House Engrossed Senate Bill

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KEN BENNETT
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CHAPTER 322

SENATE BILL 1193

AN ACT

AMENDING SECTIONS 12-284, 12-902, 12-904, 12-906, 12-907, 12-908, 12-909, 12-910, 12-911, 12-912, 12-914 AND 41-1001.01, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 6, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-1001.02; AMENDING SECTIONS 41-1055, 41-1092 AND 41-1092.06, ARIZONA REVISED STATUTES; RELATING TO ADMINISTRATIVE PROCEDURE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 12-284, Arizona Revised Statutes, is amended to read:

12-284. Fees

A. Except as otherwise provided by law, the clerk of the superior court shall receive fees classified as follows:

Class	Description	Fee
A	Initial case filing fee	
	Tax case	$ 166.00
	Filing complaint, NOTICE OF APPEAL UNDER SECTION 12-904 or petition	166.00
	Filing intervenor	166.00
	Additional plaintiffs	166.00
	Filing foreign judgment	166.00
	Ownership of real property becomes an issue plaintiff	166.00
	Appellant (except under sections 12-1809 and 13-3602)	166.00
	Change of venue to this county	166.00
	Petition for change of name	166.00
	Filing a process server application	166.00
B	Subsequent case filing fee	
	Filing answer, NOTICE OF APPEARANCE UNDER SECTION 12-907 or initial appearance	$ 88.00
	Additional defendants	88.00
	Notice of appeal to appellate courts (except under section 12-2107)	88.00
	Cross-appeal by appellee (except under section 12-2107)	88.00
	Ownership of real property becomes an issue defendant	88.00
	Jurisdiction exceeded appellee (within 20 days of filing)	88.00
	Response to show cause that does one or more of the following:	
	1. Requests affirmative relief or counterrelief	
	2. Attacks the sufficiency of process or the proceedings	
	3. Takes other affirmative action	88.00
C	Initial case filing fee	
	Filing petition for annulment	$ 131.00
	Filing for dissolution/legal separation petition	131.00
	Petition in formal testacy or appointment proceeding	131.00

	Application for informal probate or informal appointment	131.00
	Petition for supervised administration petition to appoint guardian	131.00
	Petition to appoint conservator or make other protective order	131.00
	Opposing petition in testacy or appointment proceedings or appointment of guardian or conservator	131.00
	Single estate application or petition under title 14, chapter 3, section 14-3938	131.00
	Domestic relations case for which a fee is not specifically prescribed	131.00
D	Subsequent case filing fee	
	Filing answer to annulment	$ 66.00
	Filing for dissolution/legal separation answer	66.00
	Any person opposing contested petition if no prior payment made	66.00
	Postadjudication petitions in domestic relations cases	66.00
	Postjudgment activities in probate cases	66.00
E	Minimum clerk fee	
	Filing power of attorney	$ 26.00
	Change of venue to another county transmittal fee	26.00
	Change of venue to another county pursuant to section 12-404 transmittal fee	26.00
	Filing transcript and docketing judgment from any courts	26.00
	Issuance of writs of: attachment, execution, possession, restitution, prohibition and enforcement of order of judgment-garnishment	26.00
	Certified copy or abstract of marriage application or license	26.00
	Certificate of correctness of copy of record	26.00
	Justice of peace certificate	26.00
	Each certificate of clerk to any matter in clerk's record not specifically provided	26.00
	Filing any paper or performing any act for which a fee is not specifically prescribed	26.00
	Subpoena - (civil)	26.00
	Research in locating a document (per year or source researched)	26.00
	Exemplification (per certification)	26.00
	Authentication (per certification)	26.00

	Seal a court file	26.00
	Reopen a sealed court file	26.00
	Retrieve bank records	26.00
	Reel of film alpha index per year (plus per page fee below)	26.00
	Payment history report	26.00
	Certification under one document certification	26.00
	Civil traffic appeal	26.00
F	Per page fee	
	Making copies (on appeal and on request) per page	$ .50
	Making extra copies per page	.50
	Making photographic or photostatic copies per page	.50
	Comparison fee of papers furnished by applicant per page	.50
	Alpha index per page	.50
G	Special fees	
	Small claim tax case	$ 22.00
	Marriage license and return of a marriage license	72.00
	Postage and handling	7.00
	Notary services	7.00
	Stop payment on check	14.00

B. The clerk of the superior court shall receive the fees prescribed in subsection A of this section for the following services:

1. Making copies of papers and records required to be made by the clerk on appeal, and copies of papers and records in the clerk's office made on request in other cases, for each legal size page of original.

2. Making extra copies of the papers and records mentioned in paragraph 1 of this subsection, required or requested for each page of copy of such papers and records.

3. In a clerk's office, in which a photographic or photostatic method of recording is used or is available for use in cooperation with other public offices, preparing copies enumerated in paragraphs 1 and 2 of this subsection for each page of copy or fraction of a page of copy. Portions of several pages of records may be combined in one page of copy. The clerk may prepare an abstract of marriage in lieu of a reproduction of the recorded marriage license. The fee shall apply to matters whether recorded in such office by longhand, typing, electronic, photographic or photostatic methods. The fees for copies are exclusive of the fees for certification or authentication.

4. Issuing a certificate as to official capacity of a justice of the peace and affixing a seal to the certificate.

5. Each subpoena issued in a civil proceeding or filing any paper or performing any act for which a fee is not specifically prescribed by law, but the clerk shall not charge for the clerk's services in administering the oath in connection with any affidavit, petition, letters or other pleading or document which, after administration of the oath therefor, is promptly filed by the clerk and becomes a part of a case or matter of record in the office of the clerk.

C. In addition to the fees required by subsection A of this section, the clerk shall charge and collect a surcharge of fifteen dollars for each filing of a postadjudication petition in a domestic relations case for which a fee presently is charged under class D in subsection A of this section. The surcharge shall be used exclusively to fund domestic relations education and mediation programs established pursuant to section 25-413. Each month the clerk shall transmit the monies the clerk collects pursuant to this subsection to the county treasurer for deposit in the domestic relations education and mediation fund established by section 25-413.

D. Excluding the monies that are collected pursuant to subsection C of this section, each month the clerk shall transmit seventy-five per cent of the monies collected for subsequent case filing fees for postadjudication petitions in domestic relations cases under class D in subsection A of this section to the county treasurer for deposit in the expedited child support and parenting time fund established pursuant to section 25-412. The remaining twenty-five per cent of the monies collected pursuant to this subsection shall be distributed pursuant to section 12-284.03.

E. At the commencement of each action for annulment, dissolution of marriage, legal separation, maternity or paternity, the petitioner shall pay to the clerk of the court the initial case filing fee for the action provided in subsection A of this section. At the time of filing a response, the respondent shall pay to the clerk of the court the subsequent case filing fee for the action provided in subsection A of this section. In each county where the superior court has established a conciliation court, the petitioner and respondent shall each pay to the clerk a sixty-five dollar fee. The monies from the additional fee shall be used to carry out the purposes of the conciliation court pursuant to title 25, chapter 3, article 7.

F. In garnishment matters:

1. A fee shall not be charged for filing an affidavit seeking only the release of exempt wages.

2. A fee shall not be charged for filing a garnishee's answer, for filing a judgment against the garnishee or for the issuance or return of process incident to such a judgment.

3. For any contest relating to or any controversion of a garnishment matter, unless the contesting party has paid an appearance fee in that cause, the required appearance fee shall be paid, except that the garnishee shall not pay a clerk's fee.

G. A person who is cited to appear and defend an order to show cause shall not be charged an appearance fee. The person may stipulate to or consent to the entry of an order without the payment of an appearance fee. An appearance fee shall be paid if the person is present in person or by an attorney and does one or more of the following:

1. Requests affirmative relief or counterrelief.

2. Attacks the sufficiency of process or the proceedings.

3. Takes other affirmative action.

H. A petitioner shall not be charged a fee for requesting an order of protection pursuant to section 13-3602 or an injunction against harassment pursuant to section 12-1809. A defendant shall not be charged an answer fee in an order of protection action if the defendant requests a hearing pursuant to section 13-3602, subsection I or in an injunction against harassment action if the defendant requests a hearing pursuant to section 12-1809, subsection H.

I. A person who files a registrar's order pursuant to section 32-1166.06 shall not be charged a fee.

J. The clerk of the court shall charge and collect a forty-six dollar filing fee for a petition for emancipation of a minor filed pursuant to chapter 15 of this title. Each month the clerk shall transmit the monies the clerk collects pursuant to this subsection to the county treasurer for deposit in the emancipation administrative costs fund established by section 12-2456.

K. Except for monies that are collected pursuant to subsections C, D, E and J of this section, the clerk of the superior court shall transmit monthly to the county treasurer all monies collected pursuant to this section for distribution or deposit pursuant to section 12-284.03.

L. The supreme court may increase the fees prescribed in subsection A of this section in an amount not to exceed the per cent of change in the average consumer price index as published by the United States department of labor, bureau of labor statistics between that figure for the latest calendar year and the calendar year in which the last fee increase occurred.

Sec. 2. Section 12-902, Arizona Revised Statutes, is amended to read:

12-902. Scope of article

A. This article applies to and governs:

1. Every action to ~~review~~ judicially REVIEW a final decision of an administrative agency except public welfare decisions pursuant to title 46, or if the act creating or conferring power on an agency or a separate act provides for judicial review of the agency decisions and prescribes a definite procedure for the review.

2. An action to review the decision at an administrative hearing ~~held pursuant to section 33-1905~~ AS OTHERWISE PROVIDED BY STATUTE.

B. Unless review is sought of an administrative decision within the time and in the manner provided in this article, the parties to the proceeding before the administrative agency shall be barred from obtaining

judicial review of the decision. If under the terms of the law governing procedure before an agency an administrative decision becomes final because of failure to file any document in the nature of an objection, protest, petition for hearing or application for administrative review within the time allowed by the law, the decision is not subject to judicial review under the provisions of this article except for the purpose of questioning the jurisdiction of the administrative agency over the person or subject matter.

Sec. 3. Section 12-904, Arizona Revised Statutes, is amended to read:

12-904. Commencement of action; transmission of record

A. An action to review a final administrative decision shall be commenced by filing a ~~complaint~~ NOTICE OF APPEAL within thirty-five days from the date when a copy of the decision sought to be reviewed is served upon the party affected. The method of service of the decision shall be as provided by law governing procedure before the administrative agency, or by a rule of the agency made pursuant to law, but if no method is provided a decision shall be deemed to have been served when personally delivered or mailed by certified mail to the party affected at the party's last known residence or place of business. Service is complete on personal service or five days after the date that the final administrative decision is mailed to the party's last known address. THE NOTICE OF APPEAL SHALL IDENTIFY THE FINAL ADMINISTRATIVE DECISION SOUGHT TO BE REVIEWED AND INCLUDE A STATEMENT OF THE ISSUES PRESENTED FOR REVIEW. THE STATEMENT OF AN ISSUE PRESENTED FOR REVIEW IS DEEMED TO INCLUDE EVERY SUBSIDIARY ISSUE FAIRLY COMPRISED IN THE STATEMENT.

B. Within ten days after filing a ~~complaint~~ NOTICE OF APPEAL pursuant to this article, the party seeking judicial review shall file a notice of the action with the office of administrative hearings or the agency that conducted the hearing, and the office of administrative hearings or the agency that conducted the hearing shall transmit the record to the superior court. The record shall consist of the following:

1. The original agency action from which review is sought.

2. Any motions, memoranda or other documents submitted by the parties to the appeal.

3. Any exhibits admitted as evidence at the administrative hearing.

4. The decision by the administrative law judge and any revisions or modifications to the decision.

5. A copy of the transcript of the administrative hearing, if the party seeking judicial review desires a transcript to be included in the record and provides for preparation of the transcript at the party's own expense. Any other party may have a transcript included in the record by filing a notice with the office of administrative hearings or the agency that conducted the hearing within ten days after receiving notice of the ~~complaint~~ NOTICE OF APPEAL and providing for preparation of the transcript at the party's own expense.

Sec. 4. Section 12-906, Arizona Revised Statutes, is amended to read:

12-906. Service of process

In an action to review the decision of an administrative agency, a copy of the ~~summons and complaint~~ NOTICE OF APPEAL shall be served ~~as in civil actions and as provided by~~ PURSUANT TO RULE 4 OF the rules of civil procedure, ~~upon~~ ON the agency at its principal office and ~~upon~~ ON all other ~~defendants~~ PARTIES TO THE PROCEEDING BEFORE THE AGENCY.

Sec. 5. Section 12-907, Arizona Revised Statutes, is amended to read:

12-907. Appearance of parties to the appeal

Within twenty days after service of the ~~summons and complaint~~ NOTICE OF APPEAL, the ~~defendant~~ APPELLEE agency and all other ~~defendants shall answer the complaint~~ APPELLEES SHALL FILE A NOTICE OF APPEARANCE IN RESPONSE TO THE NOTICE OF APPEAL. ALL SUBSEQUENT FILINGS SHALL BE MADE AS PROVIDED BY SECTION 12-914.

Sec. 6. Section 12-908, Arizona Revised Statutes, is amended to read:

12-908. Parties

A. In an action to review a final decision of an administrative agency, the agency and all persons, other than the ~~plaintiff~~ APPELLANT, who are parties of record in the proceedings ~~shall be made defendants~~ MAY APPEAR IN THE PROCEEDINGS BEFORE THE SUPERIOR COURT AS APPELLEES.

B. IF THE ADMINISTRATIVE HEARING IS HELD BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS, THE OFFICE OF ADMINISTRATIVE HEARINGS IS NOT A PARTY OF RECORD IN THE PROCEEDINGS AND IS NOT TO BE NAMED AS A PARTY IN THE NOTICE OF APPEAL OR TO APPEAR AS A PARTY IN THE APPELLATE PROCEEDINGS BEFORE THE COURT UNLESS OTHERWISE REQUIRED BY LAW OR ORDER OF THE COURT. FOR THE PURPOSES OF THIS SECTION, THE OFFICE OF ADMINISTRATIVE HEARINGS INCLUDES THE DIRECTOR OF THE OFFICE OF ADMINISTRATIVE HEARINGS AND THE ADMINISTRATIVE LAW JUDGE.

Sec. 7. Section 12-909, Arizona Revised Statutes, is amended to read:

12-909. Pleadings and record on review

A. The ~~complaint~~ NOTICE OF APPEAL shall contain a statement of the findings and decision or part ~~thereof~~ OF THE FINDINGS AND DECISION sought to be reviewed. ~~, and shall clearly specify the grounds upon which review is sought. It shall also state whether a transcript is to be designated as part of the record pursuant to section 12-904, subsection B, paragraph 5.~~

B. ~~Except as otherwise provided, the defendant shall file an answer.~~ Notwithstanding section 12-904, subsection B, by order of the court or by stipulation of all parties to the action, the record may be shortened or supplemented.

C. If the cause is remanded to the administrative agency and a review thereafter is sought of the administrative decision, the original and supplemental record, or so much thereof as is determined by court order or stipulation of all the parties, shall constitute the record on review.

Sec. 8. Section 12-910, Arizona Revised Statutes, is amended to read:

12-910. Scope of review

A. An action to review a final administrative decision shall be heard and determined with convenient speed. If requested by a party to an action within thirty days after filing a ~~complaint~~ NOTICE OF APPEAL, the court shall hold an evidentiary hearing, including testimony and argument, to the extent necessary to make the determination required by subsection E of this section. The court may hear testimony from witnesses who testified at the administrative hearing and witnesses who were not called to testify at the administrative hearing.

B. Relevant and admissible exhibits and testimony that were not offered during the administrative hearing shall be admitted, and objections that a party failed to make to evidence offered at the administrative hearing shall be considered, unless either of the following is true:

1. The exhibit, testimony or objection was withheld for purposes of delay, harassment or other improper purpose.

2. Allowing admission of the exhibit or testimony or consideration of the objection would cause substantial prejudice to another party.

C. For review of final administrative decisions of agencies that are exempt from sections 41-1092.03 through 41-1092.11, pursuant to section 41-1092.02, the trial shall be de novo if trial de novo is demanded in the ~~complaint~~ NOTICE OF APPEAL or ~~answer~~ MOTION of ~~a defendant~~ AN APPELLEE other than the agency and if a hearing was not held by the agency or the proceedings before the agency were not stenographically reported or mechanically recorded so that a transcript might be made. On demand of any party, if a trial de novo is available under this section, it may be with a jury, except that a trial of an administrative decision under section 25-522 shall be to the court.

D. The record in the superior court shall consist of the record of the administrative proceeding, and the record of any evidentiary hearing, or the record of the trial de novo.

E. The court may affirm, reverse, modify or vacate and remand the agency action. The court shall affirm the agency action unless after reviewing the administrative record and supplementing evidence presented at the evidentiary hearing the court concludes that the action is not supported by substantial evidence, is contrary to law, is arbitrary and capricious or is an abuse of discretion.

Sec. 9. Section 12-911, Arizona Revised Statutes, is amended to read:

12-911. Powers of superior court

A. The superior court may:

1. With or without bond, unless required by the statute under authority of which the administrative decision was entered, and before or after ~~answer~~ THE FILING OF THE NOTICE OF APPEARANCE, stay the decision in whole or in part pending final disposition of the case, after notice to the agency and for good cause shown, except that the court shall not stay an

administrative decision wherein unemployment compensation benefits have been allowed to a claimant pursuant to title 23, chapter 4.

2. Make any order that it deems proper for the amendment, completion or filing of the record of the proceedings of the administrative agency.

3. Allow substitution of parties by reason of marriage, death, bankruptcy, assignment or other cause.

4. Dismiss parties or realign parties ~~plaintiff and defendant~~ APPELLANT AND APPELLEE.

5. Modify, affirm or reverse the decision in whole or in part.

6. Specify questions or matters requiring further hearing or proceedings and give other proper instructions.

7. When a hearing has been held by the agency, remand for the purpose of taking additional evidence when from the state of the record of the administrative agency or otherwise it appears that such action is just.

8. In the case of affirmance or partial affirmance of an administrative decision requiring payment of money, enter judgment for the amount justified by the record and for costs, ~~upon~~ ON which execution may issue.

B. Technical errors in the proceedings before the administrative agency or its failure to observe technical rules of evidence shall not constitute grounds for reversal of the decision, unless it appears to the ~~trial~~ SUPERIOR court that the error or failure affected the rights of a party and resulted in injustice to him.

C. On motion of a party before rendition of judgment, the ~~trial~~ SUPERIOR court shall make findings of fact and state conclusions of law ~~upon~~ ON which its judgment is based.

Sec. 10. Section 12-912, Arizona Revised Statutes, is amended to read:

12-912. Costs

Costs may be awarded ~~defendant~~ TO THE APPELLEE agency if a judgment adverse to the ~~plaintiff~~ APPELLANT is rendered. Such costs may be awarded in an amount deemed reasonable by the ~~trial~~ SUPERIOR court, based ~~upon~~ ON the expense the ~~defendant~~ APPELLEE agency has incurred in preparing the record of the proceedings before ~~trial~~ JUDICIAL REVIEW.

Sec. 11. Section 12-914, Arizona Revised Statutes, is amended to read:

12-914. Rules of procedure

A. Where applicable, the rules of ~~civil~~ procedure FOR JUDICIAL REVIEW OF ADMINISTRATIVE DECISIONS in superior courts, including rules relating to appeals to the supreme court, shall apply to all proceedings except as otherwise provided in this article, EXCEPT IN CASES IN WHICH THE SUPERIOR COURT HAS CONDUCTED A TRIAL DE NOVO PURSUANT TO SECTION 12-910.

B. THE RULES OF CIVIL PROCEDURE APPLY TO ALL PROCEEDINGS IN WHICH THE SUPERIOR COURT ORDERS A TRIAL DE NOVO PURSUANT TO SECTION 12-910.

Sec. 12. Section 41-1001.01, Arizona Revised Statutes, is amended to read:

41-1001.01. Regulatory bill of rights

A. To ensure fair and open regulation by state agencies, a person:

1. Is eligible for reimbursement of fees and other expenses if the person prevails by adjudication on the merits against an agency in a court proceeding regarding an agency decision as provided in section 12-348.

2. Is eligible for reimbursement of the person's costs and fees if the person prevails against any agency in an administrative hearing as provided in section 41-1007.

3. Is entitled to have an agency not charge the person a fee unless the fee for the specific activity is expressly authorized as provided in section 41-1008.

4. Is entitled to receive the information and notice regarding inspections prescribed in section 41-1009.

5. May review the full text or summary of all rule making activity, the summary of substantive policy statements and the full text of executive orders in the register as provided in article 2 of this chapter.

6. May participate in the rule making process as provided in articles 3, 4, 4.1 and 5 of this chapter, including:

(a) Providing written ~~or oral~~ comments OR TESTIMONY on proposed rules to an agency as provided in section 41-1023 and having the agency adequately address those comments as provided in section 41-1052, subsection D, INCLUDING COMMENTS OR TESTIMONY CONCERNING THE INFORMATION CONTAINED IN THE ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT.

(b) Filing an early review petition with the governor's regulatory review council as provided in article 5 of this chapter.

(c) Providing written ~~or oral~~ comments OR TESTIMONY on rules to the governor's regulatory review council during the mandatory sixty-day comment period as provided in article 5 of this chapter.

7. Is entitled to have an agency not base a licensing decision in whole or in part on licensing conditions or requirements that are not specifically authorized by statute, rule or state tribal gaming compact as provided in section 41-1030, subsection B.

8. Is entitled to have an agency not make a rule under a specific grant of rule making authority that exceeds the subject matter areas listed in the specific statute or not make a rule under a general grant of rule making authority to supplement a more specific grant of rule making authority as provided in section 41-1030, subsection C.

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

10. May file a complaint with the administrative rules oversight committee concerning:

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

(b) An existing statute, rule, practice alleged to constitute a rule or substantive policy statement that is alleged to be duplicative or onerous as provided in section 41-1048.

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

12. May have administrative hearings governed by uniform administrative appeal procedures as provided in articles 6 and 10 of this chapter AND MAY APPEAL A FINAL ADMINISTRATIVE DECISION BY FILING A NOTICE OF APPEAL PURSUANT TO TITLE 12, CHAPTER 7, ARTICLE 6.

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

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

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

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

15. Is entitled to receive information regarding the license application process BEFORE OR at the time the person obtains an application for a license as provided in ~~section~~ SECTIONS 41-1001.02 AND 41-1079.

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

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

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

19. Unless specifically authorized by statute, may expect state agencies to avoid duplication of other laws that do not enhance regulatory clarity and to avoid dual permitting to the extent practicable as prescribed in section 41-1002.

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

Sec. 13. Title 41, chapter 6, article 1, Arizona Revised Statutes, is amended by adding section 41-1001.02, to read:

41-1001.02. Clarification of interpretation

A. BEFORE SUBMITTING AN APPLICATION FOR A LICENSE A PERSON MAY REQUEST FROM THE AGENCY ISSUING THE LICENSE A CLARIFICATION OF ITS INTERPRETATION OR APPLICATION OF A STATUTE, RULE, DELEGATION AGREEMENT OR SUBSTANTIVE POLICY STATEMENT AFFECTING THE PERSON'S PREPARATION OF THE APPLICATION FOR A LICENSE BY PROVIDING THE AGENCY WITH A WRITTEN REQUEST THAT STATES:

1. THE NAME AND ADDRESS OF THE PERSON REQUESTING THE CLARIFICATION.

2. THE STATUTE, RULE, DELEGATION AGREEMENT OR SUBSTANTIVE POLICY STATEMENT OR PART OF THE STATUTE, RULE, DELEGATION AGREEMENT OR SUBSTANTIVE POLICY STATEMENT THAT THE PERSON IS REQUESTING BE CLARIFIED.

3. ANY FACTS RELEVANT TO THE REQUESTED CLARIFICATION.

4. THE PERSON'S PROPOSED INTERPRETATION OF THE APPLICABLE STATUTE, RULE, DELEGATION AGREEMENT OR SUBSTANTIVE POLICY STATEMENT OR PART OF THE STATUTE, RULE, DELEGATION AGREEMENT OR SUBSTANTIVE POLICY STATEMENT.

5. WHETHER, TO THE BEST KNOWLEDGE OF THE PERSON, THE ISSUES OR RELATED ISSUES ARE BEING CONSIDERED BY THE AGENCY IN CONNECTION WITH AN EXISTING LICENSE OR LICENSE APPLICATION.

B. ON RECEIPT OF A REQUEST THAT COMPLIES WITH SUBSECTION A OF THIS SECTION:

1. THE AGENCY MAY MEET WITH THE PERSON TO DISCUSS THE WRITTEN REQUEST AND SHALL RESPOND WITHIN THIRTY DAYS OF THE RECEIPT OF THE WRITTEN REQUEST WITH A WRITTEN CLARIFICATION OF ITS INTERPRETATION OR APPLICATION AS RAISED IN THE WRITTEN REQUEST.

2. THE AGENCY SHALL PROVIDE THE REQUESTOR WITH AN OPPORTUNITY TO MEET AND DISCUSS THE AGENCY'S WRITTEN CLARIFICATION.

C. NOTWITHSTANDING ANY OTHER LAW, AN AGENCY'S WRITTEN CLARIFICATION PURSUANT TO THIS SECTION DOES NOT CONSTITUTE AN APPEALABLE ACTION AS DEFINED IN SECTION 41-1092 OR AN ACTION AGAINST THE PARTY PURSUANT TO SECTION 41-1092.12.

D. NOTWITHSTANDING ANY OTHER LAW, THIS SECTION DOES NOT APPLY TO THE ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD.

Sec. 14. Section 41-1055, Arizona Revised Statutes, is amended to read:

41-1055. Economic, small business and consumer impact statement

A. The economic, small business and consumer impact summary shall include:

1. An identification of the proposed rule making, including all of the following:

(a) The conduct and its frequency of occurrence that the rule is designed to change.

(b) The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed.

(c) The estimated change in frequency of the targeted conduct expected from the rule change.

2. A brief summary of the information included in the economic, small business and consumer impact statement.

3. If the economic, small business and consumer impact summary accompanies a proposed rule or a proposed summary rule, the name and address of agency employees who may be contacted to submit or request additional data on the information included in the economic, small business and consumer impact statement.

B. The economic, small business and consumer impact statement shall include:

1. An identification of the proposed rule making.

2. An identification of the persons who will be directly affected by, bear the costs of or directly benefit from the proposed rule making.

3. A cost benefit analysis of the following:

(a) The probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rule making. The probable costs to the implementing agency shall include the number of new full-time employees necessary to implement and enforce the proposed rule. The preparer of the economic, small business and consumer impact statement shall notify the joint legislative budget committee of the number of new full-time employees necessary to implement and enforce the rule before the rule is approved by the council.

(b) The probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rule making.

(c) The probable costs and benefits to businesses directly affected by the proposed rule making, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rule making.

4. A general description of the probable impact on private and public employment in businesses, agencies and political subdivisions of this state directly affected by the proposed rule making.

5. A statement of the probable impact of the proposed rule making on small businesses. The statement shall include:

(a) An identification of the small businesses subject to the proposed rule making.

(b) The administrative and other costs required for compliance with the proposed rule making.

(c) A description of the methods that the agency may use to reduce the impact on small businesses. These methods may include:

(i) Establishing less costly compliance requirements in the proposed rule making for small businesses.

(ii) Establishing less costly schedules or less stringent deadlines for compliance in the proposed rule making.

(iii) Exempting small businesses from any or all requirements of the proposed rule making.

(d) The probable cost and benefit to private persons and consumers who are directly affected by the proposed rule making.

6. A statement of the probable effect on state revenues.

7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule making, including the monetizing of the costs and benefits for each option and providing the rationale for not using nonselected alternatives.

8. A DESCRIPTION OF ANY DATA ON WHICH A RULE IS BASED WITH A DETAILED EXPLANATION OF HOW THE DATA WAS OBTAINED AND WHY THE DATA IS ACCEPTABLE DATA. AN AGENCY ADVOCATING THAT ANY DATA IS ACCEPTABLE DATA HAS THE BURDEN OF PROVING THAT THE DATA IS ACCEPTABLE. FOR THE PURPOSES OF THIS PARAGRAPH, "ACCEPTABLE DATA" MEANS EMPIRICAL, REPLICABLE AND TESTABLE DATA AS EVIDENCED IN SUPPORTING DOCUMENTATION, STATISTICS, REPORTS, STUDIES OR RESEARCH.

C. If for any reason adequate data are not reasonably available to comply with the requirements of subsection B of this section, the agency shall explain the limitations of the data and the methods that were employed in the attempt to obtain the data and shall characterize the probable impacts in qualitative terms. The absence of adequate data, if explained in accordance with this subsection, shall not be grounds for a legal challenge to the sufficiency of the economic, small business and consumer impact statement.

D. An agency is not required to prepare an economic, small business and consumer impact statement pursuant to this chapter for the following rule makings:

1. Initial making, but not renewal, of an emergency rule pursuant to section 41-1026.

2. Summary rule makings pursuant to section 41-1027 that only repeal existing rule language.

3. Any rule making that decreases monitoring, record keeping or reporting burdens on agencies, political subdivisions, businesses or persons, unless the agency determines that increased costs of implementation or enforcement may equal or exceed the reduction in burdens.

E. The economic, small business and consumer impact statement for a rule making that is exempt pursuant to subsection D of this section shall state that the proposed rule making is exempt.

F. The cost-benefit analysis required by subsection B of this section shall calculate only the costs and benefits that occur in this state.

G. If a person submits an analysis to the agency that compares the rule's impact on the competitiveness of businesses in this state to the impact on businesses in other states, the agency shall consider the analyses.

Sec. 15. Section 41-1092, Arizona Revised Statutes, is amended to read:

41-1092. Definitions

In this article, unless the context otherwise requires:

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

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

3. "Appealable agency action" means an action that determines the legal rights, duties or privileges of a party and that is not a contested case. Appealable agency actions do not include interim orders by self-supporting regulatory boards, ~~or~~ rules, orders, standards or statements of policy of general application issued by an administrative agency to implement, interpret or make specific the legislation enforced or administered by it OR CLARIFICATIONS OF INTERPRETATION, nor does it mean or include rules concerning the internal management of the agency that do not affect private rights or interests. For the purposes of this paragraph, administrative hearing does not include a public hearing held for the purpose of receiving public comment on a proposed agency action.

4. "Director" means the director of the office of administrative hearings.

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

6. "Office" means the office of administrative hearings.

7. "Self-supporting regulatory board" means any one of the following:

(a) The Arizona state board of accountancy.

(b) The state board of appraisal.

(c) The board of barbers.

(d) The board of behavioral health examiners.

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

(f) The state board of chiropractic examiners.

(g) The board of cosmetology.

(h) The state board of dental examiners.

(i) The state board of funeral directors and embalmers.

(j) The Arizona game and fish commission.

(k) The board of homeopathic and integrated medicine examiners.
(l) The Arizona medical board.
(m) The naturopathic physicians medical board.
(n) The state board of nursing.
(o) The board of examiners of nursing care institution administrators and adult care home managers.
(p) The board of occupational therapy examiners.
(q) The state board of dispensing opticians.
(r) The state board of optometry.
(s) The Arizona board of osteopathic examiners in medicine and surgery.
(t) The Arizona peace officer standards and training board.
(u) The Arizona state board of pharmacy.
(v) The board of physical therapy examiners.
(w) The state board of podiatry examiners.
(x) The state board for private postsecondary education.
(y) The state board of psychologist examiners.
(z) The board of respiratory care examiners.
(aa) The office of pest management.
(bb) The state board of technical registration.
(cc) The Arizona state veterinary medical examining board.
(dd) The acupuncture board of examiners.
(ee) The Arizona regulatory board of physician assistants.
(ff) The board of athletic training.
(gg) The board of massage therapy.

Sec. 16. Section 41-1092.06, Arizona Revised Statutes, is amended to read:

41-1092.06. <u>Appeals of agency actions and contested cases; informal settlement conferences; applicability</u>

A. If requested by the appellant of an appealable agency action OR THE RESPONDENT IN A CONTESTED CASE, the agency shall hold an informal settlement conference within fifteen days after receiving the request. A request for an informal settlement conference shall be in writing and shall be filed with the agency no later than twenty days before the hearing. If an informal settlement conference is requested, the agency shall notify the office of the request and the outcome of the conference, except as provided in section 41-1092.01, subsection F. The request for an informal settlement conference does not toll the sixty day period in which the administrative hearing is to be held pursuant to section 41-1092.05.

B. If an informal settlement conference is held, a person with the authority to act on behalf of the agency must represent the agency at the conference. The agency representative shall notify the appellant in writing that statements, either written or oral, made by the appellant at the conference, including a written document, created or expressed solely for the purpose of settlement negotiations are inadmissible in any subsequent

1 administrative hearing. The parties participating in the settlement
2 conference shall waive their right to object to the participation of the
3 agency representative in the final administrative decision.
4 Sec. 17. Effective date
5 Sections 12-284, 12-902, 12-904, 12-906, 12-907, 12-908, 12-909,
6 12-910, 12-911, 12-912, 12-914 and 41-1001.01, Arizona Revised Statutes, as
7 amended by this act, are effective from and after June 30, 2013.

APPROVED BY THE GOVERNOR MAY 11, 2012.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 14, 2012.

Passed the House April 23, 2012,

by the following vote: 44 Ayes,

6 Nays, 9 Not Voting 1 Vacant

Speaker of the House

Cheryl Laube

Chief Clerk of the House

Passed the Senate February 9, 2012,

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR
This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20_____,

at _____ o'clock _____ M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

S.B. 1193

SENATE CONCURS IN HOUSE AMENDMENTS AND FINAL PASSAGE

Passed the Senate April 25, **20** 12

by the following vote: 28 **Ayes,**

0 **Nays,** 2 **Not Voting**

Steve Pierce
President of the Senate

Chamein Bellington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

1 **day of** May, **20** 12

at 9:30 **o'clock** A **M.**

Michael
Secretary to the Governor

Approved this 11th **day of**

May.

at 4:46 **o'clock** P. **M.**

Janice K. Brewer
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 14th **day of** May, **20** 12

at 8:30 **o'clock** a **M.**

Ken Bennett
Secretary of State

S.B. 1193