



Bill Number: H.B. 2451

Rogers Floor Amendment

Reference to: House engrossed bill

Amendment drafted by: Leg Council

FLOOR AMENDMENT EXPLANATION

- Restores the original definition of *licensing decision* by removing the addition of any action taken by an agency to regulate a licensee.

ROGERS FLOOR AMENDMENT
SENATE AMENDMENTS TO H.B. 2451
(Reference to House engrossed bill)

Amendment instruction key:

[GREEN UNDERLINING IN BRACKETS] indicates text added to statute or previously enacted session law.

[Green underlining in brackets] indicates text added to new session law or text restoring existing law.

[GREEN STRIKEOUT IN BRACKETS] indicates new text removed from statute or previously enacted session law.

[Green strikeout in brackets] indicates text removed from existing statute, previously enacted session law or new session law.

<<Green carets>> indicate a section added to the bill.

<<Green strikeout in carets>> indicates a section removed from the bill.

1 The bill as proposed to be amended is reprinted as follows:

2 <<Section 1. ~~Section 41-1001, Arizona Revised Statutes, is amended~~
3 ~~to read:~~

4 ~~41-1001. Definitions~~

5 ~~In this chapter, unless the context otherwise requires:~~

6 ~~1. "Agency" means any board, commission, department, officer or~~
7 ~~other administrative unit of this state, including the agency head and one~~
8 ~~or more members of the agency head or agency employees or other persons~~
9 ~~directly or indirectly purporting to act on behalf or under the authority~~
10 ~~of the agency head, whether created under the Constitution of Arizona or~~
11 ~~by enactment of the legislature. Agency does not include the legislature,~~
12 ~~the courts or the governor. Agency does not include a political~~
13 ~~subdivision of this state or any of the administrative units of a~~
14 ~~political subdivision, but does include any board, commission, department,~~
15 ~~officer or other administrative unit created or appointed by joint or~~
16 ~~concerted action of an agency and one or more political subdivisions of~~
17 ~~this state or any of their units. To the extent an administrative unit~~
18 ~~purports to exercise authority subject to this chapter, an administrative~~
19 ~~unit otherwise qualifying as an agency must be treated as a separate~~
20 ~~agency even if the administrative unit is located within or subordinate to~~
21 ~~another agency.~~

22 ~~2. "Appealable agency action" has the same meaning prescribed in~~
23 ~~section 41-1092.~~

24 ~~3. "Audit" means an audit, investigation or inspection pursuant to~~
25 ~~title 23, chapter 2 or 4.~~

26 ~~4. "Code" means the Arizona administrative code, which is published~~
27 ~~pursuant to section 41-1011.~~

28 ~~5. "Committee" means the administrative rules oversight committee.~~

1 ~~6. "Contested case" means any proceeding, including rate making,~~
2 ~~except rate making pursuant to article XV, Constitution of Arizona, price~~
3 ~~fixing and licensing, in which the legal rights, duties or privileges of a~~
4 ~~party are required or permitted by law, other than this chapter, to be~~
5 ~~determined by an agency after an opportunity for an administrative~~
6 ~~hearing.~~

7 ~~7. "Council" means the governor's regulatory review council.~~

8 ~~8. "Delegation agreement" means an agreement between an agency and~~
9 ~~a political subdivision that authorizes the political subdivision to~~
10 ~~exercise functions, powers or duties conferred on the delegating agency by~~
11 ~~a provision of law. Delegation agreement does not include~~
12 ~~intergovernmental agreements entered into pursuant to title 11, chapter 7,~~
13 ~~article 3.~~

14 ~~9. "Emergency rule" means a rule that is made pursuant to section~~
15 ~~41-1026.~~

16 ~~10. "Fee" means a charge prescribed by an agency for an inspection~~
17 ~~or for obtaining a license.~~

18 ~~11. "Final rule" means any rule filed with the secretary of state~~
19 ~~and made pursuant to an exemption from this chapter in section 41-1005,~~
20 ~~made pursuant to section 41-1026, approved by the council pursuant to~~
21 ~~section 41-1052 or 41-1053 or approved by the attorney general pursuant to~~
22 ~~section 41-1044. For purposes of judicial review, final rule includes~~
23 ~~expedited rules pursuant to section 41-1027.~~

24 ~~12. "General permit" means a regulatory permit, license or agency~~
25 ~~authorization that is for facilities, activities or practices in a class~~
26 ~~that are substantially similar in nature and that is issued or granted by~~
27 ~~an agency to a qualified applicant to conduct identified operations or~~
28 ~~activities if the applicant meets the applicable requirements of the~~
29 ~~general permit, that requires less information than an individual or~~
30 ~~traditional permit, license or authorization and that does not require a~~
31 ~~public hearing.~~

32 ~~13. "License" includes the whole or part of any agency permit,~~
33 ~~certificate, approval, registration, charter or similar form of permission~~
34 ~~required by law, but does not include a license required solely for~~
35 ~~revenue purposes.~~

36 ~~14. "Licensing" includes the agency process respecting the grant,~~
37 ~~denial, renewal, revocation, suspension, annulment, withdrawal, change,~~
38 ~~reduction, modification or amendment of a license, including an existing~~
39 ~~permit, certificate, approval, registration, charter or similar form of~~
40 ~~permission, approval or authorization obtained from an agency by the~~
41 ~~holder of a license.~~

42 ~~15. "Licensing decision" means:~~

43 ~~(a) Any action by an agency to grant or deny any request for~~
44 ~~permission, approval or authorization issued in response to any request~~

1 ~~from an applicant for a license or to the holder of a license to exercise~~
2 ~~authority within the scope of the license.~~

3 ~~(b) ANY ACTION TAKEN BY AN AGENCY TO REGULATE A LICENSEE, INCLUDING~~
4 ~~A DECISION ABOUT WHETHER TO RENEW, REVOKE OR SUSPEND THE LICENSE, IMPOSE~~
5 ~~FINES OR CIVIL PENALTIES OR TAKE OTHER ADMINISTRATIVE ACTION AGAINST THE~~
6 ~~LICENSEE.~~

7 ~~16. "Party" means each person or agency named or admitted as a~~
8 ~~party or properly seeking and entitled as of right to be admitted as a~~
9 ~~party.~~

10 ~~17. "Person" means an individual, partnership, corporation,~~
11 ~~association, governmental subdivision or unit of a governmental~~
12 ~~subdivision, a public or private organization of any character or another~~
13 ~~agency.~~

14 ~~18. "Preamble" means:~~

15 ~~(a) For any rulemaking subject to this chapter, a statement~~
16 ~~accompanying the rule that includes:~~

17 ~~(i) Reference to the specific statutory authority for the rule.~~

18 ~~(ii) The name and address of agency personnel with whom persons may~~
19 ~~communicate regarding the rule.~~

20 ~~(iii) An explanation of the rule, including the agency's reasons~~
21 ~~for initiating the rulemaking.~~

22 ~~(iv) A reference to any study relevant to the rule that the agency~~
23 ~~reviewed and either proposes to rely on in its evaluation of or~~
24 ~~justification for the rule or proposes not to rely on in its evaluation of~~
25 ~~or justification for the rule, where the public may obtain or review each~~
26 ~~study, all data underlying each study and any analysis of each study and~~
27 ~~other supporting material.~~

28 ~~(v) The economic, small business and consumer impact summary, or in~~
29 ~~the case of a proposed rule, a preliminary summary and a solicitation of~~
30 ~~input on the accuracy of the summary.~~

31 ~~(vi) A showing of good cause why the rule is necessary to promote a~~
32 ~~statewide interest if the rule will diminish a previous grant of authority~~
33 ~~of a political subdivision of this state.~~

34 ~~(vii) Such other matters as are prescribed by statute and that are~~
35 ~~applicable to the specific agency or to any specific rule or class of~~
36 ~~rules.~~

37 ~~(b) In addition to the information set forth in subdivision (a) of~~
38 ~~this paragraph, for a proposed rule, the preamble also shall include a~~
39 ~~list of all previous notices appearing in the register addressing the~~
40 ~~proposed rule, a statement of the time, place and nature of the~~
41 ~~proceedings for the making, amendment or repeal of the rule and where,~~
42 ~~when and how persons may request an oral proceeding on the proposed rule~~
43 ~~if the notice does not provide for one.~~

44 ~~(c) In addition to the information set forth in subdivision (a) of~~
45 ~~this paragraph, for an expedited rule, the preamble also shall include a~~

1 ~~statement of the time, place and nature of the proceedings for the making,~~
2 ~~amendment or repeal of the rule and an explanation of why expedited~~
3 ~~proceedings are justified.~~

4 ~~(d) For a final rule, except an emergency rule, the preamble also~~
5 ~~shall include, in addition to the information set forth in subdivision~~
6 ~~(a), the following information:~~

7 ~~(i) A list of all previous notices appearing in the register~~
8 ~~addressing the final rule.~~

9 ~~(ii) A description of the changes between the proposed rules,~~
10 ~~including supplemental notices and final rules.~~

11 ~~(iii) A summary of the comments made regarding the rule and the~~
12 ~~agency response to them.~~

13 ~~(iv) A summary of the council's action on the rule.~~

14 ~~(v) A statement of the rule's effective date.~~

15 ~~(e) In addition to the information set forth in subdivision (a) of~~
16 ~~this paragraph, for an emergency rule, the preamble also shall include an~~
17 ~~explanation of the situation justifying the rule being made as an~~
18 ~~emergency rule, the date of the attorney general's approval of the rule~~
19 ~~and a statement of the emergency rule's effective date.~~

20 ~~19. "Provision of law" means the whole or a part of the federal or~~
21 ~~state constitution, or of any federal or state statute, rule of court,~~
22 ~~executive order or rule of an administrative agency.~~

23 ~~20. "Register" means the Arizona administrative register, which is:~~

24 ~~(a) This state's official publication of rulemaking notices that~~
25 ~~are filed with the office of secretary of state.~~

26 ~~(b) Published pursuant to section 41-1011.~~

27 ~~21. "Rule" means an agency statement of general applicability that~~
28 ~~implements, interprets or prescribes law or policy, or describes the~~
29 ~~procedure or practice requirements of an agency. Rule includes~~
30 ~~prescribing fees or the amendment or repeal of a prior rule but does not~~
31 ~~include intraagency memoranda that are not delegation agreements.~~

32 ~~22. "Rulemaking" means the process to make a new rule or amend,~~
33 ~~repeal or renumber a rule.~~

34 ~~23. "Small business" means a concern, including its affiliates,~~
35 ~~which is independently owned and operated, which is not dominant in its~~
36 ~~field and which employs fewer than one hundred full-time employees or~~
37 ~~which had gross annual receipts of less than four million dollars in its~~
38 ~~last fiscal year. For purposes of a specific rule, an agency may define~~
39 ~~small business to include more persons if it finds that such a definition~~
40 ~~is necessary to adapt the rule to the needs and problems of small~~
41 ~~businesses and organizations.~~

42 ~~24. "Substantive policy statement" means a written expression which~~
43 ~~informs the general public of an agency's current approach to, or opinion~~
44 ~~of, the requirements of the federal or state constitution, federal or~~
45 ~~state statute, administrative rule or regulation, or final judgment of a~~

1 ~~court of competent jurisdiction, including, where appropriate, the~~
2 ~~agency's current practice, procedure or method of action based upon that~~
3 ~~approach or opinion. A substantive policy statement is advisory only. A~~
4 ~~substantive policy statement does not include internal procedural~~
5 ~~documents which only affect the internal procedures of the agency and does~~
6 ~~not impose additional requirements or penalties on regulated parties,~~
7 ~~confidential information or rules made in accordance with this chapter.>>~~

8 Section 1. Section 41-1092.07, Arizona Revised Statutes, is amended
9 to read:

10 41-1092.07. Hearings

11 A. A PARTY TO A CONTESTED CASE OR APPEALABLE AGENCY ACTION IS
12 ENTITLED TO ONE PEREMPTORY CHANGE OF ADMINISTRATIVE LAW JUDGE. A party to
13 a contested case or appealable agency action ~~may~~ SHALL ALSO BE AUTHORIZED
14 TO file a nonperemptory motion with the director to disqualify an ~~office~~
15 administrative law judge from conducting a hearing for bias, prejudice,
16 personal interest, CONFLICT OF INTEREST, BEING A MATERIAL WITNESS IN THE
17 ACTION or lack of technical expertise necessary for a hearing.

18 B. The parties to a contested case or appealable agency action have
19 the right to be represented by counsel or to proceed without counsel, to
20 submit evidence and to cross-examine witnesses.

21 C. The administrative law judge may issue subpoenas to compel the
22 attendance of witnesses and the production of documents. The subpoenas
23 shall be served and, on application to the superior court, enforced in the
24 manner provided by law for the service and enforcement of subpoenas in
25 civil matters. The administrative law judge may administer oaths and
26 affirmations to witnesses.

27 D. All parties shall have the opportunity to respond and present
28 evidence and argument on all relevant issues. All relevant evidence is
29 admissible, but the administrative law judge may exclude evidence if its
30 probative value is outweighed by the danger of unfair prejudice, by
31 confusion of the issues or by considerations of undue delay, waste of time
32 or needless presentation of cumulative evidence. The administrative law
33 judge shall exercise reasonable control over the manner and order of
34 cross-examining witnesses and presenting evidence to make the
35 cross-examination and presentation effective for ascertaining the truth,
36 avoiding needless consumption of time and protecting witnesses from
37 harassment or undue embarrassment.

38 E. All hearings shall be recorded. The administrative law judge
39 shall secure either a court reporter or an electronic means of producing a
40 clear and accurate record of the proceeding at the agency's expense. Any
41 party that requests a transcript of the proceeding shall pay the costs of
42 the transcript to the court reporter or other transcriber.

43 F. Unless otherwise provided by law, the following apply:

44 1. A hearing may be conducted in an informal manner and without
45 adherence to the rules of evidence required in judicial proceedings.

1 Neither the manner of conducting the hearing nor the failure to adhere to
2 the rules of evidence required in judicial proceedings is grounds for
3 reversing any administrative decision or order if the evidence supporting
4 the decision or order is substantial, reliable and probative.

5 2. Copies of documentary evidence may be received in the discretion
6 of the administrative law judge. On request, the parties shall be given
7 an opportunity to compare the copy with the original.

8 3. Notice may be taken of judicially cognizable facts. In
9 addition, notice may be taken of generally recognized technical or
10 scientific facts within the agency's specialized knowledge. The parties
11 shall be notified either before or during the hearing or by reference in
12 preliminary reports or otherwise of the material noticed, including any
13 staff memoranda or data and they shall be afforded an opportunity to
14 contest the material so noticed. The agency's experience, technical
15 competence and specialized knowledge may be used in the evaluation of the
16 evidence. An agency-issued license that substantially complied with the
17 applicable licensing requirements establishes a prima facie demonstration
18 that the license meets all state and federal legal and technical
19 requirements and the license would protect public health, welfare and the
20 environment. An adversely affected party may rebut a prima facie
21 demonstration by presenting clear and convincing evidence demonstrating
22 that one or more provisions in the license violate a specifically
23 applicable state or federal requirement. If an adversely affected party
24 rebuts a prima facie demonstration, the applicant or licensee and the
25 agency director may present additional evidence to support issuing the
26 license.

27 4. On application of a party or the agency and for use as evidence,
28 the administrative law judge may ~~permit~~ ALLOW a deposition to be taken, in
29 the manner and on the terms designated by the administrative law judge, of
30 a witness who cannot be subpoenaed or who is unable to attend the hearing.
31 The administrative law judge may order subpoenas for the production of
32 documents if the party seeking the discovery demonstrates that the party
33 has reasonable need of the materials being sought. All provisions of law
34 compelling a person under subpoena to testify are applicable. Fees for
35 attendance as a witness shall be the same as for a witness in court,
36 unless otherwise provided by law or agency rule. Notwithstanding section
37 12-2212, subpoenas, depositions or other discovery shall not be ~~permitted~~
38 ALLOWED except as provided by this paragraph or subsection C of this
39 section.

40 5. Informal disposition may be made by stipulation, agreed
41 settlement, consent order or default.

42 6. Findings of fact shall be based exclusively on the evidence and
43 on matters officially noticed.

44 7. A final administrative decision shall include findings of fact
45 and conclusions of law, separately stated. Findings of fact, if set forth

1 in statutory language, shall be accompanied by a concise and explicit
2 statement of the underlying facts supporting the findings. Conclusions of
3 law shall specifically address the agency's authority to make the decision
4 consistent with section 41-1030.

5 G. Except as otherwise provided by law:

6 1. At a hearing on an agency's denial of a license or permit or a
7 denial of an application or request for modification of a license or
8 permit, the applicant has the burden of persuasion.

9 2. At a hearing on an agency action to suspend, revoke, terminate
10 or modify on its own initiative material conditions of a license or
11 permit, the agency has the burden of persuasion.

12 3. At a hearing on an agency's imposition of fees or penalties or
13 any agency compliance order, the agency has the burden of persuasion.

14 4. At a hearing held pursuant to chapter 23 or 24 of this title,
15 the appellant or claimant has the burden of persuasion.

16 H. Subsection G of this section does not affect the law governing
17 burden of persuasion in an agency denial of, or refusal to issue, a
18 license renewal.

19 Enroll and engross to conform

20 Amend title to conform

WENDY ROGERS

2451FloorROGERS.docx

03/28/2025

1:15 PM

C: AH