

REFERENCE TITLE: administrative hearings; GRRC

State of Arizona
House of Representatives
Fifty-fifth Legislature
Second Regular Session
2022

HB 2599

Introduced by
Representative Grantham

AN ACT

AMENDING SECTIONS 12-348, 41-1009 AND 41-1030, ARIZONA REVISED STATUTES; REPEALING SECTION 41-1033, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2021, CHAPTER 405, SECTION 23; AMENDING SECTION 41-1033, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2021, CHAPTER 340, SECTION 1; AMENDING SECTIONS 41-1092, 41-1092.03, 41-1092.07 AND 41-1092.08, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 6, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 12; AMENDING SECTION 49-114, 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 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. **A LICENSEE**
17 **THAT PREVAILS IN AN APPEAL OF AN AGENCY'S FINAL DECISION FOLLOWING A**
18 **CONFERENCE PURSUANT TO SECTION 41-1092.08, SUBSECTION I IS ENTITLED TO**
19 **RECOVER REASONABLE ATTORNEY FEES AND COSTS INCURRED DURING ALL STAGES OF**
20 **THE PROCEEDING.**

21 3. A proceeding pursuant to section 41-1034.

22 4. A special action proceeding brought by the party to challenge an
23 action by this state or a city, town or county against the party.

24 5. An appeal by this state to a court of law from a decision of the
25 personnel board under title 41, chapter 4, article 6.

26 6. A civil action brought by the party to challenge the seizure and
27 sale of personal property by this state or a city, town or county.

28 7. A civil action brought by the party to challenge a rule,
29 decision, guideline, enforcement policy or procedure of a state agency or
30 commission that is statutorily exempt from the rulemaking requirements of
31 title 41, chapter 6 on the grounds that the rule, decision, guideline,
32 enforcement policy or procedure is not authorized by statute or violates
33 the Constitution of the United States or this state.

34 B. In addition to any costs that are awarded as prescribed by
35 statute, except as provided in subsection C of this section, a court may
36 award fees and other expenses to any party, other than this state or a
37 city, town or county, that prevails by an adjudication on the merits in an
38 action brought by the party against this state or a city, town or county
39 challenging:

40 1. The assessment, collection or refund of taxes or in an action
41 brought by this state or a city, town or county against the party to
42 enforce the assessment or collection of taxes or the denial of a refund.

43 2. The adequacy or regularity of notice of delinquent taxes.

44 3. The regularity of sales of property for delinquent taxes.

1 C. The court in its discretion may deny the award provided for in
2 this section or may reduce the award if it finds that any of the following
3 applies:

4 1. During the course of the proceeding the prevailing party unduly
5 and unreasonably protracted the final resolution of the matter.

6 2. The reason that the party other than this state or a city, town
7 or county has prevailed is an intervening change in the applicable law.

8 3. The prevailing party refused an offer of civil settlement that
9 was at least as favorable to the party as the relief ultimately granted.

10 D. A party may apply pursuant to the applicable procedural rules
11 for an award of attorney fees and other expenses authorized under this
12 section and shall include as part of the application evidence of the
13 party's eligibility for the award and the amount sought, including an
14 itemized statement from the attorneys and experts stating the actual time
15 expended in representing the party and the rate at which the fees were
16 computed.

17 E. The court shall base any award of fees as provided in this
18 section on prevailing market rates for the kind and quality of the
19 services furnished, except that:

20 1. The award of attorney fees may not exceed the amount that the
21 prevailing party has paid or agreed to pay the attorney or a maximum
22 amount of \$350 per hour.

23 2. An award of fees against this state or a city, town or county
24 shall not exceed \$125,000 for fees incurred at each level of judicial
25 appeal.

26 3. For each calendar year beginning from and after December 31,
27 2015, the attorney general shall adjust the income dollar amounts for
28 maximum awards made pursuant to subsection B of this section according to
29 the average annual change in the metropolitan Phoenix consumer price index
30 published by the United States bureau of labor statistics. The revised
31 dollar amounts shall be raised to the nearest whole dollar. The income
32 dollar amounts may not be revised below the amounts prescribed in the
33 prior calendar year.

34 F. The particular state agency over which a party prevails shall
35 pay the fees and expenses awarded as provided in this section from any
36 monies appropriated to the agency for that purpose. If no agency is
37 involved or if an agency fails or refuses to pay fees and other expenses
38 within thirty days after demand by a person who has received an award
39 pursuant to this section, and if no further review or appeals of the award
40 are pending, the person may file a claim for the fees and other expenses
41 with the department of administration, which shall pay the claim within
42 thirty days, in the same manner as an uninsured property loss under title
43 41, chapter 3.1, article 1. If, at the time the agency failed or refused
44 to pay the award, it had appropriated monies either designated or

1 assignable for the purpose of paying awards, the legislature shall reduce
2 the agency's operating appropriation for the following year by the amount
3 of the award and shall appropriate the amount of the reduction to the
4 department of administration as reimbursement for the loss.

5 G. A city, town or county shall pay fees and expenses awarded as
6 provided in this section within thirty days after demand by a party who
7 has received an award if no further review or appeal of the award is
8 pending.

9 H. This section does not:

10 1. Apply to an action arising from a proceeding before this state
11 or a city, town or county in which the role of this state or a city, town
12 or county was to determine the eligibility or entitlement of an individual
13 to a monetary benefit or its equivalent, to adjudicate a dispute or issue
14 between private parties or to establish or fix a rate.

15 2. Apply to proceedings brought by this state pursuant to title 13
16 or 28.

17 3. Entitle a party to obtain fees and other expenses incurred in
18 making an application for an award pursuant to this section for fees and
19 other expenses.

20 4. Apply to proceedings involving eminent domain, foreclosure,
21 collection of judgment debts or proceedings in which this state or a city,
22 town or county is a nominal party.

23 5. Personally obligate any officer or employee of this state or a
24 city, town or county for the payment of an award entered under this
25 section.

26 6. Apply, except as provided in subsection A, paragraph 5 of this
27 section, to proceedings involving the personnel board under title 41,
28 chapter 4, article 6.

29 7. Apply to proceedings brought by a city, town or county pursuant
30 to title 13 or 28.

31 8. Apply to proceedings brought by a city, town or county on
32 collection of taxes or pursuant to traffic ordinances or to criminal
33 proceedings brought by a city, town or county on ordinances that contain a
34 criminal penalty or fine for violations of those ordinances.

35 I. For the purposes of this section:

36 1. "Fees and other expenses" means the reasonable expenses of
37 expert witnesses, the reasonable cost of any study, analysis, engineering
38 report, test or project that the court finds to be directly related to and
39 necessary for the presentation of the party's case and reasonable and
40 necessary attorney fees, and in the case of an action to review an agency
41 decision pursuant to subsection A, paragraph 2 of this section, all fees
42 and other expenses that are incurred in the proceedings in which the
43 decision was rendered.

44 2. "LICENSEE" HAS THE SAME MEANING PRESCRIBED IN SECTION 41-1092.

1 ~~2.~~ 3. "Party" means an individual, partnership, corporation,
2 limited liability company, limited liability partnership, association or
3 public or private organization.

4 ~~3.~~ 4. "State" means this state and any agency, officer,
5 department, board or commission of this state.

6 ~~4.~~ 5. "Taxes" includes all taxes and related levies and
7 assessments addressed in section 12-163.

8 Sec. 2. Section 41-1009, Arizona Revised Statutes, is amended to
9 read:

10 41-1009. Inspections and audits; applicability; exceptions

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

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

15 2. On initiation of the inspection or audit, state the purpose of
16 the inspection or audit and the legal authority for conducting the
17 inspection or audit.

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

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

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

28 (a) Copies of any original documents taken by the agency during the
29 inspection or audit if the agency is allowed by law to take original
30 documents.

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

34 (c) Copies of any analysis performed on samples taken during the
35 inspection.

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

39 (e) A detailed billing statement that provides reasonable
40 specificity of the inspection or audit fees imposed pursuant to paragraph
41 3 of this subsection and that cites the statute or rule that authorizes
42 the fees being charged.

1 6. Inform each person whose conversation with the agency inspector,
2 auditor or regulator during the inspection or audit is tape recorded that
3 the conversation is being tape recorded.

4 7. Inform each person who is interviewed during the inspection or
5 audit that:

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

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

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

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

18 8. AT THE END OF THE INSPECTION, REVIEW, WITH AN AUTHORIZED ON-SITE
19 REPRESENTATIVE OF THE REGULATED PERSON, THE POSITIVE AND NEGATIVE FINDINGS
20 OF THE INSPECTION AND WHAT AGENCY ACTIONS THE REGULATED PERSON CAN EXPECT.

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

24 1. The rights described in subsection A of this section and section
25 41-1001.01, subsection C.

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

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

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

36 5. A notice that if the information and documents provided to the
37 agency inspector, auditor or regulator become a public record, the
38 regulated person may redact trade secrets and proprietary and confidential
39 information unless the information and documents are confidential pursuant
40 to statute.

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

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

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

- 25 1. At the time of the inspection.
- 26 2. Notwithstanding any other state law, within thirty working days
27 after the inspection.
- 28 3. As otherwise required by federal law.

29 E. The inspection report shall contain **ALLEGED** deficiencies
30 identified during an inspection. Unless otherwise provided by state or
31 federal law, the agency shall provide the regulated person an opportunity
32 to correct the **ALLEGED** deficiencies unless the agency documents in writing
33 as part of the inspection report that the **ALLEGED** deficiencies are:

- 34 1. Committed intentionally.
- 35 2. Not correctable within a reasonable period of time as determined
36 by the agency.

37 ~~3. Evidence of a pattern of noncompliance.~~

38 3. **THE SAME ALLEGED DEFICIENCIES PREVIOUSLY IDENTIFIED IN AN**
39 **INSPECTION REPORT OR OTHER WRITTEN NOTICE AT THE SAME LOCATION WITHIN THE**
40 **LAST TWO YEARS.**

- 41 4. A **risk SIGNIFICANT IMPACT** to any person, the public health,
42 safety or welfare or the environment.

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

4 G. If the agency allows the regulated person an opportunity to
5 correct the ALLEGED deficiencies pursuant to subsection E of this section,
6 the regulated person shall notify the agency when the ALLEGED deficiencies
7 have been corrected. Within thirty days after receipt of notification
8 from the regulated person that the ALLEGED deficiencies have been
9 corrected, the agency shall determine if the regulated person is in
10 substantial compliance and notify the regulated person whether or not the
11 regulated person is in substantial compliance. If the regulated person
12 fails to correct the ALLEGED deficiencies or the agency determines the
13 ALLEGED deficiencies have not been corrected within a reasonable period of
14 time, the agency may take any enforcement action authorized by law for the
15 ALLEGED deficiencies.

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

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

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

30 K. For agencies with authority under title 49, ~~if, as a result of~~
31 ~~an inspection or any other investigation, an agency alleges that a~~
32 ~~regulated person is not in compliance with licensure or other applicable~~
33 ~~regulatory requirements, the agency shall provide written notice of that~~
34 ~~allegation to the regulated person before issuing the inspection report or~~
35 ~~any other agency communication or action relating to the allegation. The~~
36 ~~notice shall contain~~ THE INSPECTION REPORT MUST CONTAIN THE REQUIREMENTS
37 PRESCRIBED IN SUBSECTION E OF THIS SECTION AND the following information:

38 1. A citation to the statute, regulation, license or permit
39 condition on which the allegation of ~~noncompliance~~ DEFICIENCY is based,
40 including the specific provisions in the statute, regulation, license or
41 permit condition that are alleged to be violated.

42 2. Identification of any documents relied on ~~as a basis for~~ WHEN
43 DETERMINING the allegation of ~~noncompliance~~ DEFICIENCY.

1 3. An explanation stated with reasonable specificity of the
2 regulatory and factual basis **KNOWN AT THE TIME OF INSPECTION** for the
3 allegation of ~~noncompliance~~ **DEFICIENCY**.

4 4. Instructions for obtaining a timely opportunity to discuss the
5 alleged ~~violation~~ **DEFICIENCIES** with the agency **WITHIN TWO BUSINESS DAYS OF**
6 **RECEIPT OF THE INSPECTION REPORT AND BEFORE ANY FURTHER AGENCY ACTION**
7 **RELATING TO THE ALLEGED DEFICIENCIES**.

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

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

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

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

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

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

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

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

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

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

42 2. Shall be considered by the judge and administrative law judge as
43 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 be used to exclude evidence in a
4 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 Sec. 3. Section 41-1030, Arizona Revised Statutes, is amended to
19 read:

20 41-1030. Invalidity of rules not made according to this
21 chapter; prohibited agency action; prohibited acts
22 by state employees; enforcement; notice

23 A. A rule is invalid unless it is **CONSISTENT WITH THE STATUTE,**
24 **REASONABLY NECESSARY TO CARRY OUT THE PURPOSE OF THE STATUTE AND IS** made
25 and approved in substantial compliance with sections 41-1021 through
26 41-1029 and articles 4, 4.1 and 5 of this chapter, unless otherwise
27 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 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 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 F. A state employee may not intentionally or knowingly violate this
- 13 section. A violation of this section is cause for disciplinary action or
- 14 dismissal pursuant to the agency's adopted personnel policy.
- 15 G. This section does not abrogate the immunity provided by section
- 16 12-820.01 or 12-820.02.
- 17 H. An agency shall prominently print the provisions of subsections
- 18 B, E, F and G of this section on all license applications, except license
- 19 applications processed by the corporation commission.
- 20 I. The license application may be in either print or electronic
- 21 format.
- 22 Sec. 4. Repeal
- 23 Section 41-1033, Arizona Revised Statutes, as amended by Laws 2021,
- 24 chapter 405, section 23, is repealed.
- 25 Sec. 5. Section 41-1033, Arizona Revised Statutes, as amended by
- 26 Laws 2021, chapter 340, section 1, is amended to read:
- 27 41-1033. Petition for a rule or review of an agency practice,
- 28 substantive policy statement, final rule or unduly
- 29 burdensome licensing requirement; notice
- 30 A. Any person may petition an agency to do either of the following:
- 31 1. Make, amend or repeal a final rule.
- 32 2. Review an existing agency practice or substantive policy
- 33 statement that the petitioner alleges to constitute a rule.
- 34 B. An agency shall prescribe the form of the petition and the
- 35 procedures for the petition's submission, consideration and disposition.
- 36 The person shall state on the petition the rulemaking to review or the
- 37 agency practice or substantive policy statement to consider revising,
- 38 repealing or making into a rule.
- 39 C. Not later than sixty days after submission of the petition, the
- 40 agency shall either:
- 41 1. Reject the petition and state its reasons in writing for
- 42 rejection to the petitioner.
- 43 2. Initiate rulemaking proceedings in accordance with this chapter.
- 44 3. If otherwise lawful, make a rule.

1 D. The agency's response to the petition is open to public
2 inspection.

3 E. If an agency rejects a petition pursuant to subsection C of this
4 section, the petitioner has thirty days to appeal to the council to review
5 whether the existing agency practice or substantive policy statement
6 constitutes a rule. ~~The council chairperson shall place this appeal on~~
7 ~~the agenda of the council's next meeting if at least three council members~~
8 ~~make such a request of the council chairperson within two weeks after the~~
9 ~~filing of the appeal.~~ THE PETITIONER'S APPEAL MAY NOT BE MORE THAN FIVE
10 DOUBLE-SPACED PAGES.

11 F. A person may petition the council to request a review of a final
12 rule based on the person's belief that the final rule does not meet the
13 requirements prescribed in section 41-1030. A PETITION SUBMITTED UNDER
14 THIS SUBSECTION MAY NOT BE MORE THAN FIVE DOUBLE-SPACED PAGES.

15 G. A person may petition the council to request a review of an
16 existing agency practice, substantive policy statement, final rule or
17 regulatory licensing requirement that the petitioner alleges is not
18 specifically authorized by statute, EXCEEDS THE AGENCY'S STATUTORY
19 AUTHORITY, is unduly burdensome or is not demonstrated to be necessary to
20 specifically fulfill a public health, safety or welfare concern. On
21 receipt of a properly submitted petition pursuant to this section, the
22 council shall review the existing agency practice, substantive policy
23 statement, final rule or regulatory licensing requirement as prescribed by
24 this section. A PETITION SUBMITTED UNDER THIS SUBSECTION MAY NOT BE MORE
25 THAN FIVE DOUBLE-SPACED PAGES. This subsection does not apply to an
26 individual or institution that is subject to title 36, chapter 4, article
27 10 or chapter 20.

28 H. If the council receives information ~~contained in the petition~~
29 that ~~indicates how~~ ALLEGES an existing agency practice or substantive
30 policy statement may constitute a rule, that a final rule does not meet
31 the requirements prescribed in section 41-1030 or that an existing agency
32 practice, substantive policy statement, final rule or regulatory licensing
33 requirement EXCEEDS THE AGENCY'S STATUTORY AUTHORITY, IS NOT SPECIFICALLY
34 AUTHORIZED BY STATUTE OR does not meet the guidelines prescribed in
35 subsection G of this section, OR IF THE COUNCIL RECEIVES AN APPEAL UNDER
36 SUBSECTION E OF THIS SECTION, and at least ~~four~~ THREE council members
37 request of the chairperson that the matter be heard in a public meeting:

38 1. Within ninety days after ~~receipt of~~ RECEIVING the ~~fourth~~ THIRD
39 council member's request, the council shall determine whether ANY OF THE
40 FOLLOWING APPLIES:

41 (a) The agency practice or substantive policy statement constitutes
42 a rule.

43 (b) The final rule meets the requirements prescribed in section
44 41-1030.

1 (c) An existing agency practice, substantive policy statement,
2 final rule or regulatory licensing requirement EXCEEDS THE AGENCY'S
3 STATUTORY AUTHORITY, IS NOT SPECIFICALLY AUTHORIZED BY STATUTE OR meets
4 the guidelines prescribed in subsection G of this section.

5 2. Within ten days after ~~receipt of~~ RECEIVING the ~~fourth~~ THIRD
6 council member's request, the council shall notify the agency that the
7 matter has been or will be placed on ~~an~~ THE COUNCIL'S agenda FOR
8 CONSIDERATION ON THE MERITS.

9 3. Not later than thirty days after receiving notice from the
10 council, the agency shall submit a statement OF NOT MORE THAN FIVE
11 DOUBLE-SPACED PAGES to the council that addresses whether ANY OF THE
12 FOLLOWING APPLIES:

13 (a) The existing agency practice, ~~OR~~ substantive policy statement
14 constitutes a rule.

15 (b) The final rule meets the requirements prescribed in section
16 41-1030.

17 (c) An existing agency practice, substantive policy statement,
18 final rule or regulatory licensing requirement EXCEEDS THE AGENCY'S
19 STATUTORY AUTHORITY, IS NOT SPECIFICALLY AUTHORIZED BY STATUTE OR meets
20 the guidelines prescribed in subsection G of this section.

21 I. AT THE HEARING, THE COUNCIL SHALL ALLOCATE THE PETITIONER AND
22 THE AGENCY AN EQUAL AMOUNT OF TIME FOR ORAL COMMENTS NOT INCLUDING ANY
23 TIME SPENT ANSWERING QUESTIONS RAISED BY COUNCIL MEMBERS. THE COUNCIL MAY
24 ALSO ALLOCATE TIME FOR MEMBERS OF THE PUBLIC WHO HAVE AN INTEREST IN THE
25 ISSUE TO PROVIDE ORAL COMMENTS.

26 ~~I.~~ J. For the purposes of subsection H of this section, the
27 council meeting shall not be scheduled until the expiration of the agency
28 response period prescribed in subsection H, paragraph 3 of this section.

29 ~~J.~~ K. An agency practice, substantive policy statement, final rule
30 or regulatory licensing requirement considered by the council pursuant to
31 this section shall remain in effect while under consideration of the
32 council. If the council determines that the agency practice, ~~OR~~
33 substantive policy statement OR REGULATORY LICENSING REQUIREMENT EXCEEDS
34 THE AGENCY'S STATUTORY AUTHORITY, IS NOT AUTHORIZED BY STATUTE OR
35 constitutes a rule or that the final rule does not meet the requirements
36 prescribed in section 41-1030, the practice, policy statement, rule or
37 regulatory licensing requirement shall be ~~considered~~ void. If the council
38 determines that the existing agency practice, substantive policy
39 statement, final rule or regulatory licensing requirement is unduly
40 burdensome or is not demonstrated to be necessary to specifically fulfill
41 a public health, safety or welfare concern, the council ~~may~~ SHALL modify,
42 revise or declare void any such existing agency practice, substantive
43 policy statement, final rule or regulatory licensing requirement. IF AN
44 AGENCY DECIDES TO FURTHER PURSUE A PRACTICE, SUBSTANTIVE POLICY STATEMENT

1 OR REGULATORY LICENSING REQUIREMENT THAT HAS BEEN DECLARED VOID OR HAS
2 BEEN MODIFIED OR REVISED BY THE COUNCIL, THE AGENCY MAY DO SO ONLY
3 PURSUANT TO A NEW RULEMAKING.

4 ~~K.~~ L. A council decision pursuant to this section shall BE MADE BY
5 A MAJORITY OF THE COUNCIL MEMBERS WHO ARE PRESENT AND VOTING ON THE ISSUE
6 AND SHALL include findings of fact and conclusions of law, separately
7 stated. Conclusions of law shall specifically address the agency's
8 authority to act consistent with section 41-1030. NOTWITHSTANDING ANY
9 OTHER LAW, THE COUNCIL MAY NOT BASE ANY DECISION CONCERNING AN AGENCY'S
10 COMPLIANCE WITH THE REQUIREMENTS OF SECTION 41-1030 IN ISSUING A FINAL
11 RULE OR SUBSTANTIVE POLICY STATEMENT ON WHETHER ANY PARTY OR PERSON
12 COMMENTED ON THE RULEMAKING OR SUBSTANTIVE POLICY STATEMENT.

13 ~~L.~~ M. A decision by the council pursuant to this section is not
14 subject to judicial review, except that, in addition to the procedure
15 prescribed in this section or in lieu of the procedure prescribed in this
16 section, a person may seek declaratory relief pursuant to section 41-1034.

17 ~~M.~~ N. Each agency and the secretary of state shall post
18 prominently on their websites notice of an individual's right to petition
19 the council for review pursuant to this section.

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

22 41-1092. Definitions

23 In this article, unless the context otherwise requires:

24 1. "Administrative law judge" means an individual or an agency
25 head, board or commission that sits as an administrative law judge, that
26 conducts administrative hearings in a contested case or an appealable
27 agency action and that makes decisions regarding the contested case or
28 appealable agency action.

29 2. "Administrative law judge decision" means the findings of fact,
30 conclusions of law and recommendations or decisions issued by an
31 administrative law judge.

32 3. "ADVERSELY AFFECTED PARTY" MEANS:

33 (a) AN INDIVIDUAL WHO BOTH:

34 (i) PROVIDES EVIDENCE OF AN ACTUAL INJURY OR ECONOMIC DAMAGE THAT
35 THE INDIVIDUAL HAS SUFFERED OR WILL SUFFER AS A DIRECT RESULT OF THE
36 ACTION AND NOT DUE TO BEING A COMPETITOR OR A GENERAL TAXPAYER.

37 (ii) TIMELY SUBMITS COMMENTS ON THE LICENSE APPLICATION THAT
38 INCLUDE, WITH SUFFICIENT SPECIFICITY, THE QUESTIONS OF LAW THAT ARE THE
39 BASIS FOR THE APPEAL.

40 (b) A GROUP OR ASSOCIATION THAT IDENTIFIES, BY NAME AND PHYSICAL
41 ADDRESS IN THE NOTICE OF APPEAL, A MEMBER OF THE GROUP OR ASSOCIATION WHO
42 WOULD BE AN ADVERSELY AFFECTED PARTY IN THE INDIVIDUAL'S OWN RIGHT.

43 ~~S.~~ 4. "Appealable agency action" means an action that determines
44 the legal rights, duties or privileges of a party, including the

1 administrative completeness of an application other than an application
2 submitted to the department of water resources pursuant to title 45, and
3 that is not a contested case. Appealable agency actions do not include
4 interim orders by self-supporting regulatory boards, rules, orders,
5 standards or statements of policy of general application issued by an
6 administrative agency to implement, interpret or make specific the
7 legislation enforced or administered by it or clarifications of
8 interpretation, nor does it mean or include rules concerning the internal
9 management of the agency that do not affect private rights or interests.
10 For the purposes of this paragraph, administrative hearing does not
11 include a public hearing held for the purpose of receiving public comment
12 on a proposed agency action.

13 ~~4.~~ 5. "Director" means the director of the office of
14 administrative hearings.

15 ~~5.~~ 6. "Final administrative decision" means a decision by an
16 agency that is subject to judicial review pursuant to title 12, chapter 7,
17 article 6.

18 7. "LICENSEE" MEANS ANY INDIVIDUAL OR BUSINESS ENTITY THAT HAS
19 APPLIED FOR OR HAS BEEN ISSUED A LICENSE BY A STATE AGENCY TO ENGAGE IN
20 ANY BUSINESS OR ACTIVITY IN THIS STATE AND THAT IS SUBJECT TO A LICENSING
21 DECISION.

22 ~~6.~~ 8. "Office" means the office of administrative hearings.

23 ~~7.~~ 9. "Self-supporting regulatory board" means any one of the
24 following:

- 25 (a) The Arizona state board of accountancy.
- 26 (b) The barbering and cosmetology board.
- 27 (c) The board of behavioral health examiners.
- 28 (d) The Arizona state boxing and mixed martial arts commission.
- 29 (e) The state board of chiropractic examiners.
- 30 (f) The state board of dental examiners.
- 31 (g) The state board of funeral directors and embalmers.
- 32 (h) The Arizona game and fish commission.
- 33 (i) The board of homeopathic and integrated medicine examiners.
- 34 (j) The Arizona medical board.
- 35 (k) The naturopathic physicians medical board.
- 36 (l) The Arizona state board of nursing.
- 37 (m) The board of examiners of nursing care institution
38 administrators and assisted living facility managers.
- 39 (n) The board of occupational therapy examiners.
- 40 (o) The state board of dispensing opticians.
- 41 (p) The state board of optometry.
- 42 (q) The Arizona board of osteopathic examiners in medicine and
43 surgery.
- 44 (r) The Arizona peace officer standards and training board.

- 1 (s) The Arizona state board of pharmacy.
- 2 (t) The board of physical therapy.
- 3 (u) The state board of podiatry examiners.
- 4 (v) The state board for private postsecondary education.
- 5 (w) The state board of psychologist examiners.
- 6 (x) The board of respiratory care examiners.
- 7 (y) The state board of technical registration.
- 8 (z) The Arizona state veterinary medical examining board.
- 9 (aa) The acupuncture board of examiners.
- 10 (bb) The Arizona regulatory board of physician assistants.
- 11 (cc) The board of athletic training.
- 12 (dd) The board of massage therapy.

13 Sec. 7. Section 41-1092.03, Arizona Revised Statutes, is amended to
14 read:

15 41-1092.03. Notice of appealable agency action or contested
16 case; hearing; informal settlement conference;
17 applicability

18 A. Except as provided in subsection D of this section, an agency
19 shall serve notice of an appealable agency action or contested case
20 pursuant to section 41-1092.04. The notice shall:

21 1. Identify the statute or rule that is alleged to have been
22 violated or on which the action is based.

23 2. Identify with reasonable particularity the nature of any alleged
24 violation, including, if applicable, the conduct or activity constituting
25 the violation.

26 3. Include a description of the party's right to request a hearing
27 on the appealable agency action or contested case.

28 4. Include a description of the party's right to request an
29 informal settlement conference pursuant to section 41-1092.06.

30 B. A party may obtain a hearing on an appealable agency action or
31 contested case by filing a notice of appeal or request for a hearing with
32 the agency within thirty days after receiving the notice prescribed in
33 subsection A of this section. The notice of appeal or request for a
34 hearing may be filed by a party whose legal rights, duties or privileges
35 were determined by the appealable agency action or contested case. A
36 notice of appeal or request for a hearing also may be filed by a party who
37 will be adversely affected by the appealable agency action or contested
38 case and who exercised any right provided by law to comment on the action
39 being appealed or contested, provided that the grounds for the notice of
40 appeal or request for a hearing are limited to issues raised in that
41 party's comments. The notice of appeal or request for a hearing shall
42 identify the party, the party's address, the agency and the action being
43 appealed or contested and shall contain **AT LEAST THE FOLLOWING:**

1 1. A concise statement of the reasons for the appeal or request for
2 a hearing.

3 2. DETAILED AND COMPLETE INFORMATION REGARDING ALL QUESTIONS OF LAW
4 THAT ARE THE BASIS FOR THE APPEAL.

5 3. ALL RELEVANT SUPPORTING DOCUMENTATION.

6 4. HOW THE PARTY IS AN ADVERSELY AFFECTED PARTY, IF APPLICABLE.

7 C. The agency shall notify the office of the appeal or request for
8 a hearing and the office shall schedule an appeal or contested case
9 hearing pursuant to section 41-1092.05, except as provided in section
10 41-1092.01, subsection F, IF A LAWFUL PARTY FILES THE NOTICE OF APPEAL OR
11 REQUEST FOR A HEARING, THE AGENCY MAY REQUIRE A BOND OR OTHER SECURITY,
12 NOT MORE THAN \$50,000, BASED ON THE RECORD OF THE NOTICED APPEAL OR
13 REQUEST FOR A HEARING THAT WOULD COVER THE AGENCY'S REASONABLE COSTS FOR
14 THE APPEAL, IF THE PARTY SHOULD LOSE THE APPEAL.

15 ~~C.~~ D. If good cause is shown an agency head may accept an appeal
16 or request for a hearing that is not filed in a timely manner.

17 ~~D.~~ E. This section does not apply to a contested case if the
18 agency:

19 1. Initiates the contested case hearing pursuant to law other than
20 this chapter and not in response to a request by another party.

21 2. Is not required by law, other than this chapter, to provide an
22 opportunity for an administrative hearing before taking action that
23 determines the legal rights, duties or privileges of an applicant for a
24 license.

25 Sec. 8. Section 41-1092.07, Arizona Revised Statutes, is amended to
26 read:

27 41-1092.07. Hearings

28 A. A party to a contested case or appealable agency action may file
29 a nonperemptory motion with the director to disqualify an office
30 administrative law judge from conducting a hearing for bias, prejudice,
31 personal interest or lack of technical expertise necessary for a hearing.

32 B. The parties to a contested case or appealable agency action have
33 the right to be represented by counsel or to proceed without counsel, to
34 submit evidence and to cross-examine witnesses.

35 C. The administrative law judge may issue subpoenas to compel the
36 attendance of witnesses and the production of documents. The subpoenas
37 shall be served and, on application to the superior court, enforced in the
38 manner provided by law for the service and enforcement of subpoenas in
39 civil matters. The administrative law judge may administer oaths and
40 affirmations to witnesses.

41 D. All parties shall have the opportunity to respond and present
42 evidence and argument on all relevant issues. All relevant evidence is
43 admissible, but the administrative law judge may exclude evidence if its
44 probative value is outweighed by the danger of unfair prejudice, by

1 confusion of the issues or by considerations of undue delay, waste of time
2 or needless presentation of cumulative evidence. The administrative law
3 judge shall exercise reasonable control over the manner and order of
4 cross-examining witnesses and presenting evidence to make the
5 cross-examination and presentation effective for ascertaining the truth,
6 avoiding needless consumption of time and protecting witnesses from
7 harassment or undue embarrassment.

8 E. All hearings shall be recorded. The administrative law judge
9 shall secure either a court reporter or an electronic means of producing a
10 clear and accurate record of the proceeding at the agency's expense. Any
11 party that requests a transcript of the proceeding shall pay the costs of
12 the transcript to the court reporter or other transcriber.

13 F. Unless otherwise provided by law, the following apply:

14 1. A hearing may be conducted in an informal manner and without
15 adherence to the rules of evidence required in judicial proceedings.
16 Neither the manner of conducting the hearing nor the failure to adhere to
17 the rules of evidence required in judicial proceedings is grounds for
18 reversing any administrative decision or order if the evidence supporting
19 the decision or order is substantial, reliable and probative.

20 2. Copies of documentary evidence may be received in the discretion
21 of the administrative law judge. On request, THE parties shall be given
22 an opportunity to compare the copy with the original.

23 3. Notice may be taken of judicially cognizable facts. In
24 addition, notice may be taken of generally recognized technical or
25 scientific facts within the agency's specialized knowledge. THE parties
26 shall be notified either before or during the hearing or by reference in
27 preliminary reports or otherwise of the material noticed including any
28 staff memoranda or data and they shall be afforded an opportunity to
29 contest the material so noticed. The agency's experience, technical
30 competence and specialized knowledge may be used in the evaluation of the
31 evidence. AN AGENCY-ISSUED LICENSE THAT SUBSTANTIALLY COMPLIED WITH THE
32 APPLICABLE LICENSING REQUIREMENTS ESTABLISHES A PRIMA FACIE DEMONSTRATION
33 THAT THE LICENSE MEETS ALL STATE AND FEDERAL LEGAL AND TECHNICAL
34 REQUIREMENTS AND THE LICENSE WOULD PROTECT PUBLIC HEALTH, WELFARE AND THE
35 ENVIRONMENT. AN ADVERSELY AFFECTED PARTY MAY REBUT A PRIMA FACIE
36 DEMONSTRATION BY PRESENTING CLEAR AND CONVINCING EVIDENCE DEMONSTRATING
37 THAT ONE OR MORE PROVISIONS IN THE LICENSE VIOLATE A SPECIFICALLY
38 APPLICABLE STATE OR FEDERAL REQUIREMENT. IF AN ADVERSELY AFFECTED PARTY
39 REBUTS A PRIMA FACIE DEMONSTRATION, THE APPLICANT OR LICENSEE AND THE
40 AGENCY DIRECTOR MAY PRESENT ADDITIONAL EVIDENCE TO SUPPORT ISSUING THE
41 LICENSE.

42 4. On application of a party or the agency and for use as evidence,
43 the administrative law judge may permit a deposition to be taken, in the
44 manner and on the terms designated by the administrative law judge, of a

1 witness who cannot be subpoenaed or who is unable to attend the hearing.
2 **THE ADMINISTRATIVE LAW JUDGE MAY ORDER** subpoenas for the production of
3 documents ~~may be ordered by the administrative law judge~~ if the party
4 seeking the discovery demonstrates that the party has reasonable need of
5 the materials being sought. All provisions of law compelling a person
6 under subpoena to testify are applicable. Fees for attendance as a
7 witness shall be the same as for a witness in court, unless otherwise
8 provided by law or agency rule. Notwithstanding section 12-2212,
9 subpoenas, depositions or other discovery shall not be permitted except as
10 provided by this paragraph or subsection C of this section.

11 5. Informal disposition may be made by stipulation, agreed
12 settlement, consent order or default.

13 6. Findings of fact shall be based exclusively on the evidence and
14 on matters officially noticed.

15 7. A final administrative decision shall include findings of fact
16 and conclusions of law, separately stated. Findings of fact, if set forth
17 in statutory language, shall be accompanied by a concise and explicit
18 statement of the underlying facts supporting the findings. Conclusions of
19 law shall specifically address the agency's authority to make the decision
20 consistent with section 41-1030.

21 G. Except as otherwise provided by law:

22 1. At a hearing on an agency's denial of a license or permit or a
23 denial of an application or request for modification of a license or
24 permit, the applicant has the burden of persuasion.

25 2. At a hearing on an agency action to suspend, revoke, terminate
26 or modify on its own initiative material conditions of a license or
27 permit, the agency has the burden of persuasion.

28 3. At a hearing on an agency's imposition of fees or penalties or
29 any agency compliance order, the agency has the burden of persuasion.

30 4. At a hearing held pursuant to chapter 23 or 24 of this title,
31 the appellant or claimant has the burden of persuasion.

32 H. Subsection G of this section does not affect the law governing
33 burden of persuasion in an agency denial of, or refusal to issue, a
34 license renewal.

35 Sec. 9. Section 41-1092.08, Arizona Revised Statutes, is amended to
36 read:

37 **41-1092.08. Final administrative decisions; review; exception**

38 A. The administrative law judge of the office shall issue a written
39 decision within twenty days after the hearing is concluded. The written
40 decision shall contain a concise explanation of the reasons supporting the
41 decision, including the findings of fact and conclusions of law. The
42 administrative law judge shall serve a copy of the decision on ~~the agency~~
43 **ALL PARTIES TO THE CONTESTED CASE OR APPEALABLE AGENCY ACTION**. On request
44 of the agency, the office shall also transmit to the agency the record of

1 the hearing as described in section 12-904, except as provided in section
2 41-1092.01, subsection F.

3 B. Within thirty days after the date the office sends a copy of the
4 administrative law judge's decision to the head of the agency, executive
5 director, board or commission, the head of the agency, executive director,
6 board or commission may review the decision and accept, reject or modify
7 it. If the head of the agency, executive director, board or commission
8 declines to review the administrative law judge's decision, the agency
9 shall serve a copy of the decision on all parties. If the head of the
10 agency, executive director, board or commission rejects or modifies the
11 decision, the agency head, executive director, board or commission must
12 file with the office, except as provided in section 41-1092.01,
13 subsection F, and serve on all parties a copy of the administrative law
14 judge's decision with the rejection or modification and a written
15 justification setting forth the reasons for the rejection or modification
16 of each finding of fact or conclusion of law. If there is a rejection or
17 modification of a conclusion of law, the written justification shall be
18 sent to the president of the senate and the speaker of the house of
19 representatives.

20 C. A board or commission whose members are appointed by the
21 governor may review the decision of the agency head, as provided by law,
22 and make the final administrative decision.

23 D. Except as otherwise provided in this subsection, if the head of
24 the agency, the executive director or a board or commission does not
25 accept, reject or modify the administrative law judge's decision within
26 thirty days after the date the office sends a copy of the administrative
27 law judge's decision to the head of the agency, executive director, board
28 or commission, as evidenced by receipt of such action by the office by the
29 thirtieth day, the office shall certify the administrative law judge's
30 decision as the final administrative decision. If the board or commission
31 meets monthly or less frequently, if the office sends the administrative
32 law judge's decision at least thirty days before the next meeting of the
33 board or commission and if the board or commission does not accept, reject
34 or modify the administrative law judge's decision at the next meeting of
35 the board or commission, as evidenced by receipt of such action by the
36 office within five days after the meeting, the office shall certify the
37 administrative law judge's decision as the final administrative decision.

38 E. For the purposes of subsections B and D of this section, a copy
39 of the administrative law judge's decision is sent on personal delivery of
40 the decision or five days after the decision is mailed to the head of the
41 agency, executive director, board or commission.

42 F. The decision of the agency head is the final administrative
43 decision unless ~~either~~ ONE OF THE FOLLOWING APPLIES:

1 1. The agency head, executive director, board or commission does
2 not review the administrative law judge's decision pursuant to
3 subsection B of this section or does not reject or modify the
4 administrative law judge's decision as provided in subsection D of this
5 section, in which case the administrative law judge's decision is the
6 final administrative decision.

7 2. The decision of the agency head is subject to review pursuant to
8 subsection C of this section.

9 3. THE LICENSEE ACCEPTS THE ADMINISTRATIVE LAW JUDGE'S DECISION
10 CONCERNING THE APPEAL OF A LICENSING DECISION AS FINAL PURSUANT TO
11 SUBSECTION I OF THIS SECTION.

12 G. If a board or commission whose members are appointed by the
13 governor makes the final administrative decision as an administrative law
14 judge or on review of the decision of the agency head, the decision is not
15 subject to review by the head of the agency.

16 H. A party may appeal a final administrative decision pursuant to
17 title 12, chapter 7, article 6, except as provided in section 41-1092.09,
18 subsection B and except that if a party has not requested a hearing on
19 receipt of a notice of appealable agency action pursuant to section
20 41-1092.03, the appealable agency action is not subject to judicial
21 review. THE LICENSE IS NOT STAYED DURING THE APPEAL UNLESS THE AFFECTED
22 INDIVIDUAL WHO HAS APPEALED APPLIES TO THE SUPERIOR COURT FOR AN ORDER
23 REQUIRING A STAY PENDING FINAL DISPOSITION OF THE APPEAL AS NECESSARY TO
24 PREVENT AN IMMINENT AND SUBSTANTIAL ENDANGERMENT TO PUBLIC HEALTH AND THE
25 ENVIRONMENT. THE COURT SHALL DETERMINE THE MATTER UNDER THE STANDARDS
26 APPLICABLE FOR GRANTING PRELIMINARY INJUNCTIONS.

27 I. NOTWITHSTANDING ANY OTHER LAW, FOR ANY APPEALABLE AGENCY ACTION
28 OR CONTESTED CASE INVOLVING A LICENSING DECISION, THE LICENSEE MAY ACCEPT
29 THE DECISION NOT MORE THAN TEN DAYS AFTER RECEIVING THE ADMINISTRATIVE LAW
30 JUDGE'S WRITTEN DECISION. IF THE LICENSEE ACCEPTS THE ADMINISTRATIVE LAW
31 JUDGE'S WRITTEN DECISION, THE DECISION SHALL BE CERTIFIED AS THE FINAL
32 DECISION BY THE OFFICE. IF THE LICENSEE DOES NOT ACCEPT THE
33 ADMINISTRATIVE LAW JUDGE'S WRITTEN DECISION AS THE FINAL DECISION IN THE
34 MATTER, THE HEAD OF THE AGENCY, EXECUTIVE DIRECTOR, BOARD OR COMMISSION
35 MAY REVIEW THE DECISION AND ACCEPT, REJECT OR MODIFY THE DECISION. IF THE
36 HEAD OF THE AGENCY, EXECUTIVE DIRECTOR, BOARD OR COMMISSION INTENDS TO
37 REJECT OR MODIFY THE DECISION, THE PARTIES SHALL MEET AND CONFER, WITHIN
38 THIRTY DAYS AFTER RECEIVING THE ADMINISTRATIVE LAW JUDGE'S DECISION
39 PURSUANT TO SUBSECTION A OF THIS SECTION, CONCERNING THE AGENCY'S PROPOSED
40 MODIFICATIONS TO THE FINDINGS OF FACT AND CONCLUSIONS OF LAW. WITHIN
41 TWENTY DAYS AFTER CONFERRING, THE HEAD OF THE AGENCY, EXECUTIVE DIRECTOR,
42 BOARD OR COMMISSION SHALL FILE ITS FINAL DECISION IN ACCORDANCE WITH
43 SUBSECTION B OF THIS SECTION.

1 ~~f~~ J. This section does not apply to the Arizona peace officer
2 standards and training board established by section 41-1821.

3 Sec. 10. Title 41, chapter 6, Arizona Revised Statutes, is amended
4 by adding article 12, to read:

5 ARTICLE 12. DISPUTE RESOLUTION

6 41-1094. Dispute resolution; agency actions; informal and
7 judicial appeals; definitions

8 A. THE APPLICANT OR LICENSEE AND THE AGENCY SHALL FIRST SEEK IN
9 GOOD FAITH TO INFORMALLY RESOLVE ANY DISPUTE INVOLVING AN INTERIM AGENCY
10 ACTION. IF THE DISPUTE CANNOT BE RESOLVED INFORMALLY WITHIN THIRTY DAYS
11 AFTER THE INTERIM AGENCY ACTION, THE APPLICANT OR LICENSEE MAY SUBMIT A
12 WRITTEN STATEMENT DESCRIBING THE DISPUTE AND THE APPLICANT'S OR LICENSEE'S
13 PROPOSED RESOLUTION OF THE DISPUTE TO THE AGENCY WITHIN THIRTY DAYS AFTER
14 THE EXPIRATION OF THE PERIOD TO INFORMALLY RESOLVE THE DISPUTE. WITHIN
15 FORTY-FIVE DAYS AFTER RECEIVING THE APPLICANT'S OR LICENSEE'S STATEMENT
16 AND PROPOSED RESOLUTION, THE AGENCY SHALL DELIVER OR MAIL A WRITTEN
17 RESPONSE TO THE APPLICANT OR LICENSEE. IF THE APPLICANT OR LICENSEE IS
18 NOT SATISFIED WITH THE AGENCY'S WRITTEN RESPONSE, THE APPLICANT OR
19 LICENSEE MAY SUBMIT A WRITTEN REQUEST FOR A FINAL INTERIM AGENCY ACTION
20 DECISION FROM THE DIRECTOR. WITHIN TWENTY DAYS AFTER RECEIVING THE
21 APPLICANT'S OR LICENSEE'S WRITTEN REQUEST FOR A FINAL INTERIM AGENCY
22 ACTION DECISION, THE DIRECTOR SHALL SELECT THE APPLICANT'S, LICENSEE'S OR
23 AGENCY'S PROPOSED RESOLUTION OR AN ALTERNATIVE RESOLUTION AND SHALL ISSUE
24 A WRITTEN EXPLANATION OF THE FINAL INTERIM AGENCY ACTION DECISION.
25 DEADLINES UNDER THIS SUBSECTION MAY BE EXTENDED BY AGREEMENT BETWEEN THE
26 APPLICANT OR LICENSEE AND THE AGENCY. THE APPLICANT OR LICENSEE MAY
27 ACCEPT THE DIRECTOR'S FINAL INTERIM AGENCY ACTION DECISION OR SUBMIT A
28 WRITTEN REQUEST FOR DISPUTE RESOLUTION BEFORE A QUALIFIED PROFESSIONAL
29 PURSUANT TO SUBSECTIONS B AND C OF THIS SECTION, WITHIN TWENTY DAYS AFTER
30 RECEIVING THE DIRECTOR'S WRITTEN FINAL INTERIM AGENCY ACTION DECISION.

31 B. EXCEPT AS PROVIDED IN SUBSECTION A OF THIS SECTION, ANY
32 ADVERSELY AFFECTED PARTY MAY SUBMIT A WRITTEN REQUEST TO THE AGENCY FOR
33 DISPUTE RESOLUTION BEFORE A QUALIFIED PROFESSIONAL WITHIN THIRTY DAYS
34 AFTER AN AGENCY'S APPEALABLE AGENCY ACTION. THE PERSON WHO REQUESTS THE
35 DISPUTE RESOLUTION BEFORE A QUALIFIED PROFESSIONAL SHALL PAY THE FULL COST
36 OF THE SERVICES PROVIDED BY THE QUALIFIED PROFESSIONAL FOR THE DISPUTE
37 RESOLUTION. THE PAYMENT FOR THE SERVICES SHALL BE DEPOSITED IN THE
38 APPEALS PROGRAM FUND ESTABLISHED PURSUANT TO SUBSECTION I OF THIS SECTION.
39 THE QUALIFIED PROFESSIONAL SHALL BE PAID FROM THE APPEALS PROGRAM FUND.
40 PAYMENT OF THE COST OF THE SERVICES PROVIDED BY THE QUALIFIED PROFESSIONAL
41 IS ELIGIBLE FOR CREDIT AGAINST THE PERSON'S LIABILITY. THE AGENCY MAY
42 REQUIRE AN APPROPRIATE BOND OR OTHER SECURITY REQUIREMENT OF NOT MORE THAN
43 \$25,000, BASED ON THE RECORD OF THE DISPUTE THAT WOULD COVER THE AGENCY'S
44 REASONABLE COSTS FOR THE APPEAL, IF THE PARTY SHOULD LOSE THE APPEAL. THE

1 AGENCY SHALL MAINTAIN A LIST OF AND CONTACT WITH AT LEAST EIGHT QUALIFIED
2 PROFESSIONALS TO CONDUCT DISPUTE RESOLUTIONS. THE PARTIES SHALL MUTUALLY
3 SELECT A QUALIFIED PROFESSIONAL.

4 C. THE INCLUSION OF A QUALIFIED PROFESSIONAL ON THE AGENCY'S LIST
5 MAINTAINED UNDER SUBSECTION B OF THIS SECTION IS NOT DEEMED TO BE
6 EMPLOYMENT BY THE AGENCY. IF THE PARTIES CANNOT AGREE ON A QUALIFIED
7 PROFESSIONAL WHO IS ON THE AGENCY'S LIST, THE PARTIES SHALL MUTUALLY
8 SELECT A QUALIFIED PROFESSIONAL WHO IS NOT ON THE LIST AND WHO OTHERWISE
9 MEETS THE REQUIREMENTS IN SUBSECTION K OF THIS SECTION. WITHIN TWENTY
10 DAYS AFTER THE SELECTION OF A QUALIFIED PROFESSIONAL, THE PERSON WHO
11 REQUESTED THE DISPUTE RESOLUTION SHALL SUBMIT TO THE QUALIFIED
12 PROFESSIONAL AND TO THE AGENCY A WRITTEN STATEMENT INCLUDING AT LEAST:

- 13 1. A BRIEF SUMMARY THAT DESCRIBES THE DISPUTE.
- 14 2. DETAILED AND COMPLETE INFORMATION REGARDING ALL QUESTIONS OF LAW
15 THAT ARE THE BASIS FOR THE APPEAL.
- 16 3. THE PERSON'S PROPOSED RESOLUTION OF THE DISPUTE.
- 17 4. ALL RELEVANT SUPPORTING DOCUMENTATION.
- 18 5. HOW THE APPEALING PARTY IS AN ADVERSELY AFFECTED PARTY, IF
19 APPLICABLE.

20 D. WITHIN FORTY-FIVE DAYS AFTER THE PERSON SUBMITS THE WRITTEN
21 STATEMENT, THE AGENCY SHALL PROVIDE TO THE PERSON AND TO THE QUALIFIED
22 PROFESSIONAL THE AGENCY'S WRITTEN RESPONSE TO THE SUBMITTAL, THE AGENCY'S
23 PROPOSED RESOLUTION OF THE DISPUTE AND ANY RELEVANT SUPPORTING
24 DOCUMENTATION. AN AGENCY-ISSUED LICENSE THAT SUBSTANTIALLY COMPLIED WITH
25 THE APPLICABLE LICENSING REQUIREMENTS ESTABLISHES A PRIMA FACIE
26 DEMONSTRATION THAT:

- 27 1. THE LICENSE MEETS ALL STATE AND FEDERAL LEGAL AND TECHNICAL
28 REQUIREMENTS.
- 29 2. THE LICENSE WOULD PROTECT PUBLIC HEALTH, WELFARE AND THE
30 ENVIRONMENT.

31 E. AN ADVERSELY AFFECTED PARTY MAY REBUT A PRIMA FACIE
32 DEMONSTRATION BY PRESENTING CLEAR AND CONVINCING EVIDENCE THAT
33 DEMONSTRATES THAT ONE OR MORE PROVISIONS IN THE LICENSE VIOLATE A
34 SPECIFICALLY APPLICABLE STATE OR FEDERAL REQUIREMENT. IF AN ADVERSELY
35 AFFECTED PARTY REBUTS A PRIMA FACIE DEMONSTRATION, THE APPLICANT OR
36 LICENSEE AND THE AGENCY DIRECTOR MAY PRESENT ADDITIONAL EVIDENCE TO
37 SUPPORT THE LICENSE ISSUANCE.

38 F. THE QUALIFIED PROFESSIONAL SHALL REVIEW THE SUBMITTALS AND
39 RECOMMEND A RESOLUTION OF THE DISPUTE TO THE DIRECTOR WITHIN THIRTY DAYS
40 AFTER RECEIVING THE AGENCY'S RESPONSE. THE QUALIFIED PROFESSIONAL'S
41 RECOMMENDATION SHALL BE LIMITED IN SCOPE TO THE AGENCY DECISION. THE
42 QUALIFIED PROFESSIONAL, THE AGENCY OR THE PERSON WHO REQUESTED THE DISPUTE
43 RESOLUTION MAY REQUEST A MEETING WITH ALL OF THE PARTIES BEFORE THE
44 QUALIFIED PROFESSIONAL ISSUES THE RECOMMENDED RESOLUTION. WITHIN

1 FORTY-FIVE DAYS AFTER RECEIVING THE QUALIFIED PROFESSIONAL'S
2 RECOMMENDATION, THE DIRECTOR SHALL SELECT THE RESOLUTION OF THE DISPUTE
3 THAT IS PROPOSED BY THE QUALIFIED PROFESSIONAL, THE PERSON WHO REQUESTED
4 THE DISPUTE RESOLUTION, THE AGENCY OR SOME COMBINATION OF THESE
5 RESOLUTIONS AND SHALL ISSUE A FINAL WRITTEN RESOLUTION TO THE PERSON AND
6 THE QUALIFIED PROFESSIONAL THAT CONTAINS THE FACTUAL, TECHNICAL AND LEGAL
7 GROUNDS FOR THE DECISION. BY AGREEMENT, THE PARTIES MAY MODIFY ANY TIME
8 LIMITS PRESCRIBED BY THIS SUBSECTION. IF THE FINAL WRITTEN RESOLUTION IS
9 TO BE OF GENERAL APPLICABILITY, THE AGENCY SHALL ISSUE A SUBSTANTIVE
10 POLICY STATEMENT OR COMMENCE THE RULEMAKING PROCESS UNDER THIS CHAPTER.

11 G. FOR AN APPLICANT OR LICENSEE WHO PURSUES THE PROCEDURES IN THIS
12 SECTION, THE TIME IS TOLLED FOR COMPLIANCE WITH ANY INVESTIGATION,
13 CORRECTIVE ACTION, REMEDIATION, CLOSURE OR OTHER REQUIREMENT THAT IS
14 ASSOCIATED WITH THE SUBJECT OF THE DISPUTE RESOLUTION PROCESSES UNTIL THE
15 DATE OF THE DIRECTOR'S WRITTEN DECISION IN SUBSECTION A OF THIS SECTION
16 AND THE DIRECTOR'S FINAL WRITTEN RESOLUTION IN SUBSECTIONS C AND D OF THIS
17 SECTION AND ANY RELATED APPEALS ARE CONCLUDED. THE TIME FOR COMPLIANCE
18 MAY NOT BE TOLLED UNDER THIS SUBSECTION IF THE APPLICANT OR LICENSEE WHO
19 PURSUES THE PROCEDURES IN THIS SECTION IS SUBJECT TO AN ADMINISTRATIVE
20 ORDER OR JUDICIAL ORDER, JUDGMENT OR DECREE FOR THE SITE THAT IS THE
21 SUBJECT OF THE DISPUTE.

22 H. ANY APPLICANT, LICENSEE OR ADVERSELY AFFECTED PARTY WHO OBTAINS
23 A FINAL WRITTEN RESOLUTION FROM THE AGENCY UNDER SUBSECTION F OF THIS
24 SECTION MAY COMMENCE A CIVIL ACTION IN SUPERIOR COURT AGAINST THE AGENCY
25 PURSUANT TO TITLE 12, CHAPTER 7, ARTICLE 6. AN AGENCY'S FINAL WRITTEN
26 RESOLUTION IN SUBSECTION F OF THIS SECTION CONSTITUTES A FINAL
27 ADMINISTRATIVE DECISION PURSUANT TO TITLE 12, CHAPTER 7, ARTICLE 6. A
28 CIVIL ACTION MAY NOT BE COMMENCED BEFORE SIXTY DAYS AFTER THE PLAINTIFF
29 HAS GIVEN NOTICE TO THE AGENCY OF THE PLAINTIFF'S INTENT TO FILE. THE
30 LICENSE IS NOT STAYED DURING THE APPEAL UNLESS THE AFFECTED PERSON WHO HAS
31 APPEALED APPLIES TO THE SUPERIOR COURT FOR AN ORDER REQUIRING A STAY
32 PENDING FINAL DISPOSITION OF THE APPEAL AS NECESSARY TO PREVENT AN
33 IMMINENT AND SUBSTANTIAL ENDANGERMENT TO PUBLIC HEALTH AND THE
34 ENVIRONMENT. THE COURT SHALL DETERMINE THE MATTER UNDER THE STANDARDS
35 APPLICABLE FOR GRANTING PRELIMINARY INJUNCTIONS.

36 I. AN AGENCY SHALL ESTABLISH OR USE AN EXISTING APPEALS PROGRAM
37 FUND FOR THE PURPOSE OF IMPLEMENTING AND ADMINISTERING THIS SECTION. THE
38 FUND CONSISTS OF LEGISLATIVE APPROPRIATIONS AND ANY FEES COLLECTED UNDER
39 SUBSECTION B OF THIS SECTION. THE AGENCY SHALL ADMINISTER THE FUND.
40 MONIES IN THE FUND ARE EXEMPT FROM THE PROVISIONS OF SECTION 35-190
41 RELATING TO LAPSING OF APPROPRIATIONS.

42 J. SUBSECTIONS B AND C OF THIS SECTION DO NOT APPLY TO CONTESTED
43 CASES OR APPEALABLE AGENCY ACTIONS OF AGENCIES IDENTIFIED IN SECTION
44 41-1092.02.

- 1 K. FOR THE PURPOSES OF THIS SECTION:
2 1. "ADVERSELY AFFECTED PARTY" MEANS:
3 (a) ANY INDIVIDUAL WHO BOTH:
4 (i) PROVIDES EVIDENCE OF AN ACTUAL INJURY OR ECONOMIC DAMAGE THAT
5 THE INDIVIDUAL HAS SUFFERED OR WILL SUFFER AS A DIRECT RESULT OF THE
6 ACTION AND NOT DUE TO BEING A COMPETITOR OR A GENERAL TAXPAYER.
7 (ii) TIMELY SUBMITS COMMENTS ON THE LICENSE APPLICATION THAT
8 INCLUDE, WITH SUFFICIENT SPECIFICITY, THE QUESTIONS OF LAW THAT ARE THE
9 BASIS FOR THE APPEAL.
10 (b) A GROUP OR ASSOCIATION THAT IDENTIFIES, BY NAME AND PHYSICAL
11 ADDRESS IN THE NOTICE FOR APPEAL, A MEMBER OF THE GROUP OR ASSOCIATION WHO
12 WOULD BE AN ADVERSELY AFFECTED PARTY IN THE INDIVIDUAL'S OWN RIGHT.
13 2. "APPEALABLE AGENCY ACTION":
14 (a) MEANS AN ACTION THAT DETERMINES THE LEGAL RIGHTS, DUTIES OR
15 PRIVILEGES OF A PARTY AND THAT IS NOT A CONTESTED CASE.
16 (b) DOES NOT INCLUDE:
17 (i) INTERIM ORDERS BY SELF-SUPPORTING REGULATORY BOARDS, RULES,
18 ORDERS, STANDARDS OR STATEMENTS OF POLICY OF GENERAL APPLICATION THAT ARE
19 ISSUED BY AN ADMINISTRATIVE AGENCY TO IMPLEMENT, INTERPRET OR MAKE
20 SPECIFIC THE LEGISLATION ENFORCED OR ADMINISTERED BY IT OR CLARIFICATIONS
21 OF INTERPRETATION.
22 (ii) RULES CONCERNING THE INTERNAL MANAGEMENT OF THE AGENCY THAT DO
23 NOT AFFECT PRIVATE RIGHTS OR INTERESTS.
24 3. "CONTESTED CASE" MEANS ANY PROCEEDING, INCLUDING RATEMAKING,
25 EXCEPT RATEMAKING PURSUANT TO ARTICLE XV, CONSTITUTION OF ARIZONA, PRICE
26 FIXING AND LICENSING, IN WHICH THE LEGAL RIGHTS, DUTIES OR PRIVILEGES OF A
27 PARTY ARE REQUIRED OR ALLOWED BY LAW, OTHER THAN THIS CHAPTER, TO BE
28 DETERMINED BY AN AGENCY AFTER AN OPPORTUNITY FOR AN ADMINISTRATIVE
29 HEARING. FOR THE PURPOSES OF THIS PARAGRAPH, ADMINISTRATIVE HEARING DOES
30 NOT INCLUDE A PUBLIC HEARING HELD FOR THE PURPOSE OF RECEIVING PUBLIC
31 COMMENT ON A PROPOSED AGENCY ACTION.
32 4. "DIRECTOR" MEANS THE AGENCY HEAD.
33 5. "INTERIM AGENCY ACTION" MEANS A PRELIMINARY DECISION BY THE
34 AGENCY THAT MAY ADVERSELY AFFECT THE LEGAL RIGHTS, DUTIES OR PRIVILEGES OF
35 AN APPLICANT OR LICENSEE IF INCLUDED IN AN APPEALABLE AGENCY ACTION.
36 6. "QUALIFIED PROFESSIONAL":
37 (a) MEANS AN INDIVIDUAL WHO HOLDS A BACHELOR'S DEGREE, MASTER'S
38 DEGREE, DOCTORAL DEGREE OR JURIS DOCTOR DEGREE, WHO HAS AT LEAST FIVE
39 YEARS OF PROFESSIONAL EXPERIENCE IN AN AREA RELATED TO THE DISPUTE AND, IF
40 APPLICABLE, WHO HOLDS A PROFESSIONAL REGISTRATION.
41 (b) SHALL NOT HAVE:
42 (i) BE A CURRENT EMPLOYEE OF A PARTY TO THE DISPUTE RESOLUTION OR
43 THE AGENCY OR HAVE BEEN AN EMPLOYEE OF A PARTY TO THE DISPUTE RESOLUTION

1 OR THE AGENCY WITHIN ONE YEAR BEFORE THE DATE OF THE REQUEST FOR DISPUTE
2 RESOLUTION.
3 (ii) HAVE BEEN AN EMPLOYEE DURING THE PRECEDING YEAR OF A FIRM
4 ASSISTING A PARTY TO THE DISPUTE RESOLUTION OR THE AGENCY.
5 (c) PARTICIPATE IN THE DISPUTE RESOLUTION IF THE QUALIFIED
6 PROFESSIONAL HAS A PECUNIARY OR PROPRIETARY INTEREST, EITHER DIRECT OR
7 INDIRECT, IN THE MATTER BEING DISPUTED.
8 Sec. 11. Section 49-114, Arizona Revised Statutes, is amended to
9 read:
10 49-114. Appeals of agency decisions; definition
11 A. Notwithstanding any other administrative proceeding established
12 in this title or by rule, all appealable agency actions as defined in
13 section 41-1092 and contested cases as defined in section 41-1001 FOR
14 FEDERALLY DELEGATED PROGRAMS shall be governed by title 41, chapter 6,
15 article 10.
16 B. NOTWITHSTANDING ANY OTHER ADMINISTRATIVE PROCEEDING ESTABLISHED
17 IN THIS TITLE OR BY RULE, ALL APPEALABLE AGENCY ACTIONS AS DEFINED IN
18 SECTION 41-1092 AND CONTESTED CASES AS DEFINED IN SECTION 41-1001 FOR
19 NONFEDERALLY DELEGATED PROGRAMS AND THE DETERMINATIONS IN SECTION 49-298,
20 SUBSECTION A, SHALL BE GOVERNED BY TITLE 41, CHAPTER 6, ARTICLE 12.
21 C. FOR THE PURPOSES OF THIS SECTION, "NONFEDERALLY DELEGATED
22 PROGRAMS" INCLUDES DEPARTMENT PROGRAMS UNDER CHAPTER 1, ARTICLE 1,
23 CHAPTER 2, ARTICLE 3, AND CHAPTER 4 OF THIS TITLE.