

COMMITTEE ON NATURAL RESOURCES, ENERGY & WATER
HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2576
(Reference to printed 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 41-1009, Arizona Revised Statutes, is amended to
3 read:

4 41-1009. Inspections and audits: applicability; exceptions;
5 penalty; definitions

6 A. An agency inspector, auditor or regulator who enters any
7 premises of a regulated person for the purpose of conducting an inspection
8 or audit shall, unless otherwise provided by law:

9 1. Present photo identification on entry of the premises.

10 2. On initiation of the inspection or audit, state the purpose of
11 the inspection or audit and the legal authority for conducting the
12 inspection or audit.

13 3. Disclose any applicable inspection or audit fees.
14 Notwithstanding any other law, a regulated person being inspected or
15 audited is responsible for only the direct and reasonable costs of the
16 inspection or audit and is entitled to receive a detailed billing
17 statement as described in paragraph 5, subdivision (e) of this subsection.

18 4. Afford an opportunity to have an authorized on-site
19 representative of the regulated person accompany the agency inspector,
20 auditor or regulator on the premises, except during confidential
21 interviews.

22 5. Provide notice of the right to have on request:

23 (a) Copies of any original documents taken by the agency during the
24 inspection or audit if the agency is allowed by law to take original
25 documents.

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

1 (c) Copies of any analysis performed on samples taken during the
2 inspection.

3 (d) Copies of any documents to be relied on to determine compliance
4 with licensure or regulatory requirements if the agency is otherwise
5 allowed by law to do so.

6 (e) A detailed billing statement that provides reasonable
7 specificity of the inspection or audit fees imposed pursuant to paragraph
8 3 of this subsection and that cites the statute or rule that authorizes
9 the fees being charged.

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

13 7. Inform each person who is interviewed during the inspection or
14 audit that:

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

17 (b) Participation in an interview is voluntary, unless the person
18 is legally compelled to participate in the interview.

19 (c) The person is allowed at least twenty-four hours to review and
20 revise any written witness statement that is drafted by the agency
21 inspector, auditor or regulator and on which the agency inspector, auditor
22 or regulator requests the person's signature.

23 (d) The agency inspector, auditor or regulator may not prohibit the
24 regulated person from having an attorney or any other experts in their
25 field present during the interview to represent or advise the regulated
26 person.

27 8. At the end of the inspection, offer to review, with an
28 authorized representative of the regulated person, the findings of the
29 inspection and what agency actions the regulated person can expect.

30 B. On initiation of an audit or an inspection ~~[of]~~ [IN WHICH AN
31 AGENCY INSPECTOR, AUDITOR OR REGULATOR ENTERS] any premises of a regulated
32 person, ~~[an]~~ [THE] agency inspector, auditor or regulator shall provide
33 the following in writing:

34 1. The rights described in subsection A of this section and section
35 41-1001.01, subsection C.

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

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

42 4. A statement that the agency inspector, auditor or regulator may
43 not take any adverse action, treat the regulated person less favorably or
44 draw any inference as a result of the regulated person's decision to be
45 represented by an attorney or advised by any other experts in their field.

46 5. A notice that if the information and documents provided to the
47 agency inspector, auditor or regulator become a public record, the

1 regulated person may redact trade secrets and proprietary and confidential
2 information unless the information and documents are confidential pursuant
3 to statute.

4 6. The time limit or statute of limitations applicable to the right
5 of the agency inspector, auditor or regulator to file a compliance action
6 against the regulated person arising from the inspection or audit, which
7 applies to both new and amended compliance actions.

8 C. ~~[A]~~ [FOR AN AUDIT OR INSPECTION IN WHICH AN AGENCY INSPECTOR,
9 AUDITOR OR REGULATOR ENTERS THE PREMISES OF A REGULATED PERSON, THE]
10 agency inspector, auditor or regulator shall obtain the signature of the
11 regulated person or on-site representative of the regulated person on the
12 writing prescribed in subsection B of this section and section 41-1001.01,
13 subsection C, if applicable, indicating that the regulated person or
14 on-site representative of the regulated person has read the writing
15 prescribed in subsection B of this section and section 41-1001.01,
16 subsection C, if applicable, and is notified of the regulated person's or
17 on-site representative of the regulated person's inspection or audit and
18 due process rights. The agency inspector, auditor or regulator may
19 provide an electronic document of the writing prescribed in subsection B
20 of this section and section 41-1001.01, subsection C and, at the request
21 of the regulated person or on-site representative, obtain a receipt in the
22 form of an electronic signature. The agency shall maintain a copy of this
23 signature with the inspection or audit report and shall leave a copy with
24 the regulated person or on-site representative of the regulated person.
25 If a regulated person or on-site representative of the regulated person is
26 not at the site or refuses to sign the writing prescribed in subsection B
27 of this section and section 41-1001.01, subsection C, if applicable, the
28 agency inspector, auditor or regulator shall note that fact on the writing
29 prescribed in subsection B of this section and section 41-1001.01,
30 subsection C, if applicable.

31 D. An agency that conducts an inspection [BY ENTERING THE PREMISES
32 OF A REGULATED PERSON] shall [PRODUCE AN INSPECTION REPORT AND] give a
33 copy of the inspection report to the regulated person or on-site
34 representative of the regulated person either:

- 35 1. At the time of the inspection.
- 36 2. Notwithstanding any other state law, within thirty working days
37 after the inspection.
- 38 3. As otherwise required by federal law.

39 E. The inspection report [REQUIRED PURSUANT TO SUBSECTION D OF THIS
40 SECTION] shall contain alleged deficiencies identified during an
41 inspection. Unless otherwise provided by state or federal law, the agency
42 shall provide the regulated person an opportunity to correct the alleged
43 deficiencies unless the agency documents in writing as part of the
44 inspection report [OR IN A NOTICE OF VIOLATION ISSUED PURSUANT TO
45 SUBSECTION K OF THIS SECTION], ALONG WITH SPECIFIC EVIDENCE, that the
46 alleged deficiencies are:

- 47 1. Committed intentionally.

1 2. Not correctable within a reasonable period of time as determined
2 by the agency.

3 3. Evidence of a pattern of noncompliance as demonstrated by
4 alleged deficiencies previously identified in an inspection report or
5 other written notice at the same premises.

6 4. A significant risk to any person, the public health, safety or
7 welfare or the environment.

8 F. If the agency is unsure whether a regulated person meets the
9 exemptions in subsection E of this section, the agency shall provide the
10 regulated person with an opportunity to correct the alleged deficiencies.

11 G. If the agency allows the regulated person an opportunity to
12 correct the alleged deficiencies pursuant to subsection E of this section,
13 the regulated person shall notify the agency when the alleged deficiencies
14 have been corrected. Within thirty days after receipt of notification
15 from the regulated person that the alleged deficiencies have been
16 corrected, the agency shall determine if the regulated person is in
17 substantial compliance and notify the regulated person whether or not the
18 regulated person is in substantial compliance. ~~If the regulated person~~
19 ~~fails to correct the alleged deficiencies or the agency determines the~~
20 ~~alleged deficiencies have not been corrected within a reasonable period of~~
21 ~~time;~~ [UNLESS OTHERWISE REQUIRED BY STATE OR FEDERAL LAW.] the agency may
22 take any enforcement action authorized by law for the alleged
23 deficiencies~~[,]~~ ONLY IF THE REGULATED PERSON FAILS TO CORRECT THE ALLEGED
24 DEFICIENCIES~~[,]~~ [OR] THE AGENCY DETERMINES THE ALLEGED DEFICIENCIES HAVE
25 NOT BEEN CORRECTED WITHIN A REASONABLE PERIOD OF TIME [OR THE ALLEGED
26 DEFICIENCIES MEET THE CRITERIA PRESCRIBED IN SUBSECTION E OF THIS
27 SECTION].

28 H. If the agency does not allow the regulated person an opportunity
29 to correct alleged deficiencies pursuant to subsection E of this section,
30 on the request of the regulated person, the agency shall provide a
31 detailed written explanation of the reason that an opportunity to correct
32 was not allowed.

33 I. An agency decision pursuant to subsection E or G of this section
34 is not an appealable agency action.

35 J. At least once every month after the commencement of the
36 inspection, an agency shall provide a regulated person with an update on
37 the status of any agency action resulting from an inspection of the
38 regulated person. An agency is not required to provide an update after
39 the regulated person is notified that no agency action will result from
40 the agency inspection or after the completion of agency action resulting
41 from the agency inspection.

42 K. For agencies with authority under title 49, if, as a result of
43 an inspection or any other investigation, an agency alleges that a
44 regulated person is not in compliance with licensure or other applicable
45 regulatory requirements, the agency shall provide ~~written~~ A [WRITTEN]
46 notice of ~~that allegation~~ [AN OPPORTUNITY TO CORRECT OR A NOTICE OF]

1 VIOLATION ~~[to the regulated person]~~. ~~[The]~~ ~~[EITHER]~~ notice ~~[OF VIOLATION]~~
2 shall contain the following information:

3 1. A citation to the statute, regulation, license or permit
4 condition on which the allegation of deficiency is based, including the
5 specific provisions in the statute, regulation, license or permit
6 condition that are alleged to be violated.

7 2. Identification of any documents relied on when determining the
8 allegation of deficiency.

9 3. An explanation stated with reasonable specificity of the
10 regulatory and factual basis for the allegation of deficiency.

11 4. Instructions for obtaining a timely opportunity to discuss the
12 alleged deficiencies with the agency.

13 L. Subsection K of this section applies only to inspections ~~[or any~~
14 ~~other investigations]~~ ~~[THAT ARE]~~ necessary for the issuance of a license
15 or to determine compliance with licensure or other regulatory
16 requirements. Subsection K of this section does not apply to an action
17 taken pursuant to section 11-871, 11-876, 11-877, 49-457.01, 49-457.03 or
18 49-474.01. Issuance of a notice ~~[OF VIOLATION]~~ under subsection K of this
19 section is not a prerequisite to otherwise lawful agency actions ~~[TO~~
20 ~~COMPLY WITH A REQUIREMENT OF FEDERAL LAW OR IN]~~ seeking an injunction or
21 issuing an order if the agency determines that the action is necessary on
22 an expedited basis to abate an imminent and substantial endangerment to
23 public health or the environment and documents the basis for that
24 determination in the documents initiating the action. ~~WITHIN THIRTY DAYS~~
25 ~~AFTER RECEIPT OF NOTIFICATION FROM THE REGULATED PERSON THAT THE ALLEGED~~
26 ~~DEFICIENCIES HAVE BEEN CORRECTED, THE AGENCY SHALL DETERMINE IF THE~~
27 ~~REGULATED PERSON IS IN SUBSTANTIAL COMPLIANCE AND NOTIFY THE REGULATED~~
28 ~~PERSON WHETHER THE REGULATED PERSON IS IN SUBSTANTIAL COMPLIANCE. [THE~~
29 ~~AGENCY MAY TAKE ANY ENFORCEMENT ACTION AUTHORIZED BY LAW ONLY IF ANY OF~~
30 ~~THE FOLLOWING OCCURS:~~

31 1. ~~THE REGULATED PERSON FAILS TO CORRECT THE ALLEGED DEFICIENCIES.~~

32 2. ~~THE AGENCY DETERMINES THAT THE ALLEGED DEFICIENCIES HAVE NOT~~
33 ~~BEEN CORRECTED IN A REASONABLE PERIOD OF TIME.~~

34 3. ~~THE REGULATED PERSON INTENTIONALLY MISREPRESENTS INFORMATION OR~~
35 ~~ACTS UNLAWFULLY.~~

36 4. ~~THE ALLEGED DEFICIENCIES CAUSE ACTUAL HARM TO A PERSON'S HEALTH.~~

37 5. ~~THE REGULATED PARTY HAS REPEAT VIOLATIONS FROM CONSECUTIVE~~
38 ~~INSPECTIONS. ANY CIVIL PENALTY SHALL BE CALCULATED FROM THE DATE OF~~
39 ~~ISSUANCE OF THE NOTICE OF VIOLATION AND EACH DAY THEREAFTER UNTIL~~
40 ~~CONTINUOUS COMPLIANCE OCCURS.]~~

41 M. This section does not authorize an inspection or any other act
42 that is not otherwise authorized by law.

43 N. Except as otherwise provided in subsection L of this section,
44 this section applies only to inspections necessary for the issuance of a
45 license or to determine compliance with licensure or other regulatory
46 requirements applicable to a licensee and audits pursuant to enforcement
47 of title 23, chapters 2 and 4. This section does not apply:

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

4 2. If the agency inspector, auditor or regulator has reasonable
5 suspicion to believe that the regulated person may be engaged in criminal
6 activity.

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

9 4. To certificates of convenience and necessity that are issued by
10 the corporation commission pursuant to title 40, chapter 2.

11 O. If an agency inspector, auditor or regulator gathers evidence in
12 violation of this section, the violation may be a basis to exclude the
13 evidence in a civil or administrative proceeding.

14 P. Failure of an agency, board or commission employee to comply
15 with this section:

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

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

19 Q. An agency may make rules to implement subsection A, paragraph 5
20 of this section.

21 R. ~~Nothing in~~ This section shall NOT be used to exclude evidence in
22 a criminal proceeding.

23 S. Subsection A, paragraph 7, subdivision (c) and subsection E of
24 this section do not apply to the department of health services for the
25 purposes of title 36, chapters 4 and 7.1.

26 T. Subsection B, paragraph 5 and subsection E of this section do
27 not apply to the corporation commission for the purposes of title 44,
28 chapters 12 and 13.

29 U. Except as otherwise prescribed by this section and
30 notwithstanding any other law:

31 1. This section applies to all state agencies that conduct
32 inspections and audits.

33 2. If a conflict arises between the rights afforded a regulated
34 person pursuant to this section and the rights afforded a regulated person
35 pursuant to another statute, this section governs.

36 V. FOR THE PURPOSES OF THIS SECTION:

37 1. "INSPECTION" MEANS ANY ~~[INVESTIGATION, AUDIT OR REVIEW OF~~
38 ~~INFORMATION]~~ [AGENCY ACTION] TO DETERMINE COMPLIANCE WITH LICENSURE OR
39 OTHER REGULATORY REQUIREMENTS, INCLUDING ANY ~~[INSPECTIONS OF THE PREMISES~~
40 ~~OR ANY RECORDS]~~ [AUDIT OR INVESTIGATION].

41 2. "NOTICE OF VIOLATION" MEANS A WRITTEN NOTICE ISSUED AFTER AN
42 INSPECTION THAT DOCUMENTS AND COMMUNICATES THAT AN ALLEGED DEFICIENCY IS
43 ANY OF THE FOLLOWING:

44 (a) COMMITTED INTENTIONALLY.

45 (b) NOT CORRECTABLE WITHIN A REASONABLE PERIOD OF TIME AS
46 DETERMINED BY THE AGENCY.

1 (c) EVIDENCE OF A PATTERN OF NONCOMPLIANCE AS DEMONSTRATED BY
2 ALLEGED DEFICIENCIES PREVIOUSLY IDENTIFIED IN AN INSPECTION REPORT OR
3 OTHER WRITTEN NOTICE AT THE SAME PREMISES.

4 (d) A SIGNIFICANT RISK TO ANY PERSON, THE PUBLIC HEALTH, SAFETY OR
5 WELFARE OR THE ENVIRONMENT.

6 Enroll and engross to conform

7 Amend title to conform

And, as so amended, it do pass

GAIL GRIFFIN
CHAIRMAN

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