



# ARIZONA DEPARTMENT OF HEALTH SERVICES

## LICENSING

### Public Health Licensing Services

#### SMALL BUSINESS BILL OF RIGHTS

Pursuant to A.R.S. § 41-1001.01, 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 A.R.S. § 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 A.R.S. § 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 A.R.S. § 41-1008.
4. Is entitled to receive the information and notice regarding inspections and audits prescribed in A.R.S. § 41-1009.
5. May review the full text or summary of all rulemaking activity, the summary of substantive policy statements and the full text of executive orders in the register as provided in A.R.S. Title 41, Chapter 6, Article 2.
6. May participate in the rulemaking process as provided in A.R.S. Title 41, Chapter 6, Articles 3, 4, 4.1 and 5, including:
  - a. Providing written comments or testimony on proposed rules to an agency as provided in A.R.S. § 41-1023 and having the agency adequately address those comments as provided in A.R.S. § 41-1052(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 A.R.S. Title 41, Chapter 6, Article 5.
  - c. Providing written comments or testimony on rules to the governor's regulatory review council during the mandatory sixty-day comment period as provided in A.R.S. Title 41, Chapter 6, Article 5.
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 A.R.S. § 41-1030(B).
8. Is entitled to have an agency not base a decision regarding any filing or other matter submitted to an agency on a requirement or condition that is not specifically authorized by a statute, rule, federal law or regulation or state tribal gaming compact as provided in A.R.S. § 41-1030(C).
9. Is entitled to have an agency not make a rule under a specific grant of rulemaking authority that exceeds the subject matter areas listed in the specific statute or not make a rule under a general grant of rulemaking authority to supplement a more specific grant of rulemaking authority as provided in A.R.S. § 41-1030(D).
10. 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 A.R.S. § 41-1033.
11. 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 A.R.S. § 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 A.R.S. § 41-1048.
12. May have the person's administrative hearing on contested cases and appealable agency actions heard by an independent administrative law judge as provided in A.R.S. Title 41, Chapter 6, Articles 6 and 10.

13. May have administrative hearings governed by uniform administrative appeal procedures as provided in A.R.S. Title 41, Chapter 6, Articles 6 and 10, and may appeal a final administrative decision by filing a notice of appeal pursuant to A.R.S. Title 12, Chapter 7, Article 6.
14. May have an agency approve or deny the person's license application within a predetermined period of time as provided in A.R.S. Title 41, Chapter 6, Article 7.1.
15. 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 A.R.S. § 41-1076.
  - b. That explains the applicant's right to appeal the denial as provided in A.R.S. § 41-1076.
16. 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 A.R.S. §§ 41-1001.02 and 41-1079.
17. 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 A.R.S. § 41-1026.01 and Title 41, Chapter 6, Article 8.
18. 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 A.R.S. § 41-1091.
19. May file a complaint with the office of the ombudsman-citizens aide to investigate administrative acts of agencies as provided in A.R.S. Title 41, Chapter 8, Article 5.
20. 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 A.R.S. § 41-1002.
21. Pursuant to § 41-1009(E), may correct deficiencies identified during an inspection unless otherwise provided by law.
22. Pursuant to A.R.S. § 41-1006, may contact the ADHS Ombudsman to file a complaint or seek information or assistance from the agency: Carly Fleege at 150 N. 18th Avenue, Suite 500, Phoenix, AZ 85007; (480) 316-2823; carly.fleege@azdhs.gov.
23. If the person has made a reasonable effort with the agency to resolve the problem and still has not been successful, the person may contact the Arizona Ombudsman - Citizens' Aide, 2020 N. Central Ave., Suite 570, Phoenix, AZ 85004; (602) 277-7292; ombuds@azoca.gov; <https://www.azoca.gov/>.

The enumeration of the rights listed above does not grant any additional rights that are not prescribed in the referenced sections.

Pursuant to A.R.S. § 41-1009:

- A. An agency inspector, auditor or regulator who enters any premises of a regulated person for the purpose of conducting an inspection or audit shall, unless otherwise provided by law:
  1. Present photo identification on entry of the premises.
  2. On initiation of the inspection or audit, state the purpose of the inspection or audit and the legal authority for conducting the inspection or audit.
  3. Disclose any applicable inspection or audit fees. Notwithstanding any other law, a regulated person being inspected or audited is responsible for only the direct and reasonable costs of the inspection or audit and is entitled to receive a detailed billing statement as described in A.R.S. § 41-1009(A)(5)(e).
  4. Afford an opportunity to have an authorized on-site representative of the regulated person accompany the agency inspector, auditor or regulator on the premises, except during confidential interviews.
  5. Provide notice of the right to have on request:
    - a. Copies of any original documents taken by the agency during the inspection or audit if the agency is allowed by law to take original documents.

- b. A split of any samples taken during the inspection if the split of any samples would not prohibit an analysis from being conducted or render an analysis inconclusive.
  - c. Copies of any analysis performed on samples taken during the inspection.
  - d. Copies of any documents to be relied on to determine compliance with licensure or regulatory requirements if the agency is otherwise allowed by law to do so.
  - e. A detailed billing statement that provides reasonable specificity of the inspection or audit fees imposed pursuant to A.R.S. § 41-1009(A)(3) and that cites the statute or rule that authorizes the fees being charged.
6. Inform each person whose conversation with the agency inspector, auditor or regulator during the inspection or audit is tape recorded that the conversation is being tape recorded.
  7. Inform each person who is interviewed during the inspection or audit that:
    - a. Statements made by the person may be included in the inspection or audit report.
    - b. Participation in an interview is voluntary, unless the person is legally compelled to participate in the interview.
    - c. The person is allowed at least twenty-four hours to review and revise any written witness statement that is drafted by the agency inspector, auditor or regulator and on which the agency inspector, auditor or regulator requests the person's signature.
    - d. The agency inspector, auditor or regulator may not prohibit the regulated person from having an attorney or any other experts in their field present during the interview to represent or advise the regulated person.
  8. At the end of the inspection, offer to review, with an authorized representative of the regulated person, the findings of the inspection and what agency actions the regulated person can expect.
- B. On initiation of an audit or an inspection of any premises of a regulated person, an agency inspector, auditor or regulator shall provide the following in writing:
1. The rights described in A.R.S. §§ 41-1009(A) and 41-1001.01(C).
  2. The name and telephone number of a contact person who is available to answer questions regarding the inspection or audit.
  3. The due process rights relating to an appeal of a final decision of an agency based on the results of the inspection or audit, including the name and telephone number of a person to contact within the agency and any appropriate state government ombudsman.
  4. A statement that the agency inspector, auditor or regulator may not take any adverse action, treat the regulated person less favorably or draw any inference as a result of the regulated person's decision to be represented by an attorney or advised by any other experts in their field.
  5. A notice that if the information and documents provided to the agency inspector, auditor or regulator become a public record, the regulated person may redact trade secrets and proprietary and confidential information unless the information and documents are confidential pursuant to statute.
  6. The time limit or statute of limitations applicable to the right of the agency inspector, auditor or regulator to file a compliance action against the regulated person arising from the inspection or audit, which applies to both new and amended compliance actions.
- C. An agency inspector, auditor or regulator shall obtain the signature of the regulated person or on-site representative of the regulated person on the writing prescribed in A.R.S. §§ 41-1009(B) and 41-1001.01(C), if applicable, indicating that the regulated person or on-site representative of the regulated person has read the writing prescribed in A.R.S. §§ 41-1009(B) and 41-1001.01(C), if applicable, and is notified of the regulated person's or on-site representative of the regulated person's inspection or audit and due process rights. The agency inspector, auditor or regulator may provide an electronic document of the writing prescribed in A.R.S. §§ 41-1009(B) and 41-1001.01(C) and, at the request of the regulated person or on-site representative, obtain

a receipt in the form of an electronic signature. The agency shall maintain a copy of this signature with the inspection or audit report and shall leave a copy with the regulated person or on-site representative of the regulated person. If a regulated person or on-site representative of the regulated person is not at the site or refuses to sign the writing prescribed in A.R.S. §§ 41-1009(B) and 41-1001.01(C), if applicable, the agency inspector, auditor or regulator shall note that fact on the writing prescribed in A.R.S. §§ 41-1009(B) and 41-1001.01(C), if applicable.

- D. An agency that conducts an inspection shall give a copy of the inspection report to the regulated person or on-site representative of the regulated person either:
  - 1. At the time of the inspection.
  - 2. Notwithstanding any other state law, within thirty working days after the inspection.
  - 3. As otherwise required by federal law.
- E. The inspection report shall contain alleged deficiencies identified during an inspection. Unless otherwise provided by state or federal law, the agency shall provide the regulated person an opportunity to correct the alleged deficiencies unless the agency documents in writing as part of the inspection report that the alleged deficiencies are:
  - 1. Committed intentionally.
  - 2. Not correctable within a reasonable period of time as determined by the agency.
  - 3. Evidence of a pattern of noncompliance as demonstrated by alleged deficiencies previously identified in an inspection report or other written notice at the same premises.
  - 4. A significant risk to any person, the public health, safety or welfare or the environment.
- F. If the agency is unsure whether a regulated person meets the exemptions in A.R.S. § 41-1009(E), the agency shall provide the regulated person with an opportunity to correct the alleged deficiencies.
- G. If the agency allows the regulated person an opportunity to correct the alleged deficiencies pursuant to A.R.S. § 41-1009(E), the regulated person shall notify the agency when the alleged deficiencies have been corrected. Within thirty days after receipt of notification from the regulated person that the alleged deficiencies have been corrected, the agency shall determine if the regulated person is in substantial compliance and notify the regulated person whether or not the regulated person is in substantial compliance. If the regulated person fails to correct the alleged deficiencies or the agency determines the alleged deficiencies have not been corrected within a reasonable period of time, the agency may take any enforcement action authorized by law for the alleged deficiencies.
- H. If the agency does not allow the regulated person an opportunity to correct alleged deficiencies pursuant to A.R.S. § 41-1009(E), on the request of the regulated person, the agency shall provide a detailed written explanation of the reason that an opportunity to correct was not allowed.
- I. An agency decision pursuant to A.R.S. § 41-1009(E) or (G) is not an appealable agency action.
- J. At least once every month after the commencement of the inspection, an agency shall provide a regulated person with an update on the status of any agency action resulting from an inspection of the regulated person. An agency is not required to provide an update after the regulated person is notified that no agency action will result from the agency inspection or after the completion of agency action resulting from the agency inspection.