Senate Engrossed House Bill

State of Arizona
House of Representatives
Fifty-first Legislature
Second Regular Session
2014

CHAPTER 204

HOUSE BILL 2260

AN ACT

AMENDING SECTIONS 41-1001, 41-1001.01, 41-1009, 41-1376 AND 41-1376.01, ARIZONA REVISED STATUTES; RELATING TO REGULATORY ENFORCEMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 41-1001, Arizona Revised Statutes, is amended to read:

41-1001. Definitions

In this chapter, unless the context otherwise requires:

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

2. "AUDIT" MEANS AN AUDIT, INVESTIGATION OR INSPECTION PURSUANT TO TITLE 23, CHAPTER 2 OR 4.

~~2.~~ 3. "Code" means the Arizona administrative code.

~~3.~~ 4. "Committee" means the administrative rules oversight committee.

~~4.~~ 5. "Contested case" means any proceeding, including rate making, EXCEPT RATE MAKING PURSUANT TO ARTICLE XV, CONSTITUTION OF ARIZONA, price fixing and licensing, in which the legal rights, duties or privileges of a party are required or permitted by law, other than this chapter, to be determined by an agency after an opportunity for an administrative hearing.

~~5.~~ 6. "Council" means the governor's regulatory review council.

~~6.~~ 7. "Delegation agreement" means an agreement between an agency and a political subdivision that authorizes the political subdivision to exercise functions, powers or duties conferred on the delegating agency by a provision of law. Delegation agreement does not include intergovernmental agreements entered into pursuant to title 11, chapter 7, article 3.

~~7.~~ 8. "Emergency rule" means a rule that is made pursuant to section 41-1026.

~~8.~~ 9. "Fee" means a charge prescribed by an agency for an inspection or for obtaining a license.

~~9.~~ 10. "Final rule" means any rule filed with the secretary of state and made pursuant to an exemption from this chapter in section 41-1005, made pursuant to section 41-1026, approved by the council pursuant to section 41-1052 or 41-1053 or approved by the attorney general pursuant to section 41-1044. For purposes of judicial review, final rule includes expedited rules pursuant to section 41-1027.

~~10.~~ 11. "General permit" means a regulatory permit, license or agency authorization that is for facilities, activities or practices in a class that are substantially similar in nature and that is issued or granted by an agency to a qualified applicant to conduct identified operations or activities if the applicant meets the applicable requirements of the general permit, that requires less information than an individual or traditional permit, license or authorization and that does not require a public hearing.

~~11.~~ 12. "License" includes the whole or part of any agency permit, certificate, approval, registration, charter or similar form of permission required by law, but does not include a license required solely for revenue purposes.

~~12.~~ 13. "Licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license.

~~13.~~ 14. "Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

~~14.~~ 15. "Person" means an individual, partnership, corporation, association, governmental subdivision or unit of a governmental subdivision, a public or private organization of any character or another agency.

~~15.~~ 16. "Preamble" means:

(a) For any ~~rule making~~ RULEMAKING subject to this chapter, a statement accompanying the rule that includes:

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

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

(iii) An explanation of the rule, including the agency's reasons for initiating the ~~rule making~~ RULEMAKING.

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

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

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

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

(b) In addition to the information set forth in subdivision (a) of this paragraph, for a proposed rule, the preamble also shall include a list of all previous notices appearing in the register addressing the proposed rule, a statement of the time, place and nature of the proceedings for the making, amendment or repeal of the rule and where, when and how persons may

request an oral proceeding on the proposed rule if the notice does not provide for one.

(c) In addition to the information set forth in subdivision (a) of this paragraph, for an expedited rule, the preamble also shall include a statement of the time, place and nature of the proceedings for the making, amendment or repeal of the rule and an explanation of why expedited proceedings are justified.

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

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

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

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

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

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

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

~~16.~~ 17. "Provision of law" means the whole or a part of the federal or state constitution, or of any federal or state statute, rule of court, executive order or rule of an administrative agency.

~~17.~~ 18. "Register" means the Arizona administrative register.

~~18.~~ 19. "Rule" means an agency statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency. Rule includes prescribing fees or the amendment or repeal of a prior rule but does not include intraagency memoranda that are not delegation agreements.

~~19.~~ 20. "~~Rule making~~ RULEMAKING" means the process for formulation and finalization of a rule.

~~20.~~ 21. "Small business" means a concern, including its affiliates, which is independently owned and operated, which is not dominant in its field and which employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year. For purposes of a specific rule, an agency may define small business to include more persons if it finds that such a definition is necessary to adapt the rule to the needs and problems of small businesses and organizations.

~~21.~~ 22. "Substantive policy statement" means a written expression which informs the general public of an agency's current approach to, or opinion of, the requirements of the federal or state constitution, federal or state statute, administrative rule or regulation, or final judgment of a

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

Sec. 2. Section 41-1001.01, Arizona Revised Statutes, is amended to read:

41-1001.01. Regulatory bill of rights; small businesses

A. 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 section 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 section 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 section 41-1008.

4. Is entitled to receive the information and notice regarding inspections AND AUDITS prescribed in section 41-1009.

5. May review the full text or summary of all ~~rule making~~ RULEMAKING activity, the summary of substantive policy statements and the full text of executive orders in the register as provided in article 2 of this chapter.

6. May participate in the ~~rule making~~ RULEMAKING process as provided in articles 3, 4, 4.1 and 5 of this chapter, including:

(a) Providing written comments or testimony on proposed rules to an agency as provided in section 41-1023 and having the agency adequately address those comments as provided in section 41-1052, subsection 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 article 5 of this chapter.

(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 article 5 of this chapter.

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 section 41-1030, subsection B.

8. Is entitled to have an agency not make a rule under a specific grant of ~~rule making~~ RULEMAKING authority that exceeds the subject matter areas listed in the specific statute or not make a rule under a general grant of ~~rule making~~ RULEMAKING authority to supplement a more specific grant of

~~rule making~~ RULEMAKING authority as provided in section 41-1030, subsection C.

9. 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 section 41-1033.

10. 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 section 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 section 41-1048.

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

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

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

14. 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 section 41-1076.

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

15. 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 sections 41-1001.02 and 41-1079.

16. 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 section 41-1026.01 and article 8 of this chapter.

17. 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 section 41-1091.

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

19. 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 section 41-1002.

20. MAY HAVE THE PERSON'S ADMINISTRATIVE HEARING ON CONTESTED CASES PURSUANT TO TITLE 23, CHAPTER 2 OR 4 HEARD BY AN INDEPENDENT ADMINISTRATIVE LAW JUDGE AS PRESCRIBED BY TITLE 23, CHAPTER 2 OR 4.

B. The enumeration of the rights listed in subsection A of this section does not grant any additional rights that are not prescribed in the sections referenced in subsection A of this section.

C. EACH STATE AGENCY THAT CONDUCTS AUDITS, INSPECTIONS OR OTHER REGULATORY ENFORCEMENT ACTIONS PURSUANT TO SECTION 41-1009 SHALL CREATE AND CLEARLY POST ON THE AGENCY'S WEBSITE A SMALL BUSINESS BILL OF RIGHTS. THE AGENCY SHALL CREATE THE SMALL BUSINESS BILL OF RIGHTS BY SELECTING THE APPLICABLE RIGHTS PRESCRIBED IN THIS SECTION AND SECTION 41-1009 AND ANY OTHER AGENCY-SPECIFIC STATUTES AND RULES. AT THE REQUEST OF AN AUTHORIZED ON-SITE REPRESENTATIVE OF THE REGULATED SMALL BUSINESS, THE AGENCY SHALL PROVIDE A WRITTEN DOCUMENT OF THE SMALL BUSINESS BILL OF RIGHTS. IN ADDITION TO THE RIGHTS LISTED IN THIS SECTION AND SECTION 41-1009, THE AGENCY NOTICE OF THE SMALL BUSINESS BILL OF RIGHTS SHALL INCLUDE THE PROCESS BY WHICH A SMALL BUSINESS MAY FILE A COMPLAINT WITH THE AGENCY EMPLOYEES WHO ARE DESIGNATED TO ASSIST MEMBERS OF THE PUBLIC OR REGULATED COMMUNITY PURSUANT TO SECTION 41-1006. THE NOTICE MUST PROVIDE THE CONTACT INFORMATION OF THE AGENCY'S DESIGNATED EMPLOYEES. THE AGENCY NOTICE MUST ALSO STATE THAT IF THE REGULATED PERSON HAS ALREADY MADE A REASONABLE EFFORT WITH THE AGENCY TO RESOLVE THE PROBLEM AND STILL HAS NOT BEEN SUCCESSFUL, THE REGULATED PERSON MAY CONTACT THE OFFICE OF OMBUDSMAN-CITIZENS AIDE.

Sec. 3. Section 41-1009, Arizona Revised Statutes, is amended to read:

41-1009. <u>Inspections and audits; applicability; annual report</u>

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.

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 permitted 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 permitted by law to do so.

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 interviewed during the inspection OR AUDIT that statements made by the person may be included in the inspection OR AUDIT report.

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 subsection A of this section AND SECTION 41-1001.01, SUBSECTION 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.

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 subsection B of this section indicating that the regulated person or on-site representative of the regulated person has read the writing prescribed in subsection B of this section 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 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 subsection B of this section, the agency inspector, AUDITOR or regulator shall note that fact on the writing prescribed in subsection B of this section.

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 deficiencies identified during an inspection. Unless otherwise provided by law, the agency may provide the regulated person an opportunity to correct the deficiencies unless the agency determines that the 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.

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

F. If the agency allows the regulated person an opportunity to correct the deficiencies pursuant to subsection E of this section, the regulated person shall notify the agency when the deficiencies have been corrected. Within thirty days ~~of~~ AFTER receipt of notification from the regulated person that the 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 deficiencies or the agency determines the deficiencies have not been corrected within a reasonable period of time, the agency may take any enforcement action authorized by law for the deficiencies.

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

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

I. 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.

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

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

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

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

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

K. Subsection J of this section applies only to inspections necessary for the issuance of a license or to determine compliance with licensure or

other regulatory requirements. Subsection J of this section does not apply to an action taken pursuant to section 11-871, 11-876, 11-877, 49-457.01, 49-457.03 or 49-474.01. Issuance of a notice under subsection J of this section is not a prerequisite to otherwise lawful agency actions seeking an injunction or issuing an order if the agency determines that the action is necessary on an expedited basis to abate an imminent and substantial endangerment to public health or the environment and documents the basis for that determination in the documents initiating the action.

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

M. Except as otherwise provided in subsection K of this section, this section applies only to inspections necessary for the issuance of a license or to determine compliance with licensure or other regulatory requirements applicable to a licensee AND AUDITS PURSUANT TO ENFORCEMENT OF TITLE 23, CHAPTERS 2 AND 4. This section does not apply:

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

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

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

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

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

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

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

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

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

Sec. 4. Section 41-1376, Arizona Revised Statutes, is amended to read:

41-1376. <u>Powers and duties</u>

A. The ombudsman-citizens aide shall:

1. Investigate the administrative acts of agencies pursuant to section 41-1377, subsections A and B except as provided in section 41-1377, subsections C, D and E. The ombudsman-citizens aide shall investigate the administrative acts of an agency without regard to the finality of the administrative act.

2. Annually before January 1 prepare a written report to the governor, the legislature and the public that contains a summary of the ombudsman-citizens aide's activities during the previous fiscal year. The ombudsman-citizens aide shall semiannually present this report before the

1 legislative council AND DISTRIBUTE COPIES OF THE REPORT TO THE DIRECTOR OF
2 THE GOVERNOR'S OFFICE OF STRATEGIC PLANNING AND BUDGETING, THE CHAIRPERSON OF
3 THE JOINT LEGISLATIVE BUDGET COMMITTEE AND THE COCHAIRPERSONS OF THE
4 ADMINISTRATIVE RULES OVERSIGHT COMMITTEE. This report shall include:
5 (a) The ombudsman-citizens aide's mission statement.
6 (b) The number of matters that were within each of the categories
7 specified in section 41-1379, subsection B.
8 (c) Legislative issues affecting the ombudsman-citizens aide.
9 (d) Selected case studies that illustrate the ombudsman-citizens
10 aide's work and reasons for complaints.
11 (e) Ombudsman-citizens aide's contact statistics.
12 (f) Ombudsman-citizens aide's staff.
13 3. Before conducting the first investigation, adopt rules that ensure
14 that confidential information that is gathered will not be disclosed.
15 4. Appoint a deputy ombudsman and prescribe the duties of employees
16 or, subject to appropriation, contract for the services of independent
17 contractors necessary to administer the duties of the office of
18 ombudsman-citizens aide. All staff serves at the pleasure of the
19 ombudsman-citizens aide, and they are exempt from chapter 4, articles 5 and 6
20 of this title. All staff shall be subject to the conflict of interest
21 provisions of title 38, chapter 3, article 8.
22 5. Before conducting the first investigation, adopt rules that
23 establish procedures for receiving and processing complaints, including
24 guidelines to ensure each complainant has exhausted all reasonable
25 alternatives within the agency, conducting investigations, incorporating
26 agency responses into recommendations and reporting findings.
27 6. Notify the chief executive or administrative officer of the agency
28 in writing of the intention to investigate unless notification would unduly
29 hinder the investigation or make the investigation ineffectual.
30 7. Appoint an assistant to help the ombudsman-citizens aide
31 investigate complaints relating to child protective services in the
32 department of economic security. The assistant shall have expertise in child
33 protective services procedures and laws. Notwithstanding any law to the
34 contrary, the ombudsman-citizens aide and the assistant have access to child
35 protective services records and to any automated case management system used
36 by child protective services in the department of economic security.
37 B. After the conclusion of an investigation and notice to the head of
38 the agency pursuant to section 41-1379, the ombudsman-citizens aide may
39 present the ombudsman-citizens aide's opinion and recommendations to the
40 governor, the legislature, the office of the appropriate prosecutor or the
41 public, or any combination of these persons. The ombudsman-citizens aide
42 shall include in the opinion the reply of the agency, including those issues
43 that were resolved as a result of the ombudsman-citizens aide's preliminary
44 opinion or recommendation.
45 Sec. 5. Section 41-1376.01, Arizona Revised Statutes, is amended to
46 read:

1 41-1376.01. Additional powers and duties; definitions
2 A. In addition to the powers and duties prescribed in section 41-1376,
3 the ombudsman-citizens aide shall appoint two assistants, one of whom shall
4 be an attorney, to help the ombudsman-citizens aide investigate complaints
5 relating to public access laws involving an agency AND COMPLAINTS AND
6 COMPLIANCE WITH REPORTING REQUIREMENTS PURSUANT TO THIS ARTICLE. The
7 assistants shall train public officials and educate the public on the rights
8 of the public and the responsibilities of public agencies under the public
9 access laws. The assistants shall prepare interpretive and educational
10 materials and programs in cooperation with the ombudsman-citizens aide and
11 shall distribute to elected or appointed public officials the public access
12 laws and educational materials concerning the public access laws.
13 B. The annual report of the ombudsman-citizens aide shall include the
14 following information about public access:
15 1. The number of inquiries that are received from the public, the
16 media and government agencies.
17 2. The number of inquiries that are received about state agencies,
18 county agencies, city or town agencies, school districts and other local
19 jurisdictions.
20 3. The number of requests that are received concerning public records
21 and public meetings.
22 4. The number of investigations that are conducted and the results of
23 the investigations.
24 C. For investigations made pursuant to this section, the
25 ombudsman-citizens aide may:
26 1. Make inquiries and obtain information considered necessary subject
27 to the restrictions in section 41-1377.
28 2. Enter without notice to inspect agency premises with agency staff
29 on the premises.
30 3. Hold hearings.
31 4. Notwithstanding any other law, have access to all agency records,
32 including confidential records, except:
33 (a) Sealed court records without a subpoena.
34 (b) Active criminal investigation records.
35 (c) Records that could lead to the identity of confidential police
36 informants.
37 (d) Attorney work product and communications that are protected under
38 attorney-client privilege.
39 (e) Confidential information as defined in section 42-2001, except as
40 provided in section 42-2003, subsection M.
41 (f) Information protected by section 6103(d), 6103(p) or 7213 of the
42 internal revenue code.
43 (g) Confidential information relating to section 36-2903, subsection
44 I, section 36-2917, section 36-2932, subsection F or section 36-2972.
45 (h) Confidential information relating to sections 36-507, 36-509 and
46 36-2220.

(i) Documents that are protected by section 214 of the critical infrastructure information act of 2002 (6 United States Code section ~~133a~~ 133(a)) or by 49 Code of Federal Regulations part 1520.

(j) Information that is protected by section 214 of the critical infrastructure information act of 2002 (6 United States Code section ~~133a~~ 133(a)) or 49 Code of Federal Regulations part 1520 or critical infrastructure information as defined by section 41-1801 on government owned facilities that are classified as critical infrastructure by the federal government or as defined by section 41-1801.

5. Issue subpoenas if necessary to compel the attendance and testimony of witnesses and the production of books, records, documents and other evidence to which the ombudsman-citizens aide may have access pursuant to paragraph 4 of this subsection. The ombudsman-citizens aide may only issue a subpoena if the ombudsman-citizens aide has previously requested testimony or evidence and the person or agency to which the request was made has failed to comply with the request in a reasonable amount of time.

D. It is contrary to the public policy of this state for any agency or any individual acting for an agency to take any adverse action against an individual in retaliation because the individual cooperated with or provided information to the ombudsman-citizens aide or the ombudsman-citizens aide's staff.

E. For the purposes of this section:

1. "Agency" has the same meaning prescribed in section 41-1371 but includes a public body as defined in section 39-121.01, subsection A, paragraph 2.

2. "Public access laws" means:

(a) Title 39, chapter 1.

(b) Title 38, chapter 3, article 3.1.

(c) Any other state statute or rule governing access to public meetings or public records.

APPROVED BY THE GOVERNOR APRIL 23, 2014.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 24, 2014.