

House Engrossed

administrative rules oversight committee; dissent

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

# HOUSE BILL 2491

AN ACT

AMENDING SECTIONS 41-1001.01, 41-1011, 41-1031, 41-1048 AND 41-1051,  
ARIZONA REVISED STATUTES; RELATING TO RULEMAKING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:  
2 Section 1. Section 41-1001.01, Arizona Revised Statutes, is amended  
3 to read:  
4 41-1001.01. Regulatory bill of rights; small businesses  
5 A. To ensure fair and open regulation by state agencies, a person:  
6 1. Is eligible for reimbursement of fees and other expenses if the  
7 person prevails by adjudication on the merits against an agency in a court  
8 proceeding regarding an agency decision as provided in section 12-348.  
9 2. Is eligible for reimbursement of the person's costs and fees if  
10 the person prevails against any agency in an administrative hearing as  
11 provided in section 41-1007.  
12 3. Is entitled to have an agency not charge the person a fee unless  
13 the fee for the specific activity is expressly authorized as provided in  
14 section 41-1008.  
15 4. Is entitled to receive the information and notice regarding  
16 inspections and audits prescribed in section 41-1009.  
17 5. May review the full text or summary of all rulemaking activity,  
18 the summary of substantive policy statements and the full text of  
19 executive orders in the register as provided in article 2 of this chapter.  
20 6. May participate in the rulemaking process as provided in  
21 articles 3, 4, 4.1 and 5 of this chapter, including:  
22 (a) Providing written comments or testimony on proposed rules to an  
23 agency as provided in section 41-1023 and having the agency adequately  
24 address those comments as provided in section 41-1052, subsection D,  
25 including comments or testimony concerning the information contained in  
26 the economic, small business and consumer impact statement.  
27 (b) Filing an early review petition with the governor's regulatory  
28 review council as provided in article 5 of this chapter.  
29 (c) Providing written comments or testimony on rules to the  
30 governor's regulatory review council during the mandatory sixty-day  
31 comment period as provided in article 5 of this chapter.  
32 7. Is entitled to have an agency not base a licensing decision in  
33 whole or in part on licensing conditions or requirements that are not  
34 specifically authorized by statute, rule or state tribal gaming compact as  
35 provided in section 41-1030, subsection B.  
36 8. Is entitled to have an agency not base a decision regarding any  
37 filing or other matter submitted to an agency on a requirement or  
38 condition that is not specifically authorized by a statute, rule, federal  
39 law or regulation or state tribal gaming compact as provided in section  
40 41-1030, subsection C.  
41 9. Is entitled to have an agency not make a rule under a specific  
42 grant of rulemaking authority that exceeds the subject matter areas listed  
43 in the specific statute or not make a rule under a general grant of  
44 rulemaking authority to supplement a more specific grant of rulemaking  
45 authority as provided in section 41-1030, subsection D.

1           10. May allege that an existing agency practice or substantive  
2 policy statement constitutes a rule and have that agency practice or  
3 substantive policy statement declared void because the practice or  
4 substantive policy statement constitutes a rule as provided in section  
5 41-1033.

6           11. May file a complaint with the administrative rules oversight  
7 committee concerning:

8           (a) A rule's, practice's or substantive policy statement's lack of  
9 conformity with statute or legislative intent as provided in section  
10 41-1047.

11           (b) An existing statute, rule, practice alleged to constitute a  
12 rule or substantive policy statement that is alleged to be duplicative, ~~or~~  
13 onerous, **INCONSISTENT WITH LEGISLATIVE INTENT OR BEYOND AN AGENCY'S**  
14 **STATUTORY AUTHORITY** as provided in section 41-1048.

15           12. May have the person's administrative hearing on contested cases  
16 and appealable agency actions heard by an independent administrative law  
17 judge as provided in articles 6 and 10 of this chapter.

18           13. May have administrative hearings governed by uniform  
19 administrative appeal procedures as provided in articles 6 and 10 of this  
20 chapter and may appeal a final administrative decision by filing a notice  
21 of appeal pursuant to title 12, chapter 7, article 6.

22           14. May have an agency approve or deny the person's license  
23 application within a predetermined period of time as provided in article  
24 7.1 of this chapter.

25           15. Is entitled to receive written notice from an agency on denial  
26 of a license application:

27           (a) That justifies the denial with references to the statutes or  
28 rules on which the denial is based as provided in section 41-1076.

29           (b) That explains the applicant's right to appeal the denial as  
30 provided in section 41-1076.

31           16. Is entitled to receive information regarding the license  
32 application process before or at the time the person obtains an  
33 application for a license as provided in sections 41-1001.02 and 41-1079.

34           17. May receive public notice and participate in the adoption or  
35 amendment of agreements to delegate agency functions, powers or duties to  
36 political subdivisions as provided in section 41-1026.01 and article 8 of  
37 this chapter.

38           18. May inspect all rules and substantive policy statements of an  
39 agency, including a directory of documents, in the office of the agency  
40 director as provided in section 41-1091.

41           19. May file a complaint with the office of the ombudsman-citizens  
42 aide to investigate administrative acts of agencies as provided in chapter  
43 8, article 5 of this title.

44           20. Unless specifically authorized by statute, may expect state  
45 agencies to avoid duplication of other laws that do not enhance regulatory

1 clarity and to avoid dual permitting to the extent practicable as  
2 prescribed in section 41-1002.

3 21. May have the person's administrative hearing on contested cases  
4 pursuant to title 23, chapter 2 or 4 heard by an independent  
5 administrative law judge as prescribed by title 23, chapter 2 or 4.

6 22. Pursuant to section 41-1009, subsection E, may correct  
7 deficiencies identified during an inspection unless otherwise provided by  
8 law.

9 B. The enumeration of the rights listed in subsection A of this  
10 section does not grant any additional rights that are not prescribed in  
11 the sections referenced in subsection A of this section.

12 C. Each state agency that conducts audits, inspections or other  
13 regulatory enforcement actions pursuant to section 41-1009 shall create  
14 and clearly post on the agency's website a small business bill of rights.  
15 The agency shall create the small business bill of rights by selecting the  
16 applicable rights prescribed in this section and section 41-1009 and any  
17 other agency-specific statutes and rules. The agency shall provide a  
18 written document of the small business bill of rights to the authorized  
19 on-site representative of the regulated small business. In addition to  
20 the rights listed in this section and section 41-1009, the agency notice  
21 of the small business bill of rights shall include the process by which a  
22 small business may file a complaint with the agency employees who are  
23 designated to assist members of the public or regulated community pursuant  
24 to section 41-1006. The notice must provide the contact information of  
25 the agency's designated employees. The agency notice must also state that  
26 if the regulated person has already made a reasonable effort with the  
27 agency to resolve the problem and still has not been successful, the  
28 regulated person may contact the office of ombudsman-citizens aide.

29 Sec. 2. Section 41-1011, Arizona Revised Statutes, is amended to  
30 read:

31 41-1011. Preparation and publication: code and register:  
32 dissent letters

33 A. The secretary of state shall prepare and publish the code and  
34 register.

35 B. The secretary of state shall prescribe a uniform numbering  
36 system and have reasonable discretion to determine the form and style for  
37 rules filed with and published by the office. The secretary of state  
38 shall refuse to accept a rule notice or other notice filing if the notice  
39 or filing does not comply with the secretary of state's prescribed filing  
40 requirements, numbering system, form and style.

41 C. The secretary of state shall assign titles and chapters to  
42 agencies and prepare, arrange and correlate rules and other text as  
43 necessary when publishing the code and register. The secretary of state  
44 may not alter the sense, meaning or effect of any rule but may renumber  
45 rules and parts of rules, rearrange rules, change reference numbers to

1 agree with renumbered rules and parts of rules, substitute the proper rule  
2 number for "the preceding rule" and similar terms, delete figures if they  
3 are merely a repetition of written words, change capitalization for the  
4 purpose of uniformity and correct manifest clerical or typographical  
5 errors. With the consent of the attorney general, the secretary of state  
6 may remove from the code a provision of a rule that a court of final  
7 appeal declares unconstitutional or otherwise invalid and a rule made by  
8 an agency that is abolished if the rule is not transferred to a successor  
9 agency. The secretary of state shall remove a rule from the code when  
10 notified by the governor's regulatory review council that the rule has  
11 expired pursuant to section 41-1056, subsection J.

12 D. THE SECRETARY OF STATE SHALL PREPARE AND PUBLISH A DISSENT  
13 LETTER FILED PURSUANT TO SECTION 41-1048 WITH THE CORRESPONDING RULE IN  
14 THE CODE AND REGISTER.

15 Sec. 3. Section 41-1031, Arizona Revised Statutes, is amended to  
16 read:

17 41-1031. Filing rules and preamble with secretary of state;  
18 administrative oversight committee dissent letter;  
19 permanent record

20 A. Following the filing of a rule made pursuant to an exemption to  
21 this chapter, ~~or~~ following approval and filing of a rule and preamble and  
22 an economic, small business and consumer impact statement by the council  
23 as provided in article 5 of this chapter or by the attorney general as  
24 provided in article 4 of this chapter **OR FOLLOWING THE FILING OF A DISSENT**  
25 **LETTER BY THE COMMITTEE PURSUANT TO SECTION 41-1048**, the secretary of  
26 state shall affix to each rule document, preamble, ~~and~~ economic, small  
27 business and consumer impact statement **AND DISSENT LETTER** the time and  
28 date of filing. A rule is not final until the secretary of state affixes  
29 the time and date of filing to the rule document as provided in this  
30 section.

31 B. The secretary of state shall keep a permanent record of rules,  
32 preambles, ~~and~~ economic, small business and consumer impact statements **AND**  
33 **DISSENT LETTERS** filed with the office.

34 Sec. 4. Section 41-1048, Arizona Revised Statutes, is amended to  
35 read:

36 41-1048. Committee review; duplicative or onerous statutes,  
37 rules, practices alleged to constitute rules and  
38 substantive policy statements; legislative intent;  
39 inconsistency; statutory authority

40 A. The committee shall receive complaints concerning statutes,  
41 rules, agency practices alleged to constitute rules and substantive policy  
42 statements that are alleged to be duplicative, ~~or~~ onerous, **INCONSISTENT**  
43 **WITH LEGISLATIVE INTENT OR BEYOND AN AGENCY'S STATUTORY AUTHORITY**. The  
44 committee may review any statutes, rules, agency practices alleged to  
45 constitute rules or substantive policy statements alleged to be

1 duplicative, ~~or~~ onerous, INCONSISTENT WITH LEGISLATIVE INTENT OR BEYOND AN  
2 AGENCY'S STATUTORY AUTHORITY and may hold hearings regarding the  
3 allegations. The committee may comment to an agency, the attorney  
4 general, the council or the legislature on whether the statutes, rules,  
5 agency practices alleged to constitute rules or substantive policy  
6 statements are duplicative, ~~or~~ onerous, INCONSISTENT WITH LEGISLATIVE  
7 INTENT OR BEYOND AN AGENCY'S STATUTORY AUTHORITY. The comments may  
8 include committee recommendations for ENSURING CONSISTENCY WITH  
9 LEGISLATIVE INTENT OR alleviating the duplicative or onerous aspects of  
10 the statutes, rules, agency practices alleged to constitute rules and  
11 substantive policy statements.

12 B. THE COMMITTEE MAY PREPARE A DISSENT LETTER EXPRESSING  
13 DISAGREEMENT WITH ANY STATUTES, RULES, AGENCY PRACTICES ALLEGED TO  
14 CONSTITUTE RULES OR SUBSTANTIVE POLICY STATEMENTS THAT ARE DUPLICATIVE,  
15 ONEROUS, INCONSISTENT WITH LEGISLATIVE INTENT OR BEYOND AN AGENCY'S  
16 STATUTORY AUTHORITY. THE DISSENT LETTER SHALL BE FILED WITH THE SECRETARY  
17 OF STATE AND PLACED IN THE CODE PURSUANT TO SECTION 41-1011.

18 ~~B.~~ C. The committee shall prepare a report to the legislature by  
19 December 1 of each year recommending legislation to ENSURE CONSISTENCY  
20 WITH LEGISLATIVE INTENT AND TO alleviate the effects of duplicative or  
21 onerous statutes, rules, agency practices alleged to constitute rules and  
22 substantive policy statements.

23 ~~C.~~ D. This section applies to all statutes, rules, agency  
24 practices alleged to constitute rules and substantive policy statements,  
25 regardless of whether the statutes, rules, agency practices alleged to  
26 constitute rules or substantive policy statements were enacted or made  
27 before or after January 1, 1996.

28 Sec. 5. Section 41-1051, Arizona Revised Statutes, is amended to  
29 read:

30 41-1051. Governor's regulatory review council; membership;  
31 terms; compensation; powers

32 A. The governor's regulatory review council is established  
33 consisting of ~~six~~ EIGHT members who are appointed by the governor pursuant  
34 to section 38-211 and who are subject to sections 38-291 and 38-295 and  
35 the director of the department of administration or the assistant director  
36 of the department of administration who is responsible for administering  
37 the council. The director or assistant director is an ex officio member  
38 and chairperson of the council. The council shall elect a  
39 ~~vice-chairperson~~ VICE CHAIRPERSON to serve as chairperson in the  
40 chairperson's absence. The governor shall appoint at least one member who  
41 represents the public interest, at least one member who represents the  
42 business community, at least one member who is a small business owner, ~~one~~  
43 ~~member~~ TWO MEMBERS from a list of three persons who are not legislators  
44 submitted by the president of the senate and ~~one member~~ TWO MEMBERS from a  
45 list of three persons who are not legislators submitted by the speaker of

1 the house of representatives. At least one member of the council shall be  
2 an attorney licensed to practice law in this state. The governor shall  
3 appoint the members of the council for staggered terms of three years. A  
4 vacancy occurring during the term of office of any member shall be filled  
5 by appointment by the governor for the unexpired portion of the term in  
6 the same manner as provided in this section.

7 B. The council shall meet at least once a month at a time and place  
8 set by the chairperson and at other times and places as the chairperson  
9 deems necessary.

10 C. Members of the council are eligible to receive compensation in  
11 an amount of ~~two hundred dollars~~ \$200 for each day on which the council  
12 meets and reimbursement of expenses pursuant to title 38, chapter 4,  
13 article 2.

14 D. The chairperson, subject to chapter 4, article 4 and, as  
15 applicable, articles 5 and 6 of this title, shall employ, determine the  
16 conditions of employment of and specify the duties of administrative,  
17 secretarial and clerical employees as the chairperson deems necessary.

18 E. The council may make rules pursuant to this chapter to carry out  
19 the purposes of this chapter.

20 F. The council shall make a list of agency rules approved or  
21 returned pursuant to sections 41-1027 and 41-1052 and section 41-1056,  
22 subsection C for the previous twelve-month period available to the public  
23 on request and on the council's website.