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

CHAPTER 240

HOUSE BILL 2297

AN ACT

AMENDING TITLE 41, CHAPTER 6, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-1038; RELATING TO STATE AGENCY RULEMAKING.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 41, chapter 6, article 3, Arizona Revised Statutes, is amended by adding section 41-1038, to read:

41-1038. Rules; restrictions; affirmative defense; fees and costs; exceptions; definition

A. NOTWITHSTANDING ANY OTHER LAW, AN AGENCY MAY NOT ADOPT ANY NEW RULE THAT WOULD INCREASE EXISTING REGULATORY RESTRAINTS OR BURDENS ON THE FREE EXERCISE OF PROPERTY RIGHTS OR THE FREEDOM TO ENGAGE IN AN OTHERWISE LAWFUL BUSINESS OR OCCUPATION UNLESS THE RULE IS EITHER OF THE FOLLOWING:

1. A COMPONENT OF A COMPREHENSIVE EFFORT TO REDUCE REGULATORY RESTRAINTS OR BURDENS.
2. NECESSARY TO IMPLEMENT STATUTES OR REQUIRED BY A FINAL COURT ORDER OR DECISION.

B. ANY PERSON WHO IS SUBJECT TO A CIVIL OR CRIMINAL PROCEEDING ARISING FROM THE ENFORCEMENT OF A RULE IN VIOLATION OF SUBSECTION A OF THIS SECTION HAS AN AFFIRMATIVE DEFENSE TO THE ENFORCEMENT ACTION. ANY COURT OR ADMINISTRATIVE BODY CONSIDERING OR REVIEWING THE DEFENSE SHALL RULE ON ITS MERITS WITHOUT DEFERENCE TO ANY LEGISLATIVE, ADMINISTRATIVE OR EXECUTIVE FINDING CONCERNING THE RULE. THE COURT OR ADMINISTRATIVE BODY MAY AWARD THE PREVAILING PARTY, OTHER THAN THE AGENCY, ATTORNEY FEES AND COSTS.

C. THIS SECTION DOES NOT APPLY TO RULES THAT EITHER:

1. GOVERN PUBLIC EMPLOYEES.
2. ARE NECESSARY TO PROTECT PUBLIC HEALTH AND SAFETY.
3. ARE NECESSARY TO AVOID SANCTIONS THAT WOULD RESULT FROM A FAILURE TO TAKE RULEMAKING ACTION PURSUANT TO A COURT ORDER OR FEDERAL LAW.

D. FOR THE PURPOSES OF THIS SECTION, AGENCY DOES NOT INCLUDE ANY BOARD, COMMISSION, DEPARTMENT, OFFICER OR OTHER ADMINISTRATIVE UNIT OF THIS STATE ESTABLISHED UNDER THE AUTHORITY OF THE CONSTITUTION OF ARIZONA.

E. FOR THE PURPOSES OF THIS SECTION, "TO PROTECT PUBLIC HEALTH AND SAFETY" MEANS THE IMMEDIATE NEED TO ADDRESS OR PREVENT AN OUTBREAK OF AN INFECTIOUS DISEASE, A DISASTER OR ANY OTHER CATASTROPHIC EVENT.

APPROVED BY THE GOVERNOR APRIL 9, 2015.