

Senate Engrossed House Bill
administrative hearings; GRRC

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

HOUSE BILL 2599

AN ACT

AMENDING SECTIONS 12-348 AND 32-4302, ARIZONA REVISED STATUTES; AMENDING TITLE 32, CHAPTER 43, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 32-4304; AMENDING SECTIONS 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 TITLE 41, CHAPTER 6, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-1039; AMENDING SECTIONS 41-1092, 41-1092.03, 41-1092.07, 41-1092.08 AND 41-1092.12, 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 32-4302, Arizona Revised Statutes, is amended to
9 read:

10 32-4302. Out-of-state applicants; residents; military
11 spouses; licensure; certification; exceptions;
12 notice

13 A. Notwithstanding any other law, an occupational or professional
14 license or certificate shall be issued, in the discipline applied for and
15 at the same practice level as determined by the regulating entity,
16 pursuant to this title to a person who establishes residence in this state
17 or without an examination to a person who is married to an active duty
18 member of the armed forces of the United States and who is accompanying
19 the member to an official permanent change of station to a military
20 installation located in this state if all of the following apply:

21 1. The person is currently licensed or certified in at least one
22 other state in the discipline applied for and at the same practice level
23 as determined by the regulating entity and the license or certification is
24 in good standing in all states in which the person holds a license or
25 certification.

26 2. The person has been licensed or certified by another state for
27 at least one year.

28 3. When the person was licensed or certified by another state there
29 were minimum education requirements and, if applicable, work experience
30 and clinical supervision requirements in effect and the other state
31 verifies that the person met those requirements in order to be licensed or
32 certified in that state.

33 4. The person previously passed an examination required for the
34 license or certification if required by the other state.

35 5. The person has not had a license or certificate revoked and has
36 not voluntarily surrendered a license or certificate in any other state or
37 country while under investigation for unprofessional conduct.

38 6. The person has not had discipline imposed by any other
39 regulating entity. If another jurisdiction has taken disciplinary action
40 against the person, the regulating entity shall determine if the cause for
41 the action was corrected and the matter resolved. If the matter has not
42 been resolved by that jurisdiction, the regulating entity may not issue or
43 deny a license until the matter is resolved.

1 7. The person does not have a complaint, allegation or
2 investigation pending before another regulating entity in another state or
3 country that relates to unprofessional conduct. If an applicant has any
4 complaints, allegations or investigations pending, the regulating entity
5 in this state shall suspend the application process and may not issue or
6 deny a license to the applicant until the complaint, allegation or
7 investigation is resolved.

8 8. The person pays all applicable fees.

9 9. The person does not have a disqualifying criminal history as
10 determined by the regulating entity pursuant to section 41-1093.04.

11 B. This section does not prevent a regulating entity under this
12 title from entering into a reciprocity agreement with another state or
13 jurisdiction for persons married to active duty members of the armed
14 forces of the United States, except that the agreement may not allow
15 out-of-state licensees or certificate holders to obtain a license or
16 certificate by reciprocity in this state if the applicant has not met
17 standards that are substantially equivalent to or greater than the
18 standards required in this state as determined by the regulating entity on
19 a case-by-case basis.

20 C. Except as provided in subsection A of this section, a regulating
21 entity that administers an examination on laws of this state as part of
22 its license or certificate application requirement may require an
23 applicant to take and pass an examination specific to the laws of this
24 state.

25 D. A person who is licensed pursuant to this title is subject to
26 the laws regulating the person's practice in this state and is subject to
27 the regulating entity's jurisdiction.

28 E. This section does not apply to:

29 1. A license or registration certificate that is issued pursuant to
30 chapter 24 or 26 of this title.

31 2. Requirements for a fingerprint clearance card issued pursuant to
32 title 41, chapter 12, article 3.1.

33 3. Criteria for a license, permit or certificate of eligibility
34 that is established by an interstate compact.

35 4. The ability of a regulating entity under this title to require
36 an applicant to submit fingerprints in order to access state and federal
37 criminal records information for noncriminal justice purposes.

38 F. A license or certificate issued pursuant to this section is
39 valid only in this state and does not make the person eligible to be part
40 of an interstate compact. A regulating entity under this title may
41 determine eligibility for an applicant to be licensed or certified under
42 this section if the applicant is not part of an interstate compact.

1 G. A regulating entity under this title shall prominently print the
2 following notice on all license and certificate applications and
3 regulating entity websites:

4 Pursuant to section 32-4302, Arizona Revised Statutes, a
5 person shall be granted an occupational or professional
6 license or certificate if the person has been licensed or
7 certified in another state for at least twelve months, the
8 license or certificate is in the same discipline and at the
9 same practice level as the license or certificate for which
10 the person is applying in this state and the person meets
11 other conditions prescribed by section 32-4302, Arizona
12 Revised Statutes.

13 H. BEFORE ANY REGULATING ENTITY TAKES ANY OFFICIAL ACTION TO DENY A
14 PROFESSIONAL OR OCCUPATIONAL LICENSE THAT A PERSON APPLIES FOR PURSUANT TO
15 THIS SECTION, THE REGULATING ENTITY SHALL SUBMIT THE APPLICATION AND THE
16 REASON FOR DENIAL TO THE GOVERNOR FOR REVIEW. THE REGULATING ENTITY SHALL
17 NOTIFY THE GOVERNOR OF ANY REQUIRED TIME FRAMES FOR APPROVAL OR DENIAL OF
18 THE LICENSE APPLICATION BY THE REGULATING ENTITY.

19 I. BEGINNING JULY 1, 2022, ALL REGULATING ENTITIES THAT ARE
20 REQUIRED TO ISSUE OCCUPATIONAL OR PROFESSIONAL LICENSES PURSUANT TO THIS
21 SECTION SHALL TRACK INFORMATION ABOUT APPLICATIONS RECEIVED IN THE FORMAT
22 TO BE DETERMINED BY THE GOVERNOR AND ANNUALLY REPORT THAT INFORMATION TO
23 THE GOVERNOR.

24 J. FOR THE PURPOSES OF SUBSECTIONS H AND I OF THIS SECTION,
25 "REGULATING ENTITY":

26 1. MEANS ALL EXECUTIVE DEPARTMENTS, AGENCIES AND OFFICES AND ALL
27 STATE BOARDS AND COMMISSIONS.

28 2. DOES NOT INCLUDE:

29 (a) A STATE AGENCY THAT IS HEADED BY A SINGLE ELECTED STATE
30 OFFICIAL.

31 (b) THE CORPORATION COMMISSION.

32 (c) ANY BOARD OR COMMISSION ESTABLISHED BY BALLOT MEASURE AT OR
33 AFTER THE NOVEMBER 1998 GENERAL ELECTION.

34 (d) THE JUDICIARY.

35 Sec. 3. Title 32, chapter 43, article 1, Arizona Revised Statutes,
36 is amended by adding section 32-4304, to read:

37 32-4304. Occupational and professional licenses; websites;
38 reporting; definition

39 A. A REGULATING ENTITY THAT ISSUES OCCUPATIONAL OR PROFESSIONAL
40 LICENSES SHALL:

41 1. PROMINENTLY POST ON ITS WEBSITE HOME PAGE ALL CURRENT STATE
42 POLICIES THAT EASE LICENSING BURDENS AND THE EXACT STEPS APPLICANTS MUST
43 COMPLETE TO RECEIVE THEIR LICENSE USING SUCH POLICIES. POLICIES THAT EASE
44 LICENSING BURDENS INCLUDE THE FOLLOWING:

- 1 (a) UNIVERSAL RECOGNITION OF OUT-OF-STATE LICENSES.
2 (b) AVAILABILITY OF TEMPORARY LICENSES.
3 (c) FEE WAIVERS.
4 (d) EXAMINATION EXEMPTIONS.
5 (e) ALLOWING AN APPLICANT TO SUBSTITUTE MILITARY EDUCATION OR
6 EXPERIENCE FOR LICENSING REQUIREMENTS.
- 7 2. HAVE A DESIGNATED AREA ON ITS WEBSITE HOME PAGE THAT INCLUDES
8 LICENSING INFORMATION SPECIFICALLY FOR MILITARY SPOUSES, ACTIVE DUTY
9 SERVICE MEMBERS AND VETERANS AND ALL POLICIES THAT MAKE IT EASIER FOR THE
10 APPLICANT GROUPS TO RECEIVE A LICENSE.
- 11 3. DISPLAY ALL INFORMATION REQUIRED BY PARAGRAPHS 1 AND 2 OF THIS
12 SUBSECTION IN A LOCATION THAT IS EASY TO LOCATE AND SHALL USE LANGUAGE
13 THAT IS CLEAR AND CONCISE. A WEBSITE HOME PAGE FEATURE MAY LINK TO AN
14 INTERNAL WEBPAGE WITH MORE INFORMATION IF A REGULATING ENTITY DEEMS IT
15 NECESSARY.
- 16 4. BEGINNING JULY 1, 2022, TRACK WHETHER EACH APPLICANT IS A
17 VETERAN OR MILITARY SPOUSE AND SHALL ANNUALLY REPORT THE INFORMATION
18 GATHERED PURSUANT TO THIS PARAGRAPH TO THE GOVERNOR.
- 19 B. FOR THE PURPOSES OF THIS SECTION, "REGULATING ENTITY":
20 1. MEANS ALL EXECUTIVE DEPARTMENTS, AGENCIES AND OFFICES AND ALL
21 STATE BOARDS AND COMMISSIONS.
22 2. DOES NOT INCLUDE:
23 (a) A STATE AGENCY THAT IS HEADED BY A SINGLE ELECTED STATE
24 OFFICIAL.
25 (b) THE CORPORATION COMMISSION.
26 (c) ANY BOARD OR COMMISSION ESTABLISHED BY BALLOT MEASURE AT OR
27 AFTER THE NOVEMBER 1998 GENERAL ELECTION.
28 (d) THE JUDICIARY.
- 29 Sec. 4. Section 41-1009, Arizona Revised Statutes, is amended to
30 read:
31 41-1009. Inspections and audits; applicability; exceptions
32 A. An agency inspector, auditor or regulator who enters any
33 premises of a regulated person for the purpose of conducting an inspection
34 or audit shall, unless otherwise provided by law:
35 1. Present photo identification on entry of the premises.
36 2. On initiation of the inspection or audit, state the purpose of
37 the inspection or audit and the legal authority for conducting the
38 inspection or audit.
39 3. Disclose any applicable inspection or audit fees.
40 Notwithstanding any other law, a regulated person being inspected or
41 audited is responsible for only the direct and reasonable costs of the
42 inspection or audit and is entitled to receive a detailed billing
43 statement as described in paragraph 5, subdivision (e) of this subsection.

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

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

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

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

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

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

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

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

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

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

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

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

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

38 8. AT THE END OF THE INSPECTION, OFFER TO REVIEW, WITH AN
39 AUTHORIZED REPRESENTATIVE OF THE REGULATED PERSON, THE FINDINGS OF THE
40 INSPECTION AND WHAT AGENCY ACTIONS THE REGULATED PERSON CAN EXPECT.

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

1 1. The rights described in subsection A of this section and section
2 41-1001.01, subsection C.

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

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

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

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

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

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

- 1 D. An agency that conducts an inspection shall give a copy of the
2 inspection report to the regulated person or on-site representative of the
3 regulated person either:
- 4 1. At the time of the inspection.
 - 5 2. Notwithstanding any other state law, within thirty working days
6 after the inspection.
 - 7 3. As otherwise required by federal law.
- 8 E. The inspection report shall contain **ALLEGED** deficiencies
9 identified during an inspection. Unless otherwise provided by state or
10 federal law, the agency shall provide the regulated person an opportunity
11 to correct the **ALLEGED** deficiencies unless the agency documents in writing
12 as part of the inspection report that the **ALLEGED** deficiencies are:
- 13 1. Committed intentionally.
 - 14 2. Not correctable within a reasonable period of time as determined
15 by the agency.
 - 16 3. Evidence of a pattern of noncompliance **AS DEMONSTRATED BY**
17 **ALLEGED DEFICIENCIES PREVIOUSLY IDENTIFIED IN AN INSPECTION REPORT OR**
18 **OTHER WRITTEN NOTICE AT THE SAME PREMISES.**
 - 19 4. A **SIGNIFICANT** risk to any person, the public health, safety or
20 welfare or the environment.
- 21 F. If the agency is unsure whether a regulated person meets the
22 exemptions in subsection E of this section, the agency shall provide the
23 regulated person with an opportunity to correct the **ALLEGED** deficiencies.
- 24 G. If the agency allows the regulated person an opportunity to
25 correct the **ALLEGED** deficiencies pursuant to subsection E of this section,
26 the regulated person shall notify the agency when the **ALLEGED** deficiencies
27 have been corrected. Within thirty days after receipt of notification
28 from the regulated person that the **ALLEGED** deficiencies have been
29 corrected, the agency shall determine if the regulated person is in
30 substantial compliance and notify the regulated person whether or not the
31 regulated person is in substantial compliance. If the regulated person
32 fails to correct the **ALLEGED** deficiencies or the agency determines the
33 **ALLEGED** deficiencies have not been corrected within a reasonable period of
34 time, the agency may take any enforcement action authorized by law for the
35 **ALLEGED** deficiencies.
- 36 H. If the agency does not allow the regulated person an opportunity
37 to correct **ALLEGED** deficiencies pursuant to subsection E of this section,
38 on the request of the regulated person, the agency shall provide a
39 detailed written explanation of the reason that an opportunity to correct
40 was not allowed.
- 41 I. An agency decision pursuant to subsection E or G of this section
42 is not an appealable agency action.

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

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

14 1. A citation to the statute, regulation, license or permit
15 condition on which the allegation of ~~noncompliance~~ DEFICIENCY is based,
16 including the specific provisions in the statute, regulation, license or
17 permit condition that are alleged to be violated.

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

20 3. An explanation stated with reasonable specificity of the
21 regulatory and factual basis for the allegation of ~~noncompliance~~
22 DEFICIENCY.

23 4. Instructions for obtaining a timely opportunity to discuss the
24 alleged ~~violation~~ DEFICIENCIES with the agency.

25 L. Subsection K of this section applies only to inspections OR ANY
26 OTHER INVESTIGATIONS necessary for the issuance of a license or to
27 determine compliance with licensure or other regulatory requirements.
28 Subsection K of this section does not apply to an action taken pursuant to
29 section 11-871, 11-876, 11-877, 49-457.01, 49-457.03 or 49-474.01.
30 Issuance of a notice under subsection K of this section is not a
31 prerequisite to otherwise lawful agency actions seeking an injunction or
32 issuing an order if the agency determines that the action is necessary on
33 an expedited basis to abate an imminent and substantial endangerment to
34 public health or the environment and documents the basis for that
35 determination in the documents initiating the action.

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

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

1 41-1029 and articles 4, 4.1 and 5 of this chapter, unless otherwise
2 provided by law.

3 B. An agency shall not base a licensing decision in whole or in
4 part on a licensing requirement or condition that is not specifically
5 authorized by statute, rule or state tribal gaming compact. A general
6 grant of authority in statute does not constitute a basis for imposing a
7 licensing requirement or condition unless a rule is made pursuant to that
8 general grant of authority that specifically authorizes the requirement or
9 condition.

10 C. An agency shall not base a decision regarding any filing or
11 other matter submitted by a licensee on a requirement or condition that is
12 not specifically authorized by a statute, rule, federal law or regulation
13 or state tribal gaming compact. A general grant of authority in statute
14 does not constitute a basis for imposing a requirement or condition for
15 approval of a decision on any filing or other matter submitted by a
16 licensee unless a rule is made pursuant to that general grant of authority
17 that specifically authorizes the requirement or condition.

18 D. An agency shall not:

19 1. Make a rule under a specific grant of rulemaking authority that
20 exceeds the subject matter areas listed in the specific statute
21 authorizing the rule.

22 2. Make a rule under a general grant of rulemaking authority to
23 supplement a more specific grant of rulemaking authority.

24 3. MAKE A RULE THAT IS NOT SPECIFICALLY AUTHORIZED BY STATUTE.

25 E. This section may be enforced in a private civil action and
26 relief may be awarded against the state. The court may award reasonable
27 attorney fees, damages and all fees associated with the license
28 application to a party that prevails in an action against the state for a
29 violation of this section.

30 F. A state employee may not intentionally or knowingly violate this
31 section. A violation of this section is cause for disciplinary action or
32 dismissal pursuant to the agency's adopted personnel policy.

33 G. This section does not abrogate the immunity provided by section
34 12-820.01 or 12-820.02.

35 H. An agency shall prominently print the provisions of subsections
36 B, E, F and G of this section on all license applications, except license
37 applications processed by the corporation commission.

38 I. The license application may be in either print or electronic
39 format.

40 Sec. 6. Repeal

41 Section 41-1033, Arizona Revised Statutes, as amended by Laws 2021,
42 chapter 405, section 23, is repealed.

1 Sec. 7. Section 41-1033, Arizona Revised Statutes, as amended by
2 Laws 2021, chapter 340, section 1, is amended to read:

3 41-1033. Petition for a rule or review of an agency practice,
4 substantive policy statement, final rule or unduly
5 burdensome licensing requirement; notice

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

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

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

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

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

17 1. Reject the petition and state its reasons in writing for
18 rejection to the petitioner.

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

20 3. If otherwise lawful, make a rule.

21 D. The agency's response to the petition is open to public
22 inspection.

23 E. If an agency rejects a petition pursuant to subsection C of this
24 section, the petitioner has thirty days to appeal to the council to review
25 whether the existing agency practice or substantive policy statement
26 constitutes a rule. ~~The council chairperson shall place this appeal on~~
27 ~~the agenda of the council's next meeting if at least three council members~~
28 ~~make such a request of the council chairperson within two weeks after the~~
29 ~~filing of the appeal.~~ 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

1 THAN FIVE DOUBLE-SPACED PAGES. This subsection does not apply to an
2 individual or institution that is subject to title 36, chapter 4, article
3 10 or chapter 20.

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

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

17 (a) The agency practice or substantive policy statement constitutes
18 a rule.

19 (b) The final rule meets the requirements prescribed in section
20 41-1030.

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

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

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

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

35 (b) The final rule meets the requirements prescribed in section
36 41-1030.

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

41 I. AT THE HEARING, THE COUNCIL SHALL ALLOCATE THE PETITIONER AND
42 THE AGENCY AN EQUAL AMOUNT OF TIME FOR ORAL COMMENTS NOT INCLUDING ANY
43 TIME SPENT ANSWERING QUESTIONS RAISED BY COUNCIL MEMBERS. THE COUNCIL MAY

1 ALSO ALLOCATE TIME FOR MEMBERS OF THE PUBLIC WHO HAVE AN INTEREST IN THE
2 ISSUE TO PROVIDE ORAL COMMENTS.

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

6 ~~K.~~ K. An agency practice, substantive policy statement, final rule
7 or regulatory licensing requirement considered by the council pursuant to
8 this section shall remain in effect while under consideration of the
9 council. If the council determines that the agency practice, ~~or~~
10 substantive policy statement OR REGULATORY LICENSING REQUIREMENT EXCEEDS
11 THE AGENCY'S STATUTORY AUTHORITY, IS NOT AUTHORIZED BY STATUTE OR
12 constitutes a rule or that the final rule does not meet the requirements
13 prescribed in section 41-1030, the practice, policy statement, rule or
14 regulatory licensing requirement shall be ~~considered~~ void. If the council
15 determines that the existing agency practice, substantive policy
16 statement, final rule or regulatory licensing requirement is unduly
17 burdensome or is not demonstrated to be necessary to specifically fulfill
18 a public health, safety or welfare concern, the council ~~may~~ SHALL modify,
19 revise or declare void any such existing agency practice, substantive
20 policy statement, final rule or regulatory licensing requirement. IF AN
21 AGENCY DECIDES TO FURTHER PURSUE A PRACTICE, SUBSTANTIVE POLICY STATEMENT
22 OR REGULATORY LICENSING REQUIREMENT THAT HAS BEEN DECLARED VOID OR HAS
23 BEEN MODIFIED OR REVISED BY THE COUNCIL, THE AGENCY MAY DO SO ONLY
24 PURSUANT TO A NEW RULEMAKING.

25 ~~L.~~ L. A council decision pursuant to this section shall BE MADE BY
26 A MAJORITY OF THE COUNCIL MEMBERS WHO ARE PRESENT AND VOTING ON THE ISSUE.
27 ~~include findings of fact and conclusions of law, separately~~
28 ~~stated. Conclusions of law shall specifically address the agency's~~
29 ~~authority to act consistent with section 41-1030.~~ NOTWITHSTANDING ANY
30 OTHER LAW, THE COUNCIL MAY NOT BASE ANY DECISION CONCERNING AN AGENCY'S
31 COMPLIANCE WITH THE REQUIREMENTS OF SECTION 41-1030 IN ISSUING A FINAL
32 RULE OR SUBSTANTIVE POLICY STATEMENT ON WHETHER ANY PARTY OR PERSON
33 COMMENTED ON THE RULEMAKING OR SUBSTANTIVE POLICY STATEMENT.

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

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

1 AUDITOR GENERAL RECOMMENDATION OR RULES THAT ARE NECESSARY TO ADDRESS A
2 NEW STATUTORY REQUIREMENT.

3 D. A STATE AGENCY MAY NOT PUBLICIZE ANY DIRECTIVES, POLICY
4 STATEMENTS, DOCUMENTS OR FORMS ON ITS WEBSITE UNLESS THE DIRECTIVE, POLICY
5 STATEMENT, DOCUMENT OR FORM IS AUTHORIZED BY STATUTE OR RULE. A STATE
6 AGENCY SHALL REMOVE MATERIAL NOT AUTHORIZED BY STATUTE OR RULE FROM ITS
7 WEBSITE ON THE EFFECTIVE DATE OF THIS SECTION.

8 E. FOR THE PURPOSES OF THIS SECTION, "STATE AGENCY":

9 1. INCLUDES ALL EXECUTIVE DEPARTMENTS, AGENCIES AND OFFICES AND ALL
10 STATE BOARDS AND COMMISSIONS.

11 2. DOES NOT INCLUDE:

12 (a) A STATE AGENCY THAT IS HEADED BY A SINGLE ELECTED STATE
13 OFFICIAL.

14 (b) THE CORPORATION COMMISSION.

15 (c) ANY BOARD OR COMMISSION ESTABLISHED BY BALLOT MEASURE AT OR
16 AFTER THE NOVEMBER 1998 GENERAL ELECTION.

17 (d) THE JUDICIARY.

18 Sec. 9. Section 41-1092, Arizona Revised Statutes, is amended to
19 read:

20 41-1092. Definitions

21 In this article, unless the context otherwise requires:

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

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

30 3. "ADVERSELY AFFECTED PARTY" MEANS:

31 (a) AN INDIVIDUAL WHO BOTH:

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

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

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

41 ~~3.~~ 4. "Appealable agency action" means an action that determines
42 the legal rights, duties or privileges of a party, including the
43 administrative completeness of an application other than an application
44 submitted to the department of water resources pursuant to title 45, and

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

11 ~~4.~~ 5. "Director" means the director of the office of
12 administrative hearings.

13 ~~5.~~ 6. "Final administrative decision" means a decision by an
14 agency that is subject to judicial review pursuant to title 12, chapter 7,
15 article 6.

16 7. "LICENSEE":

17 (a) MEANS ANY INDIVIDUAL OR BUSINESS ENTITY THAT HAS BEEN ISSUED A
18 LICENSE BY A STATE AGENCY TO ENGAGE IN ANY BUSINESS OR ACTIVITY IN THIS
19 STATE AND THAT IS SUBJECT TO A LICENSING DECISION.

20 (b) INCLUDES ANY INDIVIDUAL OR BUSINESS ENTITY THAT HAS APPLIED FOR
21 SUCH A LICENSE AND THAT APPEALS A LICENSING DECISION PURSUANT TO SECTION
22 41-1092.08 OR 41-1092.12.

23 ~~6.~~ 8. "Office" means the office of administrative hearings.

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

26 (a) The Arizona state board of accountancy.

27 (b) The barbering and cosmetology board.

28 (c) The board of behavioral health examiners.

29 (d) The Arizona state boxing and mixed martial arts commission.

30 (e) The state board of chiropractic examiners.

31 (f) The state board of dental examiners.

32 (g) The state board of funeral directors and embalmers.

33 (h) The Arizona game and fish commission.

34 (i) The board of homeopathic and integrated medicine examiners.

35 (j) The Arizona medical board.

36 (k) The naturopathic physicians medical board.

37 (l) The Arizona state board of nursing.

38 (m) The board of examiners of nursing care institution
39 administrators and assisted living facility managers.

40 (n) The board of occupational therapy examiners.

41 (o) The state board of dispensing opticians.

42 (p) The state board of optometry.

43 (q) The Arizona board of osteopathic examiners in medicine and
44 surgery.

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

14 Sec. 10. Section 41-1092.03, Arizona Revised Statutes, is amended
15 to read:

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

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

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

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

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

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

31 B. A party may obtain a hearing on an appealable agency action or
32 contested case by filing a notice of appeal or request for a hearing with
33 the agency within thirty days after receiving the notice prescribed in
34 subsection A of this section. The notice of appeal or request for a
35 hearing may be filed by a party whose legal rights, duties or privileges
36 were determined by the appealable agency action or contested case. A
37 notice of appeal or request for a hearing also may be filed by a party who
38 will be adversely affected by the appealable agency action or contested
39 case and who exercised any right provided by law to comment on the action
40 being appealed or contested, provided that the grounds for the notice of
41 appeal or request for a hearing are limited to issues raised in that
42 party's comments. The notice of appeal or request for a hearing shall
43 identify the party, the party's address, the agency and the action being
44 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
4 LAW, IF APPLICABLE, 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.

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

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

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

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

21 Sec. 11. Section 41-1092.07, Arizona Revised Statutes, is amended
22 to read:

23 41-1092.07. Hearings

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

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

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

37 D. All parties shall have the opportunity to respond and present
38 evidence and argument on all relevant issues. All relevant evidence is
39 admissible, but the administrative law judge may exclude evidence if its
40 probative value is outweighed by the danger of unfair prejudice, by
41 confusion of the issues or by considerations of undue delay, waste of time
42 or needless presentation of cumulative evidence. The administrative law
43 judge shall exercise reasonable control over the manner and order of
44 cross-examining witnesses and presenting evidence to make the

1 cross-examination and presentation effective for ascertaining the truth,
2 avoiding needless consumption of time and protecting witnesses from
3 harassment or undue embarrassment.

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

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

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

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

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

38 4. On application of a party or the agency and for use as evidence,
39 the administrative law judge may permit a deposition to be taken, in the
40 manner and on the terms designated by the administrative law judge, of a
41 witness who cannot be subpoenaed or who is unable to attend the hearing.
42 THE ADMINISTRATIVE LAW JUDGE MAY ORDER subpoenas for the production of
43 documents ~~may be ordered by the administrative law judge~~ if the party
44 seeking the discovery demonstrates that the party has reasonable need of

1 the materials being sought. All provisions of law compelling a person
2 under subpoena to testify are applicable. Fees for attendance as a
3 witness shall be the same as for a witness in court, unless otherwise
4 provided by law or agency rule. Notwithstanding section 12-2212,
5 subpoenas, depositions or other discovery shall not be permitted except as
6 provided by this paragraph or subsection C of this section.

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

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

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

17 G. Except as otherwise provided by law:

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

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

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

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

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

31 Sec. 12. Section 41-1092.08, Arizona Revised Statutes, is amended
32 to read:

33 41-1092.08. Final administrative decisions; review; exception

34 A. The administrative law judge of the office shall issue a written
35 decision within twenty days after the hearing is concluded. The written
36 decision shall contain a concise explanation of the reasons supporting the
37 decision, including the findings of fact and conclusions of law. The
38 administrative law judge shall serve a copy of the decision on ~~the agency~~
39 ALL PARTIES TO THE CONTESTED CASE OR APPEALABLE AGENCY ACTION. On request
40 of the agency, the office shall also transmit to the agency the record of
41 the hearing as described in section 12-904, except as provided in section
42 41-1092.01, subsection F.

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

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

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

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

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

42 1. The agency head, executive director, board or commission does
43 not review the administrative law judge's decision pursuant to
44 subsection B of this section or does not reject or modify the

1 administrative law judge's decision as provided in subsection D of this
2 section, in which case the administrative law judge's decision is the
3 final administrative decision.

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

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

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

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

24 I. EXCEPT FOR A LICENSING DECISION CONCERNING THE ADMINISTRATIVE
25 COMPLETENESS OF AN APPLICATION SUBMITTED BY A LICENSEE OR A LICENSING
26 DECISION WHERE THE AGENCY, EXECUTIVE DIRECTOR, BOARD OR COMMISSION HAS
27 DETERMINED THAT THE LICENSEE POSES A THREAT OF GRAVE HARM OR DANGER TO THE
28 PUBLIC OR HAS ACTED WITH COMPLETE DISREGARD FOR THE WELL-BEING OF THE
29 PUBLIC IN ENGAGING OR IN BEING ALLOWED TO ENGAGE IN THE LICENSEE'S
30 REGULATED BUSINESS ACTIVITY, FOR ANY APPEALABLE AGENCY ACTION OR CONTESTED
31 CASE INVOLVING A LICENSING DECISION, THE LICENSEE MAY ACCEPT THE DECISION
32 NOT MORE THAN TEN DAYS AFTER RECEIVING THE ADMINISTRATIVE LAW JUDGE'S
33 WRITTEN DECISION. IF THE LICENSEE ACCEPTS THE ADMINISTRATIVE LAW JUDGE'S
34 WRITTEN DECISION, THE DECISION SHALL BE CERTIFIED AS THE FINAL DECISION BY
35 THE OFFICE. IF THE LICENSEE DOES NOT ACCEPT THE ADMINISTRATIVE LAW
36 JUDGE'S WRITTEN DECISION AS THE FINAL DECISION IN THE MATTER, THE HEAD OF
37 THE AGENCY, EXECUTIVE DIRECTOR, BOARD OR COMMISSION MAY REVIEW THE
38 DECISION AND ACCEPT, REJECT OR MODIFY THE DECISION. IF THE HEAD OF THE
39 AGENCY, EXECUTIVE DIRECTOR, BOARD OR COMMISSION INTENDS TO REJECT OR
40 MODIFY THE DECISION, THE PARTIES SHALL MEET AND CONFER, WITHIN THIRTY DAYS
41 AFTER RECEIVING THE ADMINISTRATIVE LAW JUDGE'S DECISION PURSUANT TO
42 SUBSECTION A OF THIS SECTION, CONCERNING THE AGENCY'S PROPOSED
43 MODIFICATIONS TO THE FINDINGS OF FACT AND CONCLUSIONS OF LAW. WITHIN
44 TWENTY DAYS AFTER CONFERRING, THE HEAD OF THE AGENCY, EXECUTIVE DIRECTOR,

1 BOARD OR COMMISSION SHALL FILE ITS FINAL DECISION IN ACCORDANCE WITH
2 SUBSECTION B OF THIS SECTION. THIS SUBSECTION DOES NOT APPLY TO ANY
3 APPEALABLE AGENCY ACTIONS OF THE DEPARTMENT OF WATER RESOURCES PURSUANT TO
4 TITLE 45.

5 ~~+~~ J. This section does not apply to the Arizona peace officer
6 standards and training board established by section 41-1821.

7 Sec. 13. Section 41-1092.12, Arizona Revised Statutes, is amended
8 to read:

9 41-1092.12. Private right of action; recovery of costs and
10 fees; definitions

11 A. If an agency takes an action against a party that is arbitrary,
12 capricious or not in accordance with law, the action is an appealable
13 agency action if all of the following apply:

14 1. Within ten days after RECEIVING NOTIFICATION OF the action that
15 is arbitrary, capricious or not in accordance with law, the party notifies
16 the director of the agency in writing of the party's intent to file a
17 claim pursuant to this section. This notice shall include a description
18 of the action the party claims to be arbitrary, capricious or not in
19 accordance with law and reasons why the action is arbitrary, capricious or
20 not in accordance with law.

21 2. The agency continues the action that is arbitrary, capricious or
22 not in accordance with law more than ten days after the agency receives
23 the notice.

24 3. The action is not excluded from the definition of appealable
25 agency action as defined in section 41-1092.

26 B. This section only applies if an administrative remedy or an
27 administrative or a judicial appeal of final agency action is not
28 otherwise provided by law.

29 C. If the party prevails, the agency shall pay reasonable costs and
30 fees to the party from any monies appropriated to the agency and available
31 for that purpose or from other operating monies of the agency. If the
32 agency fails or refuses to pay the award within fifteen days after the
33 demand, and if no further review or appeal of the award is pending, the
34 prevailing party may file a claim with the department of
35 administration. The department of administration shall pay the claim
36 within thirty days in the same manner as an uninsured property loss under
37 ~~title 41~~, chapter 3.1, article 1 OF THIS TITLE, except that the agency is
38 responsible for the total amount awarded and shall pay it from its
39 operating monies. If the agency had appropriated monies available for
40 paying the award at the time it failed or refused to pay, the legislature
41 shall reduce the agency's operating appropriation for the following fiscal
42 year by the amount of the award and shall appropriate that amount to the
43 department of administration as reimbursement for the loss.

1 D. If the administrative law judge determines that the appealable
2 agency action is frivolous, the administrative law judge may require the
3 party to pay reasonable costs and fees to the agency in responding to the
4 appeal filed before the office of administrative hearings.

5 E. NOTWITHSTANDING ANY OTHER LAW, A LICENSEE MAY FORGO AN
6 ADMINISTRATIVE APPEAL AND SEEK JUDICIAL REVIEW OF AN AGENCY'S GRANT,
7 DENIAL, MODIFICATION OR REVOCATION OF A PERMIT ISSUED PURSUANT TO TITLE
8 49.

9 ~~E.~~ F. For the purposes of this section:

10 1. "Action against the party" means any of the following that
11 results in the expenditure of costs and fees:

- 12 (a) A decision.
- 13 (b) An inspection.
- 14 (c) An investigation.
- 15 (d) The entry of private property.
- 16 (e) A NOTICE OF VIOLATION.

17 2. "Agency" means the department of environmental quality
18 established pursuant to title 49, chapter 1, article 1.

19 3. "Costs and fees" means reasonable attorney and professional
20 fees.

21 4. "NOTICE OF VIOLATION" MEANS A WRITTEN NOTICE ISSUED AFTER AN
22 INSPECTION OR INVESTIGATION PURSUANT TO SECTION 41-1009 THAT DOCUMENTS AND
23 COMMUNICATES AN ALLEGED DEFICIENCY MEETING ONE OR MORE OF THE CRITERIA
24 LISTED IN SECTION 41-1009, SUBSECTION E.

25 ~~4.~~ 5. "Party" means an individual, partnership, corporation,
26 association and public or private organization at whom the action was
27 directed and who has expended costs and fees as a result of the action
28 against the party.