

REFERENCE TITLE: nonhealth regulatory boards; challenges; prohibition

State of Arizona
Senate
Fifty-sixth Legislature
Second Regular Session
2024

SB 1634

Introduced by
Senator Hoffman

AN ACT

AMENDING SECTIONS 41-1092.08 AND 41-3505, ARIZONA REVISED STATUTES;
RELATING TO NONHEALTH PROFESSION REGULATORY BOARDS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 41-1092.08, Arizona Revised Statutes, is amended
3 to read:

4 41-1092.08. Final administrative decisions; review; exception

5 A. The administrative law judge of the office shall issue a written
6 decision within twenty days after the hearing is concluded. The written
7 decision shall contain a concise explanation of the reasons supporting the
8 decision, including the findings of fact and conclusions of law. The
9 administrative law judge shall serve a copy of the decision on all parties
10 to the contested case or appealable agency action. On request of the
11 agency, the office shall also transmit to the agency the record of the
12 hearing as described in section 12-904, except as provided in section
13 41-1092.01, subsection F.

14 B. Within thirty days after the date the office sends a copy of the
15 administrative law judge's decision to the head of the agency, executive
16 director, board or commission, the head of the agency, executive director,
17 board or commission may review the decision and accept, reject or modify
18 it. If the head of the agency, executive director, board or commission
19 declines to review the administrative law judge's decision, the agency
20 shall serve a copy of the decision on all parties. If the head of the
21 agency, executive director, board or commission rejects or modifies the
22 decision, the agency head, executive director, board or commission must
23 file with the office, except as provided in section 41-1092.01,
24 subsection F, and serve on all parties a copy of the administrative law
25 judge's decision with the rejection or modification and a written
26 justification setting forth the reasons for the rejection or modification
27 of each finding of fact or conclusion of law. If there is a rejection or
28 modification of a conclusion of law, the written justification shall be
29 sent to the president of the senate and the speaker of the house of
30 representatives. **THIS SUBSECTION DOES NOT APPLY TO NONHEALTH PROFESSION
31 REGULATORY BOARDS PURSUANT TO CHAPTER 33 OF THIS TITLE.**

32 C. A board or commission **THAT IS NOT A NONHEALTH PROFESSION
33 REGULATORY BOARD PURSUANT TO CHAPTER 33 OF THIS TITLE AND** whose members
34 are appointed by the governor may review the decision of the agency head,
35 as provided by law, and make the final administrative decision.

36 D. Except as otherwise provided in this subsection, if the head of
37 the agency, the executive director or a board or commission does not
38 accept, reject or modify the administrative law judge's decision within
39 thirty days after the date the office sends a copy of the administrative
40 law judge's decision to the head of the agency, executive director, board
41 or commission, as evidenced by receipt of such action by the office by the
42 thirtieth day, the office shall certify the administrative law judge's
43 decision as the final administrative decision. If the board or commission
44 meets monthly or less frequently, if the office sends the administrative
45 law judge's decision at least thirty days before the next meeting of the

1 board or commission and if the board or commission does not accept, reject
2 or modify the administrative law judge's decision at the next meeting of
3 the board or commission, as evidenced by receipt of such action by the
4 office within five days after the meeting, the office shall certify the
5 administrative law judge's decision as the final administrative
6 decision. THE OFFICE SHALL CERTIFY THE ADMINISTRATIVE LAW JUDGE'S
7 DECISION AS THE FINAL ADMINISTRATIVE DECISION OF NONHEALTH REGULATORY
8 BOARDS PURSUANT TO CHAPTER 33 OF THIS TITLE.

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

13 F. The decision of the agency head is the final administrative
14 decision unless one of the following applies:

15 1. The agency head, executive director, board or commission does
16 not review the administrative law judge's decision pursuant to
17 subsection B of this section or does not reject or modify the
18 administrative law judge's decision as provided in subsection D of this
19 section, in which case the administrative law judge's decision is the
20 final administrative decision.

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

23 3. The licensee accepts the administrative law judge's decision
24 concerning the appeal of a licensing decision as final pursuant to
25 subsection I of this section.

26 4. THE PROFESSION IS REGULATED BY A NONHEALTH PROFESSION REGULATORY
27 BOARD PURSUANT TO CHAPTER 33 OF THIS TITLE.

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

32 H. EXCEPT FOR A NONHEALTH PROFESSION REGULATORY BOARD PURSUANT TO
33 CHAPTER 33 OF THIS TITLE, a party may appeal a final administrative
34 decision pursuant to title 12, chapter 7, article 6, except as provided in
35 section 41-1092.09, subsection B and except that if a party has not
36 requested a hearing on receipt of a notice of appealable agency action
37 pursuant to section 41-1092.03, the appealable agency action is not
38 subject to judicial review. The license is not stayed during the appeal
39 unless the affected party that has appealed applies to the superior court
40 for an order requiring a stay pending final disposition of the appeal as
41 necessary to prevent an imminent and substantial endangerment to public
42 health or the environment. The court shall determine the matter under the
43 standards applicable for granting preliminary injunctions.

44 I. Except for a licensing decision concerning the administrative
45 completeness of an application submitted by a licensee or a licensing

1 decision where the agency, executive director, board or commission has
2 determined that the licensee poses a threat of grave harm or danger to the
3 public or has acted with complete disregard for the well-being of the
4 public in engaging or in being allowed to engage in the licensee's
5 regulated business activity, for any appealable agency action or contested
6 case involving a licensing decision, the licensee may accept the decision
7 not more than ten days after receiving the administrative law judge's
8 written decision. If the licensee accepts the administrative law judge's
9 written decision, the decision shall be certified as the final decision by
10 the office. If the licensee does not accept the administrative law
11 judge's written decision as the final decision in the matter, the head of
12 the agency, executive director, board or commission may review the
13 decision and accept, reject or modify the decision. If the head of the
14 agency, executive director, board or commission intends to reject or
15 modify the decision, the parties shall meet and confer, within thirty days
16 after receiving the administrative law judge's decision pursuant to
17 subsection A of this section, concerning the agency's proposed
18 modifications to the findings of fact and conclusions of law. Within
19 twenty days after conferring, the head of the agency, executive director,
20 board or commission shall file its final decision in accordance with
21 subsection B of this section. This subsection does not apply to **EITHER OF**
22 **THE FOLLOWING:**

23 1. Any appealable agency actions of the department of water
24 resources pursuant to title 45.

25 2. **NONHEALTH PROFESSION REGULATORY BOARDS PURSUANT TO CHAPTER 33 OF**
26 **THIS TITLE.**

27 J. This section does not apply to the Arizona peace officer
28 standards and training board established by section 41-1821.

29 Sec. 2. Section 41-3505, Arizona Revised Statutes, is amended to
30 read:

31 **41-3505. Board actions; records; website; legislative**
32 **advocacy; prohibition**

33 A. If a nonhealth profession regulatory board dismisses a
34 complaint, the record of that complaint is available to that regulatory
35 board and the public pursuant to section 39-121 but may not appear on the
36 board's website. For the purposes of this subsection, "dismisses a
37 complaint" means that a board does not issue a disciplinary or
38 nondisciplinary order or action against a licensee or certificate holder.

39 B. If a nonhealth profession regulatory board issues a
40 nondisciplinary order or action against a licensee or certificate holder,
41 the record of the nondisciplinary order or action is available to that
42 board and the public pursuant to section 39-121 but may not appear on the
43 board's website, except that a practice limitation or restriction, and
44 documentation relating to that action, may appear on the board's website.

1 C. If a nonhealth profession regulatory board maintains a website,
2 the board must display on its website a statement that a person may obtain
3 additional public records related to any licensee or certificate holder,
4 including dismissed complaints and nondisciplinary actions and orders, by
5 contacting the board directly.

6 D. A NONHEALTH PROFESSION REGULATORY BOARD MAY NOT OVERTURN OR
7 CHALLENGE A DECISION MADE BY AN ADMINISTRATIVE LAW JUDGE OF THE OFFICE OF
8 ADMINISTRATIVE HEARINGS.

9 ~~D.~~ E. This section does not prohibit a nonhealth profession
10 regulatory board from conducting its authorized duties in a public
11 meeting.

12 ~~E.~~ F. Subsections A and B of this section do not apply to meeting
13 minutes and notices kept by the board in accordance with the public
14 meeting requirements of title 38, chapter 3, article 3.1.

15 ~~F.~~ G. The director of a nonhealth profession regulatory board may
16 not advocate for or against a legislative proposal in the director's
17 official capacity until the regulatory board has taken a formal position
18 on the proposal in a public meeting.

19 Sec. 3. Conforming legislation

20 The legislative council staff shall prepare proposed legislation
21 conforming the Arizona Revised Statutes to the provisions of this act for
22 consideration in the fifty-seventh legislature, first regular session.