deficiency correction

State of Arizona
House of Representatives
Fifty-seventh Legislature
First Regular Session
2025

HB 2576

Introduced by
Representative Griffin

AN ACT

AMENDING SECTION 41-1009, 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 41-1009, Arizona Revised Statutes, is amended to
3 read:

4 41-1009. Inspections and audits; applicability; exceptions;
5 penalty; definitions

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

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

10 2. On initiation of the inspection or audit, state the purpose of
11 the inspection or audit and the legal authority for conducting the
12 inspection or audit.

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

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

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

23 (a) Copies of any original documents taken by the agency during the
24 inspection or audit if the agency is allowed by law to take original
25 documents.

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

29 (c) Copies of any analysis performed on samples taken during the
30 inspection.

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

34 (e) A detailed billing statement that provides reasonable
35 specificity of the inspection or audit fees imposed pursuant to paragraph
36 3 of this subsection and that cites the statute or rule that authorizes
37 the fees being charged.

38 6. Inform each person whose conversation with the agency inspector,
39 auditor or regulator during the inspection or audit is tape recorded that
40 the conversation is being tape recorded.

41 7. Inform each person who is interviewed during the inspection or
42 audit that:

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

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

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

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

11 8. At the end of the inspection, offer to review, with an
12 authorized representative of the regulated person, the findings of the
13 inspection and what agency actions the regulated person can expect.

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

17 1. The rights described in subsection A of this section and section
18 41-1001.01, subsection C.

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

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

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

29 5. A notice that if the information and documents provided to the
30 agency inspector, auditor or regulator become a public record, the
31 regulated person may redact trade secrets and proprietary and confidential
32 information unless the information and documents are confidential pursuant
33 to statute.

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

38 C. An agency inspector, auditor or regulator shall obtain the
39 signature of the regulated person or on-site representative of the
40 regulated person on the writing prescribed in subsection B of this section
41 and section 41-1001.01, subsection C, if applicable, indicating that the
42 regulated person or on-site representative of the regulated person has
43 read the writing prescribed in subsection B of this section and section
44 41-1001.01, subsection C, if applicable, and is notified of the regulated
45 person's or on-site representative of the regulated person's inspection or

1 audit and due process rights. The agency inspector, auditor or regulator
2 may provide an electronic document of the writing prescribed in subsection
3 B of this section and section 41-1001.01, subsection C and, at the request
4 of the regulated person or on-site representative, obtain a receipt in the
5 form of an electronic signature. The agency shall maintain a copy of this
6 signature with the inspection or audit report and shall leave a copy with
7 the regulated person or on-site representative of the regulated person.
8 If a regulated person or on-site representative of the regulated person is
9 not at the site or refuses to sign the writing prescribed in subsection B
10 of this section and section 41-1001.01, subsection C, if applicable, the
11 agency inspector, auditor or regulator shall note that fact on the writing
12 prescribed in subsection B of this section and section 41-1001.01,
13 subsection C, if applicable.

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

- 17 1. At the time of the inspection.
- 18 2. Notwithstanding any other state law, within thirty working days
19 after the inspection.
- 20 3. As otherwise required by federal law.

21 E. The inspection report shall contain alleged deficiencies
22 identified during an inspection. Unless otherwise provided by state or
23 federal law, the agency shall provide the regulated person an opportunity
24 to correct the alleged deficiencies unless the agency documents in writing
25 as part of the inspection report, **ALONG WITH SPECIFIC EVIDENCE**, that the
26 alleged deficiencies are:

- 27 1. Committed intentionally.
- 28 2. Not correctable within a reasonable period of time as determined
29 by the agency.
- 30 3. Evidence of a pattern of noncompliance as demonstrated by
31 alleged deficiencies previously identified in an inspection report or
32 other written notice at the same premises.
- 33 4. A significant risk to any person, the public health, safety or
34 welfare or the environment.

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

38 G. If the agency allows the regulated person an opportunity to
39 correct the alleged deficiencies pursuant to subsection E of this section,
40 the regulated person shall notify the agency when the alleged deficiencies
41 have been corrected. Within thirty days after receipt of notification
42 from the regulated person that the alleged deficiencies have been
43 corrected, the agency shall determine if the regulated person is in
44 substantial compliance and notify the regulated person whether or not the
45 regulated person is in substantial compliance. ~~If the regulated person~~

~~fails to correct the alleged deficiencies or the agency determines the alleged deficiencies have not been corrected within a reasonable period of time.~~ The agency may take any enforcement action authorized by law for the alleged deficiencies, **ONLY IF THE REGULATED PERSON FAILS TO CORRECT THE ALLEGED DEFICIENCIES, THE AGENCY DETERMINES THE ALLEGED DEFICIENCIES HAVE NOT BEEN CORRECTED WITHIN A REASONABLE PERIOD OF TIME OR THE ALLEGED DEFICIENCIES MEET THE CRITERIA PRESCRIBED IN SUBSECTION E OF THIS SECTION.**

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

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

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

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

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

2. Identification of any documents relied on when determining the allegation of deficiency.

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

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

L. Subsection K of this section applies only to inspections or any other investigations necessary for the issuance of a license or to determine compliance with licensure or other regulatory requirements. Subsection K of this section does not apply to an action taken pursuant to section 11-871, 11-876, 11-877, 49-457.01, 49-457.03 or 49-474.01. Issuance of a notice **OF VIOLATION** under subsection K of this section is not a prerequisite to otherwise lawful agency actions seeking an injunction or issuing an order if the agency determines that the action is

necessary on an expedited basis to abate an imminent and substantial endangerment to public health or the environment and documents the basis for that determination in the documents initiating the action. **WITHIN THIRTY DAYS AFTER RECEIPT OF NOTIFICATION FROM THE REGULATED PERSON THAT THE ALLEGED DEFICIENCIES HAVE BEEN CORRECTED, THE AGENCY SHALL DETERMINE IF THE REGULATED PERSON IS IN SUBSTANTIAL COMPLIANCE AND NOTIFY THE REGULATED PERSON WHETHER THE REGULATED PERSON IS IN SUBSTANTIAL COMPLIANCE. THE AGENCY MAY TAKE ANY ENFORCEMENT ACTION AUTHORIZED BY LAW ONLY IF ANY OF THE FOLLOWING OCCURS:**

- 1. THE REGULATED PERSON FAILS TO CORRECT THE ALLEGED DEFICIENCIES.**
- 2. THE AGENCY DETERMINES THAT THE ALLEGED DEFICIENCIES HAVE NOT BEEN CORRECTED IN A REASONABLE PERIOD OF TIME.**
- 3. THE REGULATED PERSON INTENTIONALLY MISREPRESENTS INFORMATION OR ACTS UNLAWFULLY.**
- 4. THE ALLEGED DEFICIENCIES CAUSE ACTUAL HARM TO A PERSON'S HEALTH.**
- 5. THE REGULATED PARTY HAS REPEAT VIOLATIONS FROM CONSECUTIVE INSPECTIONS. ANY CIVIL PENALTY SHALL BE CALCULATED FROM THE DATE OF ISSUANCE OF THE NOTICE OF VIOLATION AND EACH DAY THEREAFTER UNTIL CONTINUOUS COMPLIANCE OCCURS.**

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

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

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

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

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

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

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

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

1. May subject the employee to disciplinary action or dismissal.
2. Shall be considered by the judge and administrative law judge as grounds for reduction of any fine or civil penalty.

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

3 R. ~~Nothing in~~ This section shall NOT be used to exclude evidence in
4 a criminal proceeding.

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

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

11 U. Except as otherwise prescribed by this section and
12 notwithstanding any other law:

13 1. This section applies to all state agencies that conduct
14 inspections and audits.

15 2. If a conflict arises between the rights afforded a regulated
16 person pursuant to this section and the rights afforded a regulated person
17 pursuant to another statute, this section governs.

18 V. FOR THE PURPOSES OF THIS SECTION:

19 1. "INSPECTION" MEANS ANY INVESTIGATION, AUDIT OR REVIEW OF
20 INFORMATION TO DETERMINE COMPLIANCE WITH LICENSURE OR OTHER REGULATORY
21 REQUIREMENTS, INCLUDING ANY INSPECTIONS OF THE PREMISES OR ANY RECORDS.

22 2. "NOTICE OF VIOLATION" MEANS A WRITTEN NOTICE ISSUED AFTER AN
23 INSPECTION THAT DOCUMENTS AND COMMUNICATES THAT AN ALLEGED DEFICIENCY IS
24 ANY OF THE FOLLOWING:

25 (a) COMMITTED INTENTIONALLY.

26 (b) NOT CORRECTABLE WITHIN A REASONABLE PERIOD OF TIME AS
27 DETERMINED BY THE AGENCY.

28 (c) EVIDENCE OF A PATTERN OF NONCOMPLIANCE AS DEMONSTRATED BY
29 ALLEGED DEFICIENCIES PREVIOUSLY IDENTIFIED IN AN INSPECTION REPORT OR
30 OTHER WRITTEN NOTICE AT THE SAME PREMISES.

31 (d) A SIGNIFICANT RISK TO ANY PERSON, THE PUBLIC HEALTH, SAFETY OR
32 WELFARE OR THE ENVIRONMENT.