

Senate Engrossed

nonhealth regulatory boards; challenges; prohibition

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

SENATE BILL 1634

AN ACT

AMENDING SECTION 41-1092.08, 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.

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

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

1 the board or commission, as evidenced by receipt of such action by the
2 office within five days after the meeting, the office shall certify the
3 administrative law judge's decision as the final administrative decision.

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

8 F. The decision of the agency head **OR A NONHEALTH PROFESSION**
9 **REGULATORY BOARD PURSUANT TO CHAPTER 33 OF THIS TITLE** is the final
10 administrative decision unless one of the following applies:

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

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

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

22 4. **THE INDIVIDUAL IS REGULATED BY A NONHEALTH PROFESSION REGULATORY**
23 **BOARD PURSUANT TO CHAPTER 33 OF THIS TITLE AND THE INDIVIDUAL ACCEPTS THE**
24 **ADMINISTRATIVE LAW JUDGE'S DECISION.**

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

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

41 I. Except for a licensing decision concerning the administrative
42 completeness of an application submitted by a licensee or a licensing
43 decision where the agency, executive director, board or commission has
44 determined that the licensee poses a threat of grave harm or danger to the
45 public or has acted with complete disregard for the well-being of the

1 public in engaging or in being allowed to engage in the licensee's
2 regulated business activity, for any appealable agency action or contested
3 case involving a licensing decision, the licensee may accept the decision
4 not more than ten days after receiving the administrative law judge's
5 written decision. If the licensee accepts the administrative law judge's
6 written decision, the decision shall be certified as the final decision by
7 the office. If the licensee does not accept the administrative law
8 judge's written decision as the final decision in the matter, the head of
9 the agency, executive director, board or commission may review the
10 decision and accept, reject or modify the decision. If the head of the
11 agency, executive director, board or commission intends to reject or
12 modify the decision, the parties shall meet and confer, within thirty days
13 after receiving the administrative law judge's decision pursuant to
14 subsection A of this section, concerning the agency's proposed
15 modifications to the findings of fact and conclusions of law. Within
16 twenty days after conferring, the head of the agency, executive director,
17 board or commission shall file its final decision in accordance with
18 subsection B of this section. This subsection does not apply to any
19 appealable agency actions of the department of water resources pursuant to
20 title 45.

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

23 Sec. 2. Conforming legislation

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