

Senate Engrossed House Bill

FILED

**MICHELE REAGAN
SECRETARY OF STATE**

State of Arizona
House of Representatives
Fifty-second Legislature
First Regular Session
2015

CHAPTER 192

HOUSE BILL 2213

AN ACT

AMENDING SECTIONS 41-1001.01 AND 41-1009, ARIZONA REVISED STATUTES; RELATING TO REGULATORY ENFORCEMENT.

(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 make a rule under a specific
37 grant of rulemaking authority that exceeds the subject matter areas listed
38 in the specific statute or not make a rule under a general grant of
39 rulemaking authority to supplement a more specific grant of rulemaking
40 authority as provided in section 41-1030, subsection C.

41 9. May allege that an existing agency practice or substantive
42 policy statement constitutes a rule and have that agency practice or
43 substantive policy statement declared void because the practice or
44 substantive policy statement constitutes a rule as provided in section
45 41-1033.

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

3 (a) A rule's, practice's or substantive policy statement's lack of
4 conformity with statute or legislative intent as provided in section
5 41-1047.

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

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

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

16 13. May have an agency approve or deny the person's license
17 application within a predetermined period of time as provided in article
18 7.1 of this chapter.

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

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

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

25 15. Is entitled to receive information regarding the license
26 application process before or at the time the person obtains an
27 application for a license as provided in sections 41-1001.02 and 41-1079.

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

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

35 18. May file a complaint with the office of the ombudsman-citizens
36 aide to investigate administrative acts of agencies as provided in chapter
37 8, article 5 of this title.

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

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

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

4 (c) Copies of any analysis performed on samples taken during the
5 inspection.

6 (d) Copies of any documents to be relied on to determine compliance
7 with licensure or regulatory requirements if the agency is otherwise
8 permitted by law to do so.

9 6. Inform each person whose conversation with the agency inspector,
10 auditor or regulator during the inspection or audit is tape recorded that
11 the conversation is being tape recorded.

12 7. Inform each person WHO IS interviewed during the inspection or
13 audit that:

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

16 (b) PARTICIPATION IN AN INTERVIEW IS VOLUNTARY, UNLESS THE PERSON
17 IS LEGALLY COMPELLED TO PARTICIPATE IN THE INTERVIEW.

18 (c) THE PERSON IS ALLOWED AT LEAST TWENTY-FOUR HOURS TO REVIEW AND
19 REVISE ANY WRITTEN WITNESS STATEMENT THAT IS DRAFTED BY THE AGENCY
20 INSPECTOR, AUDITOR OR REGULATOR AND ON WHICH THE AGENCY INSPECTOR, AUDITOR
21 OR REGULATOR REQUESTS THE PERSON'S SIGNATURE.

22 (d) THE INSPECTOR, AUDITOR OR REGULATOR MAY NOT PROHIBIT THE
23 REGULATED PERSON FROM HAVING AN ATTORNEY OR ANY OTHER EXPERTS IN THEIR
24 FIELD PRESENT DURING THE INTERVIEW TO REPRESENT OR ADVISE THE REGULATED
25 PERSON.

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

29 1. The rights described in subsection A of this section and section
30 41-1001.01, subsection C.

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

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

37 4. A STATEMENT THAT THE AGENCY INSPECTOR, AUDITOR OR REGULATOR MAY
38 NOT TAKE ANY ADVERSE ACTION, TREAT THE REGULATED PERSON LESS FAVORABLY OR
39 DRAW ANY INFERENCE AS A RESULT OF THE REGULATED PERSON'S DECISION TO BE
40 REPRESENTED BY AN ATTORNEY OR ADVISED BY ANY OTHER EXPERTS IN THEIR FIELD.

41 5. A NOTICE THAT IF THE INFORMATION AND DOCUMENTS PROVIDED TO THE
42 AGENCY INSPECTOR, AUDITOR OR REGULATOR BECOME A PUBLIC RECORD, THE
43 REGULATED PERSON MAY REDACT TRADE SECRETS AND PROPRIETARY AND CONFIDENTIAL
44 INFORMATION UNLESS THE INFORMATION AND DOCUMENTS ARE CONFIDENTIAL PURSUANT
45 TO STATUTE.

1 6. THE TIME LIMIT OR STATUTE OF LIMITATIONS APPLICABLE TO THE RIGHT
2 OF THE AGENCY INSPECTOR, AUDITOR OR REGULATOR TO FILE A COMPLIANCE ACTION
3 AGAINST THE REGULATED PERSON ARISING FROM THE INSPECTION OR AUDIT, WHICH
4 APPLIES TO BOTH NEW AND AMENDED COMPLIANCE ACTIONS.

5 C. An agency inspector, auditor or regulator shall obtain the
6 signature of the regulated person or on-site representative of the
7 regulated person on the writing prescribed in subsection B of this section
8 AND SECTION 41-1001.01, SUBSECTION C, IF APPLICABLE, indicating that the
9 regulated person or on-site representative of the regulated person has
10 read the writing prescribed in subsection B of this section AND SECTION
11 41-1001.01, SUBSECTION C, IF APPLICABLE, and is notified of the regulated
12 person's or on-site representative of the regulated person's inspection or
13 audit and due process rights. THE AGENCY INSPECTOR, AUDITOR OR REGULATOR
14 MAY PROVIDE AN ELECTRONIC DOCUMENT OF THE WRITING PRESCRIBED IN SUBSECTION
15 B OF THIS SECTION AND SECTION 41-1001.01, SUBSECTION C AND, AT THE REQUEST
16 OF THE REGULATED PERSON OR ON-SITE REPRESENTATIVE, OBTAIN A RECEIPT IN THE
17 FORM OF AN ELECTRONIC SIGNATURE. The agency shall maintain a copy of this
18 signature with the inspection or audit report and shall leave a copy with
19 the regulated person or on-site representative of the regulated person.
20 If a regulated person or on-site representative of the regulated person is
21 not at the site or refuses to sign the writing prescribed in subsection B
22 of this section AND SECTION 41-1001.01, SUBSECTION C, IF APPLICABLE, the
23 agency inspector, auditor or regulator shall note that fact on the writing
24 prescribed in subsection B of this section AND SECTION 41-1001.01,
25 SUBSECTION C, IF APPLICABLE.

26 D. An agency that conducts an inspection shall give a copy of the
27 inspection report to the regulated person or on-site representative of the
28 regulated person either:

- 29 1. At the time of the inspection.
- 30 2. Notwithstanding any other state law, within thirty working days
31 after the inspection.
- 32 3. As otherwise required by federal law.

33 E. The inspection report shall contain deficiencies identified
34 during an inspection. Unless otherwise provided by STATE OR FEDERAL law,
35 the agency ~~may~~ SHALL provide the regulated person an opportunity to
36 correct the deficiencies unless the agency determines that the
37 deficiencies are:

- 38 1. Committed intentionally.
- 39 2. Not correctable within a reasonable period of time as determined
40 by the agency.
- 41 3. Evidence of a pattern of noncompliance.
- 42 4. A risk to any person, the public health, safety or welfare or
43 the environment.

44 F. If the agency allows the regulated person an opportunity to
45 correct the deficiencies pursuant to subsection E of this section, the

1 regulated person shall notify the agency when the deficiencies have been
2 corrected. Within thirty days after receipt of notification from the
3 regulated person that the deficiencies have been corrected, the agency
4 shall determine if the regulated person is in substantial compliance and
5 notify the regulated person whether or not the regulated person is in
6 substantial compliance. If the regulated person fails to correct the
7 deficiencies or the agency determines the deficiencies have not been
8 corrected within a reasonable period of time, the agency may take any
9 enforcement action authorized by law for the deficiencies.

10 G. For agencies with authority under title 49, if the agency does
11 not allow the regulated person an opportunity to correct deficiencies
12 pursuant to subsection E of this section, on the request of the regulated
13 person, the agency shall provide a written explanation of the reason that
14 an opportunity to correct was not allowed.

15 H. An agency decision pursuant to subsection E or F of this section
16 is not an appealable agency action.

17 I. At least once every month after the commencement of the
18 inspection, an agency shall provide a regulated person with an update on
19 the status of any agency action resulting from an inspection of the
20 regulated person. An agency is not required to provide an update after
21 the regulated person is notified that no agency action will result from
22 the agency inspection or after the completion of agency action resulting
23 from the agency inspection.

24 J. For agencies with authority under title 49, if, as a result of
25 an inspection or any other investigation, an agency alleges that a
26 regulated person is not in compliance with licensure or other applicable
27 regulatory requirements, the agency shall provide written notice of that
28 allegation to the regulated person. The notice shall contain the
29 following information:

30 1. A citation to the statute, regulation, license or permit
31 condition on which the allegation of noncompliance is based, including the
32 specific provisions in the statute, regulation, license or permit
33 condition that are alleged to be violated.

34 2. Identification of any documents relied on as a basis for the
35 allegation of noncompliance.

36 3. An explanation stated with reasonable specificity of the
37 regulatory and factual basis for the allegation of noncompliance.

38 4. Instructions for obtaining a timely opportunity to discuss the
39 alleged violation with the agency.

40 K. Subsection J of this section applies only to inspections
41 necessary for the issuance of a license or to determine compliance with
42 licensure or other regulatory requirements. Subsection J of this section
43 does not apply to an action taken pursuant to section 11-871, 11-876,
44 11-877, 49-457.01, 49-457.03 or 49-474.01. Issuance of a notice under
45 subsection J of this section is not a prerequisite to otherwise lawful

1 agency actions seeking an injunction or issuing an order if the agency
2 determines that the action is necessary on an expedited basis to abate an
3 imminent and substantial endangerment to public health or the environment
4 and documents the basis for that determination in the documents initiating
5 the action.

6 L. This section does not authorize an inspection or any other act
7 that is not otherwise authorized by law.

8 M. Except as otherwise provided in subsection K of this section,
9 this section applies only to inspections necessary for the issuance of a
10 license or to determine compliance with licensure or other regulatory
11 requirements applicable to a licensee and audits pursuant to enforcement
12 of title 23, chapters 2 and 4. This section does not apply:

13 1. To criminal investigations, investigations under tribal state
14 gaming compacts and undercover investigations that are generally or
15 specifically authorized by law.

16 2. If the inspector, auditor or regulator has reasonable suspicion
17 to believe that the regulated person may be engaged in criminal activity.

18 3. To the Arizona peace officer standards and training board
19 established by section 41-1821.

20 4. TO CERTIFICATES OF CONVENIENCE AND NECESSITY THAT ARE ISSUED BY
21 THE CORPORATION COMMISSION PURSUANT TO TITLE 40, CHAPTER 2.

22 N. If an inspector, auditor or regulator gathers evidence in
23 violation of this section, the violation may be a basis to exclude the
24 evidence in a civil or administrative proceeding.

25 O. Failure of an agency, board or commission employee to comply
26 with this section:

27 1. May subject the employee to disciplinary action or dismissal.

28 2. Shall be considered by the judge and administrative law judge as
29 grounds for reduction of any fine or civil penalty.

30 P. An agency may make rules to implement subsection A, paragraph 5
31 of this section.

32 Q. Nothing in this section shall be used to exclude evidence in a
33 criminal proceeding.

34 R. SUBSECTION A, PARAGRAPH 7, SUBDIVISION (c) AND SUBSECTION E OF
35 THIS SECTION DO NOT APPLY TO THE DEPARTMENT OF HEALTH SERVICES FOR THE
36 PURPOSES OF TITLE 36, CHAPTERS 4 AND 7.1.

37 S. SUBSECTION B, PARAGRAPH 5 AND SUBSECTION E OF THIS SECTION DO
38 NOT APPLY TO THE CORPORATION COMMISSION FOR THE PURPOSES OF TITLE 44,
39 CHAPTERS 12 AND 13.

~~APPROVED BY THE GOVERNOR APRIL 2, 2015.~~

~~FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 2, 2015.~~

Passed the House February 4, 20 15

Passed the Senate March 24, 20 15

by the following vote: 37 Ayes,

by the following vote: 24 Ayes,

21 Nays, 2 Not Voting

4 Nays, 2 Not Voting

[Signature]
Speaker of the House

[Signature]
President of the Senate

[Signature]
Chief Clerk of the House

[Signature]
Secretary of the Senate

~~EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR~~

~~This Bill received by the Governor this~~

~~_____ day of _____, 20 _____~~

~~at _____ o'clock _____ M.~~

~~_____
Secretary to the Governor~~

~~Approved this _____ day of~~

~~_____~~

~~at _____ o'clock _____ M.~~

~~_____
Governor of Arizona~~

~~EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE~~

~~This Bill received by the Secretary of State~~

~~this _____ day of _____, 20 _____~~

~~at _____ o'clock _____ M.~~

~~_____
Secretary of State~~

H.B. 2213

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

March 30, 2015,

by the following vote: 40 Ayes,

20 Nays, 0 Not Voting

[Signature]
Speaker of the House

[Signature]
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this
30th day of March, 2015,

at 4:07 o'clock P. M.

[Signature]
Secretary to the Governor

Approved this 2nd day of

April, 2015,

at 11:00 o'clock A. M.

[Signature]
Governor of Arizona

H.B. 2213

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State
this 2nd day of April, 2015,

at 4:00 o'clock P. M.

[Signature]
Secretary of State