



Arizona State Board of Technical Registration

Revised Statutes

32-101. Purpose; definitions

- A. The purpose of this chapter is to provide for the safety, health and welfare of the public through the promulgation and enforcement of standards of qualification for those individuals who are registered or certified and seeking registration or certification pursuant to this chapter.
- B. In this chapter, unless the context otherwise requires:
1. "Advertising" includes business cards, signs or letterhead provided by a person to the public.
 2. "Alarm" or "alarm system":
 - (a) Means any mechanical or electrical device that is designed to emit an audible alarm or transmit a signal or message if activated and that is used to detect an unauthorized entry into a building or other facility or alert other persons of the occurrence of a medical emergency or the commission of an unlawful act against a person or in a building or other facility.
 - (b) Includes a silent, panic, holdup, robbery, duress, burglary, medical alert or proprietor alarm that requires emergency personnel to respond.
 - (c) Does not include a telephone call diverter or a system that is designed to report environmental and other occurrences and that is not designed or used to alert or cause other persons to alert public safety personnel.
 3. "Alarm agent":
 - (a) Means a person, whether an employee, an independent contractor or otherwise, who acts on behalf of an alarm business and who tests, maintains, services, repairs, sells, rents, leases or installs alarm systems.
 - (b) Does not include any action by a person that:
 - (i) Is performed in connection with an alarm system located on the person's own property or the property of the person's employer.
 - (ii) Is acting on behalf of an alarm business whose work duties do not include visiting the location where an alarm system installation occurs.
 4. "Alarm business":
 - (a) Means any person who, either alone or through a third party, engages in the business of either of the following:
 - (i) Providing alarm monitoring services.
 - (ii) Selling, leasing, renting, maintaining, repairing or installing a nonproprietor alarm system or service.
 - (b) Does not include any of the following:
 - (i) A person or company that purchases, rents or uses an alarm that is affixed to a motor vehicle.
 - (ii) A person who owns or conducts a business of selling, leasing, renting, installing, maintaining or monitoring an alarm that is affixed to a motor vehicle.
 - (iii) A person who installs a nonmonitored proprietor alarm for a business that the person owns, is employed by or manages.
 - (iv) The installation or monitoring of fire alarm systems.

(v) An alarm system that is operated by a city or town.

5. "Alarm subscriber" means any person who:

(a) Leases, rents or purchases any monitored alarm system or service from an alarm business.

(b) Leases or rents an alarm system.

(c) Contracts with an alarm business for alarm monitoring, installation, repair or maintenance services.

6. "Architect" means a person who, by reason of knowledge of the mathematical and physical sciences and the principles of architecture and architectural engineering acquired by professional education and practical experience, is qualified to engage in the practice of architecture and is registered as an architect pursuant to this chapter.

7. "Architectural practice" means any professional service or creative work requiring architectural education, training and experience, and the application of the mathematical and physical sciences and the principles of architecture and architectural engineering to such professional services or creative work as consultation, evaluation, design and review of construction for conformance with contract documents and design, in connection with any building, planning or site development. A person shall be deemed to practice or offer to practice architecture who in any manner represents that the person is an architect or is able to perform any architectural service or other services recognized by educational authorities as architecture.

8. "Board" means the state board of technical registration.

9. "Controlling person":

(a) Means a person who is designated by an alarm business.

(b) Does not include an alarm agent.

10. "Engineer" means a person who, by reason of special knowledge of the mathematical and physical sciences and the principles and methods of engineering analysis and design acquired by professional education and practical experience, is qualified to practice engineering and is registered as a professional engineer pursuant to this chapter.

11. "Engineering practice" means any professional service or creative work requiring engineering education, training and experience and the application of special knowledge of the mathematical, physical and engineering sciences to such professional services or creative work as consultation, research investigation, evaluation, planning, surveying as defined in paragraph 20, subdivisions (d) and (e) of this subsection, design, location, development, and review of construction for conformance with contract documents and design, in connection with any public or private utility, structure, building, machine, equipment, process, work or project. Such services and work include plans and designs relating to the location, development, mining and treatment of ore and other minerals. A person shall be deemed to be practicing or offering to practice engineering if the person practices any branch of the profession of engineering, or by verbal claim, sign, advertisement, letterhead, card or any other manner represents that the person is a professional engineer or is able to perform or does perform any engineering service or other service recognized by educational authorities as engineering. A person employed on a full-time basis as an engineer by an employer engaged in the business of developing, mining and treating ores and other minerals shall not be deemed to be practicing engineering for the purposes of this chapter if the person engages in the practice of engineering exclusively for and as an employee of such employer and does not represent that the person is available and is not represented as being available to perform any engineering services for persons other than the person's employer.

12. "Engineer-in-training" means a candidate for registration as a professional engineer who is a graduate in an approved engineering curriculum of four years or more of a school approved by the board or who has four years

or more of education or experience, or both, in engineering work that meets standards specified by the board in its rules. In addition, the candidate shall have passed the engineer-in-training examination.

13. "Firm" means any individual or partnership, corporation or other type of association, including the association of a nonregistrant and a registrant who offers to the public professional services regulated by the board.

14. "Geological practice" means any professional service or work requiring geological education, training and experience, and the application of special knowledge of the earth sciences to such professional services as consultation, evaluation of mining properties, petroleum properties and groundwater resources, professional supervision of exploration for mineral natural resources including metallic and nonmetallic ores, petroleum and groundwater, and the geological phases of engineering investigations.

15. "Geologist" means a person, not of necessity an engineer, who by reason of special knowledge of the earth sciences and the principles and methods of search for and appraisal of mineral or other natural resources acquired by professional education and practical experience is qualified to practice geology as attested by registration as a professional geologist. A person employed on a full-time basis as a geologist by an employer engaged in the business of developing, mining or treating ores and other minerals shall not be deemed to be engaged in geological practice for the purposes of this chapter if the person engages in geological practice exclusively for and as an employee of such employer and does not represent that the person is available and is not represented as being available to perform any geological services for persons other than the person's employer.

16. "Geologist-in-training" means a candidate for registration as a professional geologist who is a graduate of a school approved by the board or who has four years or more of education or experience, or both, in geological work that meets standards specified by the board in its rules. In addition, the candidate shall have passed the geologist-in-training examination.

17. "Home inspection" means a visual analysis for the purposes of providing a professional opinion of the building, any reasonably accessible installed components and the operation of the building's systems, including the controls normally operated by the owner, for the following components of a residential building of four units or less:

- (a) Heating system.
- (b) Cooling system.
- (c) Plumbing system.
- (d) Electrical system.
- (e) Structural components.
- (f) Foundation.
- (g) Roof covering.
- (h) Exterior and interior components.
- (i) Site aspects as they affect the building.
- (j) Pursuant to rules adopted by the board, swimming pool and spa.

18. "Home inspection report" means a written report that is prepared for compensation, that is issued after a home inspection and that clearly describes and identifies the inspected systems, structures and components of a

completed dwelling and any visible major defects found to be in need of immediate major repair and any recommendations for additional evaluation by appropriate persons.

19. "Home inspector" means an individual who is certified pursuant to this chapter as a home inspector and who engages in the business of performing home inspections and writing home inspection reports.

20. "Land surveying practice" means the performance of one or more of the following professional services:

(a) Measurement of land to determine the position of any monument or reference point that marks a property line, boundary or corner for the purpose of determining the area or description of the land.

(b) Location, relocation, establishment, reestablishment, setting, resetting or replacing of corner monuments or reference points which identify land boundaries, rights-of-way or easements.

(c) Platting or plotting of lands for the purpose of subdividing.

(d) Measurement by angles, distances and elevations of natural or artificial features in the air, on the surface and immediate subsurface of the earth, within underground workings and on the surface or within bodies of water for the purpose of determining or establishing their location, size, shape, topography, grades, contours or water surface and depths, and the preparation and perpetuation of field note records and maps depicting these features.

(e) Setting, resetting or replacing of points to guide the location of new construction.

21. "Land surveyor" means a person who by reason of knowledge of the mathematical and physical sciences, principles of land surveying and evidence gathering acquired by professional education or practical experience, or both, is qualified to practice land surveying as attested by registration as a land surveyor. A person employed on a full-time basis as a land surveyor by an employer engaged in the business of developing, mining or treating ores or other minerals shall not be deemed to be engaged in land surveying practice for purposes of this chapter if the person engages in land surveying practice exclusively for and as an employee of such employer and does not represent that the person is available and is not represented as being available to perform any land surveying services for persons other than the person's employer.

22. "Land surveyor-in-training" means a candidate for registration as a professional land surveyor who is a graduate of a school and curriculum approved by the board or who has four years or more of education or experience, or both, in land surveying work that meets standards specified by the board in its rules. In addition, the candidate shall have passed the land surveyor-in-training examination.

23. "Landscape architect" means a person who, by reason of professional education or practical experience, or both, is qualified to engage in the practice of landscape architecture as attested by registration as a landscape architect.

24. "Landscape architectural practice" means the performance of professional services such as consultations, investigation, reconnaissance, research, planning, design or responsible supervision in connection with the development of land and incidental water areas where, and to the extent that, the dominant purpose of such services is the preservation, enhancement or determination of proper land uses, natural land features, ground cover and planting, naturalistic and aesthetic values, the settings of and approaches to buildings, structures, facilities or other improvements, natural drainage and the consideration and the determination of inherent problems of the land relating to erosion, wear and tear, light or other hazards. This practice shall include the location and arrangement of such tangible objects and features as are incidental and necessary to the purposes outlined in this paragraph but shall not include the making of cadastral surveys or final land plats for official recording or approval, nor mandatorily include planning for governmental subdivisions.

25. "Monitored alarm" means a device that is designed for the detection of an entry on any premises and that if activated generates a notification signal.

26. "Person" means any individual, firm, partnership, corporation, association or other organization.
27. "Principal" means an individual who is an officer of the corporation or is designated by a firm as having full authority and responsible charge of the services offered by the firm.
28. "Proprietor alarm" means any alarm or alarm system that is owned by an alarm subscriber who has not contracted with an alarm business.
29. "Registrant" means a person registered or certified by the board.
30. "Registration" means a registration or certification issued by the board.

32-102. State board of technical registration; vacancies; terms

A. The state board of technical registration is established consisting of members who are appointed by the governor as follows:

1. Two architects.
2. Three professional engineers, one of whom is a civil engineer and two of whom are representatives of branches of engineering other than civil engineering and are registered in those branches pursuant to this chapter.
3. One public member.
4. One landscape architect.
5. One geologist.
6. One land surveyor.

B. On the expiration of any of the terms, a successor who is qualified pursuant to subsection A of this section shall be appointed for a full term of three years. The governor may remove a member of the board for misconduct, incapacity or neglect of duty. Appointment to fill a vacancy caused other than by expiration of term shall be for the unexpired portion of the term.

C. No member may serve more than two consecutive terms.

32-103. Qualifications of members

A. Each professional member of the board shall:

1. Be at least twenty-five years of age.
2. Have been a resident of this state for at least three years immediately preceding appointment as a member.

B. Each member who is an architect, a geologist, a landscape architect, a professional engineer or a land surveyor shall have at least five years' active professional experience as attested by registration under this chapter.

32-104. Compensation

Members of the board are eligible to receive compensation pursuant to title 38, chapter 4, article 1.

32-105. Organization

The board shall annually elect from its membership a chairman, vice-chairman and secretary. It shall hold at least two regular meetings each year and such special or called meetings as the rules provide.

32-106. Powers and duties

A. The board shall:

1. Adopt rules for the conduct of its meetings and performance of duties imposed on it by law.
2. Adopt an official seal for attestation of certificates of registration and other official papers and documents.
3. Consider and act on or delegate the authority to act on applications for registration or certification.
4. Conduct examinations for in-training and professional registration, except for an alarm business, a controlling person or an alarm agent.
5. Hear and act on complaints or charges or direct an administrative law judge to hear and act on complaints and charges.
6. Compel attendance of witnesses, administer oaths and take testimony concerning all matters coming within its jurisdiction. In exercising these powers, the board may issue subpoenas for the attendance of witnesses and the production of books, records, documents and other evidence it deems relevant to an investigation or hearing.
7. Keep a record of its proceedings.
8. Keep a register that shows the date of each application for registration or certification, the name of the applicant, the practice or branch of practice in which the applicant has applied for registration, if applicable, and the disposition of the application.
9. Do other things necessary to carry out the purposes of this chapter.

B. The board shall specify the proficiency designation in the branch of engineering in which the applicant has designated proficiency on the certificate of registration and renewal card issued to each registered engineer and shall authorize the engineer to use the title of registered professional engineer. The board shall decide what branches of engineering it shall recognize.

C. The board may hold membership in and be represented at national councils or organizations of proficiencies registered under this chapter and may pay the appropriate membership fees. The board may conduct standard examinations on behalf of national councils and may establish fees for those examinations.

D. The board may employ and pay on a fee basis persons, including full-time employees of a state institution, bureau or department, to prepare and grade examinations given to applicants for registration or review an applicant's submissions of required documents for home inspector certification and regulation and may fix the fee to be paid for these services. These employees are authorized to prepare, grade and monitor examinations, review an applicant's submissions of required documents for home inspector certification and regulation and perform other services the board authorizes, and to receive payment for these services from the technical registration fund. The board may contract with an organization to administer the registration examination, including selecting the test site, scheduling the examination, billing and collecting the fee directly from the applicant and grading the examination if a national council of which the board is a member or a professional association approved by the board does not provide these services. If a national council of which the board is a member or a professional association approved by the board does provide these services, the board shall enter into an agreement with the national council or professional association to administer the registration examination.

E. The board may rent necessary office space and pay the cost of this office space from the technical registration fund.

F. The board may adopt rules establishing rules of professional conduct for registrants.

G. The board may require evidence it deems necessary to establish the continuing competency of registrants as a condition of renewal of licenses.

H. Subject to title 41, chapter 4, article 4, the board may employ persons as it deems necessary.

I. The board shall issue or may authorize the executive director to issue a certificate or renewal certificate to each alarm business and each controlling person and a certification or renewal certification card to each alarm agent if the qualifications prescribed by this chapter are met.

32-106.01. Petition for injunction

- A. The superior court may issue an injunction immediately upon a petition filed as provided in this section to enjoin the practice of any board regulated profession or occupation by any person not registered or certified to practice the occupations or exempt pursuant to this chapter from registration requirements.
- B. In a petition for injunction pursuant to subsection A of this section, it shall be sufficient to charge that the respondent on a day certain in a named county engaged in the practice of any board regulated profession or occupation without a registration and without being exempt pursuant to this chapter from registration requirements. No showing of damage or injury shall be required.
- C. Such petition shall be filed in the name of the state by the board or at the request of the board by the attorney general or any county attorney in any county where the respondent resides or may be found.
- D. Issuance of an injunction shall not relieve the respondent from being subject to any proceedings pursuant to section 32-145, or otherwise. Any violation of an injunction shall be punished as contempt of court.
- E. In all other respects, injunction proceedings pursuant to this section shall be governed by title 12, chapter 10, article 1.

32-106.02. Authority to investigate; civil penalties

- A. The board may initiate a hearing pursuant to title 41, chapter 6, article 10 on receipt of a complaint that a person who is not exempt from this chapter and is not registered or certified under this chapter is practicing, offering to practice or by implication purporting to be qualified to practice any board regulated profession or occupation. The board shall give notice of the hearing by mailing a copy of the complaint to the person's last known address by certified mail return receipt requested.
- B. If after the hearing the board determines that based on the evidence the person committed a violation under section 32-145, it, in addition to any other sanction, action or remedy, shall issue an order that imposes a civil penalty of no more than two thousand dollars per violation.
- C. In determining the amount of the civil penalty it imposes, the board shall consider:
1. The seriousness of the violation.
 2. The economic benefit to the violator that was generated by the violator's commission of the violation.
 3. The violator's history of violations.
 4. Any other considerations the board deems appropriate.
- D. Except as provided in section 41-1092.08, subsection H, a person may seek judicial review of a final administrative decision made or order issued pursuant to this section pursuant to title 12, chapter 7, article 6.
- E. If a person fails to pay a civil penalty that the board imposes within thirty days after the board issues the order or if the order is stayed pending appeal within ten days after the court enters a final judgment in favor of the board, the board shall notify the attorney general. The attorney general may commence a civil action to recover the penalty.
- F. An action to enforce an order that was issued under this section may be combined with a petition for injunction under section 32-106.01.
- G. The board shall deposit, pursuant to sections 35-146 and 35-147, all civil penalties collected under this section in the state general fund.

32-107. Executive director; duties; compensation

- A. The board may employ an executive director to conduct investigations and carry out the purposes of this chapter.
- B. The executive director shall be the custodian of the records of the board, receive applications for registration and certification and, if authority is delegated by the board, issue registrations and certifications as authorized by the board, file complaints with the proper officials against violators of any provision of this chapter, assist in the prosecution of such cases and perform other duties the board prescribes.
- C. The executive director is eligible to receive compensation as determined pursuant to section 38-611.

32-109. Technical registration fund

A. Pursuant to sections 35-146 and 35-147, the executive director shall deposit ten percent of all fees or other revenues received by the board in the state general fund to assist in defraying the cost of maintaining the state government and shall deposit the remaining ninety percent in a separate fund, known as the technical registration fund, to be used only in defraying expenses of the board and in prosecuting violations of this chapter.

B. Monies deposited in the technical registration fund pursuant to subsection A of this section are subject to section 35-143.01.

32-110. Immunity from personal liability.

Members, agents and employees of the board, members of advisory committees and statutorily established committees of the board and registrants volunteering professional services to emergency services personnel at the scene of a disaster as part of an authorized board program are immune from personal liability with respect to acts done and actions taken in good faith within the scope of their authority.

32-111. Home inspector rules and standards committee

A. The home inspector rules and standards committee of the state board of technical registration is established and consists of:

1. Three home inspectors, one of whom is a resident of a county with a population of four hundred thousand persons or less, appointed by the board from a list of names any home inspector organization provides if the home inspector organization meets all of the following criteria:

(a) Has at least forty members who are actively engaged in the practice of home inspection in this state.

(b) Holds regular elections.

(c) Publishes bylaws.

(d) Maintains a code of ethics.

2. Two members of the board of technical registration, including:

(a) An architect member or an engineer member of the board who is appointed by the chairman.

(b) The public member.

B. The board may make appointments of home inspectors to the committee from the lists provided pursuant to subsection A, paragraph 1 of this section or from others having the necessary qualifications.

C. The board-appointed members serve staggered three-year terms. These members shall be home inspectors, shall each have at least five years of experience as a home inspector and shall have passed the examination prescribed in section 32-122.02. The board by a majority vote may remove any member for misconduct, incapacity or neglect of duty and may appoint a new member to complete a term.

D. The committee is responsible for drafting and recommending to the board:

1. Criteria for home inspector certification.

2. Standards for home inspection reports.

3. Standards for written examinations.

4. Standards for educational programs, including course of study, programs and continuing education.

5. Rules defining conduct.

6. Recommendations for types of financial assurances as required in section 32-122.02.

7. Other rules and standards related to the practice of home inspectors.

E. The committee may participate in the investigation and review of home inspector complaints as provided by the board.

F. Members of the home inspector rules and standards committee are eligible to receive compensation pursuant to title 38, chapter 4, article 1.

32-113. Preemption; power of local authorities

- A. The state legislature determines that the licensure, certification or registration of alarm businesses and alarm agents is a matter of statewide concern. The power to license, register or certify an alarm business or alarm agent is preempted by this state.
- B. The board, a county, a city, including a charter city, or a town shall not require an alarm business to provide any information regarding the alarm subscribers of the alarm business without a court order.
- C. A county, city, including a charter city, or town that violates this section shall reimburse a prevailing party for fees and expenses. A court may assess civil penalties against the county or city.

32-121. Certificate or registration required for practice

Except as otherwise provided in this section, a person or firm desiring to practice any board-regulated profession or occupation shall first secure a certificate or registration and shall comply with all the conditions prescribed in this chapter. An alarm business or an alarm agent may install alarms if all of the following apply:

1. The alarm business has submitted an application for certification pursuant to section 32-122.05 or is a licensed contractor pursuant to chapter 10 of this title.
2. Each controlling person has submitted an application and proof of a valid fingerprint clearance card to the board pursuant to section 32-122.05.
3. The alarm agent has submitted an application and applied for a fingerprint clearance card pursuant to section 32-122.06.

32-122. Qualifications for in-training registration

(L16, Ch. 352, sec. 9 & Ch. 371, sec. 11)

A. An applicant for in-training registration as an architect, engineer, geologist or landscape architect shall:

1. Be of good moral character and repute.
2. Be a graduate of a school approved by the board or have four years or more, or if an applicant for in-training registration as an architect, five years or more, of education or experience, or both, in work in the profession in which registration is sought that meets standards specified by the board in its rules.
3. Unless exempt under section 32-126, subsection D, pass the in-training examination in the profession in which registration is sought.

B. An applicant for in-training registration as a land surveyor shall:

1. Be a graduate of a school and curriculum approved by the board, or have four years or more of education or experience, or both, in work in the profession in which registration is sought that meets standards specified by the board in its rules.
2. Unless exempt under section 32-126, subsection D, pass the in-training examination in the profession in which registration is sought.

C. An applicant for in-training registration as a home inspector-in-training shall meet the requirements of section 32-122.02, subsection A, paragraphs 1 through 7.

32-122.01. Qualifications for professional registration

A. An applicant for professional registration as an architect, engineer, geologist or landscape architect shall:

1. Be of good moral character and repute.
2. Be actively engaged in education or experience, or both, in the profession for which registration is sought for at least eight years.
3. Unless exempt under section 32-126, pass the applicable in-training and professional examinations in the profession in which registration is sought.

B. An applicant for professional registration as a land surveyor shall:

1. Be of good moral character and repute.
2. Be actively engaged in education or experience, or both, in the profession for which registration is sought for at least six years.
3. Unless exempt under section 32-126, pass the in-training and professional examinations in the profession in which registration is sought.

C. In computing the period of active engagement required under this section:

1. Each year of study that is satisfactorily completed in an architectural, engineering, geological or landscape architectural school approved by the board is equivalent to one year of active engagement up to a maximum of five years. One year or more of teaching architectural, engineering, geological or landscape architectural subjects in a school approved by the board is equivalent to one year of active engagement.
2. Each year of study satisfactorily completed in a land surveying curriculum and school approved by the board is considered equivalent to one year of active engagement up to a maximum of four years. One year or more of teaching land surveying or other courses approved by the board as pertinent to the profession in which registration is sought in a school approved by the board is equivalent to one year of active engagement.

D. Except as provided in subsection E of this section, experience credited by the board under this section and sections 32-101, 32-122 and 32-126 must be attained under the direct supervision of a professional who is satisfactory to the board and registered in this state, another state or a foreign country in the profession in which the applicant is seeking registration, except that up to one year's experience may be attained under the direct supervision of a professional who is satisfactory to the board and registered in another profession regulated under this chapter in this state, another state or a foreign country.

E. By a two-thirds majority vote, the board may allow an applicant except for an architect applicant to meet the requirements of subsection D of this section by crediting comparable experience satisfactory to the board that the applicant attained without direct supervision of a registered professional.

32-122.02. Certification of home inspectors; insurance

A. An applicant for certification as a home inspector shall:

1. Be at least eighteen years of age.
2. Be of good moral character and repute.
3. Have passed within two years preceding application a written examination that is approved by the board and that meets the competency standards recommended by the home inspector rules and standards committee and adopted by the board.
4. Have passed a course of study that meets the standards recommended by the home inspector rules and standards committee and approved by the board.
5. Pay a fee as determined by the board and for initial certification shall provide to the board evidence of having a valid fingerprint clearance card issued pursuant to title 41, chapter 12, article 3.1.
6. Not have had a certificate denied or revoked pursuant to this chapter within one year immediately preceding the application.
7. Have received an absolute discharge from sentence at least five years before the application if the person has been convicted of one or more felonies, provided the board determines the applicant is of good moral character and repute.
8. Provide evidence of the applicant's ability to obtain financial assurance as provided by subsection B of this section.

B. Within sixty days after certification and before any fee-based home inspection is performed, a home inspector certified pursuant to this chapter shall file one of the following financial assurances pursuant to rules recommended by the home inspector rules and standards committee and adopted by the board:

1. Errors and omissions insurance for negligent acts committed in the course of a home inspection in an amount of two hundred thousand dollars in the aggregate and one hundred thousand dollars per occurrence.
2. A bond that is retroactive to the certification date in the amount of twenty-five thousand dollars or proof that minimum net assets have a value of at least twenty-five thousand dollars.

C. If a home inspector loses or otherwise fails to maintain a required financial assurance, the certification shall be automatically suspended and shall be reinstated if a financial assurance is obtained within ninety days. If a financial assurance is not obtained within ninety days, the certification shall be automatically revoked.

D. A home inspector is subject to this chapter and rules adopted pursuant to this chapter.

E. Except as provided in subsection A, paragraph 5 of this section, the board may not require the submission of a fingerprint clearance card for certification renewal or any other purpose.

32-122.05. Certification of alarm businesses and controlling persons; applications; fingerprinting; fee; renewal

A. The board shall issue certificates to alarm businesses and controlling persons. An alarm business may not operate until the alarm business and each of its controlling persons submit applications and receive certification from the board. A separate certificate is required for each business name under which an alarm business conducts business or advertises, except that one certificate may be used for two businesses with the same ownership. To obtain an alarm business certificate, each controlling person of the alarm business shall provide proof to the board of having a valid fingerprint clearance card issued pursuant to title 41, chapter 12, article 3.1. All alarm business certificates and controlling person certificates issued pursuant to this article are valid for three years from the date of issuance.

B. An application for an alarm business certificate and for a controlling person certificate shall include:

1. The name, business address, mailing address and telephone number of the alarm business. If the applicant is a corporation, general or limited partnership, limited liability company or other legal entity, the applicant shall state the name of the alarm business exactly as shown in its articles of incorporation, charter, certificate of limited partnership, articles of organization or other organizational documents, as applicable, together with the state and date of incorporation and the name, residence address and date of birth of each controlling person. If one or more of the partners, members or shareholders of the applicant is a corporation or other legal entity, the provisions of this subsection relating to information required of a corporation apply.

2. If the alarm business is a corporation, general or limited partnership, limited liability company or other legal entity, designation of one of its designated controlling persons to have full authority, act as the alarm business's contact with the board and be responsible for the alarm business's compliance with this chapter. Each designated controlling person shall complete and sign all application forms required of an individual alarm agent applicant under this article. The alarm business shall also provide a copy of the corporation, partnership or limited liability company formation documents to the board.

3. The name of the alarm business and each controlling person, any alias or other name used or by which the alarm business or any controlling person has been previously known and the current residence and business addresses, telephone numbers, including fax numbers, and e-mail addresses of each alarm business and each controlling person.

4. The names and addresses of the alarm agents who are employed by the alarm business.

5. Proof that the person submitting the application and each controlling person are at least eighteen years of age as indicated on a current driver license or other picture identification document that is issued by a governmental agency.

6. Two current two-inch by two-inch photographs of each controlling person.

7. Information as to whether the applicant or any controlling person, or the business on behalf of which the certificate is being applied for, has ever been refused or denied any similar registration, certificate, license or permit or has had any similar license or permit revoked, canceled or suspended and the reason or reasons for the revocation, cancellation or suspension.

8. Whether the person submitting the application or any controlling person has been convicted of a felony or misdemeanor.

C. In addition to the application requirements prescribed in subsection B of this section, an applicant for an alarm business certificate and an applicant for a controlling person certificate shall pay a fee as determined by the board.

D. An applicant for an initial alarm business certificate or an initial controlling person certificate or an applicant for a renewal of an alarm business certificate or a controlling person certificate shall notify the board, in writing,

of any change in the information contained in the certificate application or renewal application, including the names of controlling persons or alarm agents that have left the applicant's employment. The applicant shall notify the board within fifteen calendar days after the occurrence of the change.

E. An alarm business and each controlling person shall file an application for a certificate renewal with the board no later than fourteen days before the expiration of the certificate that is currently in effect. If a certificate expires without the alarm business or controlling persons having submitted a timely application for renewal, the alarm business may not operate until the holder of the expired certificate files a new application for an initial certificate.

32-122.06. Certification of alarm agents; fee; fingerprinting; temporary certification; renewal

A. Each alarm agent shall apply for an alarm agent certification and a renewal certification card from the board. The board shall issue or deny an alarm agent certification card or a renewal certification card within ten business days after receiving an administratively complete application that includes an explanation of any criminal or disciplinary history. All alarm agent certificates issued pursuant to this article are valid for three years from the date of issuance.

B. To obtain an alarm agent certificate, a person shall submit an application to the board, pay a fee as determined by the board and provide to the board evidence of having a valid fingerprint clearance card issued pursuant to title 41, chapter 12, article 3.1. On receipt of the application and on the third anniversary of the initial certification for as long as the person is an alarm agent, the board shall verify with the department of public safety the status of the alarm agent's fingerprint clearance card. This subsection does not apply if the alarm agent is also the controlling person and has complied with section 32-122.05. An alarm agent certificate remains valid only if the person maintains a valid fingerprint clearance card.

C. A person shall apply for an alarm agent certificate within five working days after being employed by an alarm business. A person may not work as an alarm agent until the application is processed and approved unless the person is under the direct supervision of a certified alarm agent or unless the alarm business employing an alarm agent who is applying for an initial alarm agent certificate certifies that the alarm business has determined through a privately administered background check by a nationally recognized database company that the applicant has not been convicted of a crime that would prevent the applicant from receiving a fingerprint clearance card. The alarm business employing the alarm agent shall provide a copy of the background check to the board on request. A copy of the application showing that the application has been filed with the board and that a background check has been conducted is valid as a sixty-day temporary certification under this subsection. The sixty-day temporary certification may be extended for a period not to exceed an additional thirty days if the applicant shows good cause to the board. When the applicant receives a fingerprint clearance card, the applicant shall provide a copy of the fingerprint clearance card to the board within ten days. If the board determines that a person is working as an alarm agent without a valid certification or temporary certification, the board shall notify the alarm business. A person is subject to disciplinary action and penalties pursuant to this chapter.

D. An alarm agent shall physically possess the agent's alarm agent certification card when performing or authorizing the performance of any task pursuant to this chapter.

E. An alarm agent certificate card becomes the personal property of the person to whom it is issued. The person shall retain possession of the card.

F. If an alarm agent's employment with an alarm business is terminated, the alarm agent shall notify the board in writing within fifteen days after the termination.

32-122.07. Denial of alarm business, controlling person or alarm agent certification; appeal

A. The board may deny an application for certification as an alarm business, controlling person or alarm agent if a controlling person of an alarm business or an alarm agent lacks good moral character or has been convicted of an act involving moral turpitude. A lack of good moral character may be established by evidence of past criminal activity and shall be determined by the board.

B. If the board denies an application for certification as an alarm business, controlling person or alarm agent, the board shall send notice of its action by certified mail to the applicant, setting forth the reasons for the action taken.

C. Within thirty days after the date of the notice, the applicant may request a hearing before the board pursuant to title 41, chapter 6, article 10.

32-122.07. Denial of alarm business, controlling person or alarm agent certification; appeal

A. The board may deny an application for certification as an alarm business, controlling person or alarm agent if a controlling person of an alarm business or an alarm agent lacks good moral character or has been convicted of an act involving moral turpitude. A lack of good moral character may be established by evidence of past criminal activity and shall be determined by the board.

B. If the board denies an application for certification as an alarm business, controlling person or alarm agent, the board shall send notice of its action by certified mail to the applicant, setting forth the reasons for the action taken.

C. Within thirty days after the date of the notice, the applicant may request a hearing before the board pursuant to title 41, chapter 6, article 10.

32-122. Qualifications for in-training designation

(L16, Ch. 167, sec. 5)

A. An applicant for in-training designation as an engineer, geologist or land surveyor shall:

1. Be of good moral character and repute.
2. Be a graduate of a school approved by the board or have four years or more of education or experience, or both, in work in the profession in which registration is sought that meets standards specified by the board in its rules.
3. Unless exempt under section 32-126, subsection D, pass the in-training examination in the profession in which registration is sought.

B. An applicant for in-training designation as an assayer shall:

1. Be of good moral character and repute.
2. Be a graduate of a school and curriculum approved by the board or have four years or more of education or experience, or both, in work in the profession in which registration is sought that meets standards specified by the board in its rules.
3. Unless exempt under section 32-126, subsection D, pass the in-training examination in the profession in which registration is sought.

32-123. Application for registration and certification; denial; hearing

- A. A person desiring to practice any board-regulated profession or occupation shall apply for registration or certification on a form prescribed by the board, subscribed under penalty of perjury and accompanied by the appropriate application fee prescribed by the board. If the evidence submitted satisfies the board that the applicant is fully qualified to practice the profession or occupation for which registration or certification is asked, the board or the executive director as authorized by the board shall grant the applicant a certificate of registration or certification, signed by the chairman and secretary and attested by the official seal. If the applicant seeks registration as a professional engineer, the certificate of registration shall list the proficiency designation in the branch of engineering in which the applicant has demonstrated proficiency.
- B. A registered professional engineer who desires to practice land surveying shall apply for professional registration as a land surveyor and satisfy the requirements set forth in section 32-122.01.
- C. If in the judgment of the board the applicant has not furnished satisfactory evidence of qualifications for registration or certification, it may require additional data or may require the applicant to submit to an additional oral or written examination specified by the board in its rules.
- D. An applicant whose application is denied may request a formal hearing pursuant to title 41, chapter 6, article 10. If the application is granted after a formal hearing, the application fee shall be returned.

32-124. Schedule of fees; exemption

A. The board shall establish a schedule of fees for the following:

1. Examinations.
2. Applications.
3. Renewals.
4. Board publications.
5. Computer printouts of names of registrants.
6. Photocopies.
7. Copies of audiotapes, videotapes, computer discs or other media used for recording sounds, images or information.
8. Replacement certificates of registration.
9. Review of examinations.
10. Regrading of examinations.
11. Returned checks.

B. The board is exempt from the requirements of title 41, chapter 6 in establishing a fee schedule for the fees in subsection A, paragraphs 1, 2, 3, 9 and 10.

32-125. Seals for registrants

- A. The board shall adopt and prescribe seals for use by registrants who are required by the board to use seals. Each seal shall bear the name of the registrant and shall state the profession in which the registrant is permitted to practice and, in the case of engineering, the branch or branches of engineering in which the registrant has demonstrated proficiency, and other data the board deems pertinent.
- B. Plans, specifications, plats or reports prepared by a registrant or a registrant's bona fide employee shall be issued under the registrant's seal if the board requires the registrant to use a seal.
- C. It is unlawful for a registrant whose certificate has expired or has been revoked or suspended to use the seal.
- D. It is unlawful for any nonregistrant to cause or permit the illegal use of a registrant's seal, signature or stamp on any document prepared by the nonregistrant.
- E. If the board requires a registrant to use a seal, the registrant is responsible for all documents that the registrant signs, stamps or seals, including those documents prepared by the registrant's bona fide employee.

32-126. Exemptions from examination requirement

A. The board shall waive the examination requirement for an applicant, other than an applicant for professional registration as a land surveyor, who satisfies any one of the following:

1. Holds a valid certificate of registration in good standing issued by another state or foreign country which has or had requirements for registration substantially identical to those of this state.
2. Holds a certificate of qualification in good standing issued by a national bureau of registration or certification recognized by the board.
3. Has been actively engaged in another state or foreign country as a professional registrant in the profession in which registration is sought for at least ten years and holds a valid certificate of registration in good standing issued by that state or country.

B. A registered professional engineer who holds a proficiency designation in one branch of engineering in this state and seeks an additional or different proficiency designation shall submit evidence to the board of either:

1. Four years of experience acceptable to the board as a registered professional engineer practicing in that branch of engineering in which the person seeks the proficiency designation.
2. Successful completion of the professional examination in the branch of engineering in which the applicant seeks the proficiency designation.

C. An applicant for professional registration as a land surveyor who satisfies any one of the requirements of subsection A shall pass the part of the professional land surveyor examination relating to surveying methods and legal principles in this state prescribed by the board in its rules.

D. The board shall exempt an applicant from the in-training examination if the applicant is a graduate of a school and curriculum approved by the board and has been actively engaged in experience in the profession for which registration is sought for at least twelve years after graduation.

32-127. Renewal of certification or registration; penalty fee; cancellation; inactive status; renewal fees; home inspector exam requirement

- A. The board shall establish a system for renewing certification or registration.
- B. Except as provided in section 32-4301, certificates of registration or certification are invalid after their expiration date unless renewed by payment of the required renewal fee. If the renewal fee is not paid prior to the expiration date, it shall be accompanied by a penalty fee equal to one-sixth of the renewal fee for each year or fraction of a year of delinquency.
- C. The board shall cancel a certificate of registration or certification if the registration or certification has remained invalid for at least one renewal period. Before the board may issue a valid registration or certification:
 - 1. If the registration or certification has been invalid for less than five years or has been invalid for at least five years but the person has practiced as a licensed, certified or registered professional in that profession in another jurisdiction for the five years immediately before the date of the person's application with the board:
 - (a) The person shall apply as a new candidate and pay the application fee.
 - (b) The person is not required to take and pass the applicable professional examination.
 - 2. If the registration or certification has been invalid for at least five years and the person has not practiced as a licensed, certified or registered professional in that profession in any other jurisdiction for the five years immediately before the date of the person's application with the board, the person shall apply as a new candidate, pay the application fee and take and pass the professional examination.
- D. A registrant shall not practice, offer to practice or advertise if the certificate of registration or the certification is inactive or invalid.
- E. A registrant who retires from the active practice of any board-regulated profession or occupation or who is not currently practicing that board-regulated profession or occupation in this state may request that the board place the registrant's certificate of registration or certification on inactive status. The registrant shall submit the request in writing to the board.
- F. If the board has invalidated, pursuant to subsection B of this section, the certificate of registration of a registrant who seeks to place the certificate of registration on inactive status, the registrant shall submit all penalty fees that are due with the registrant's application for inactive status.
- G. A registrant shall not place the registrant's certificate of registration on inactive status if the person's certificate of registration has been canceled by the board pursuant to subsection C of this section.
- H. A registrant who holds an inactive certificate of registration may apply to the board to reactivate the certificate of registration. The board shall reactivate an inactive certificate of registration if the registrant submits a completed application on a form prescribed by the board and meets the qualifications for professional registration set forth in section 32-122.01. A registrant who seeks reactivation of the registrant's certificate of registration and who has not been engaged in the profession in which the registrant seeks reactivation for the five years immediately preceding the date of the application for reactivation shall take the applicable professional examination.
- I. The board shall establish the renewal fee for each certificate or registration issued pursuant to this chapter.
- J. Notwithstanding subsection C of this section, a home inspector who has had a certification canceled pursuant to subsection C of this section shall apply as a new candidate and pay the application fee. If the applicant has not taken and passed the board-approved national examination within the two years immediately preceding the date of application, the applicant shall take and pass the examination for certification.

32-128. Disciplinary action; letter of concern; judicial review

A. The board may take the following disciplinary actions, in combination or alternatively:

1. Revocation of a certification or registration.
2. Suspension of a certification or registration for a period of not more than three years.
3. Imposition of an administrative penalty of not more than two thousand dollars for each violation of this chapter or rules adopted pursuant to this chapter.
4. Imposition of restrictions on the scope of the registrant's practice.
5. Imposition of peer review and professional education requirements.
6. Imposition of probation requirements that are best adapted to protect the public safety, health and welfare and that may include a requirement for restitution payments to professional services clients or to other persons suffering economic loss resulting from violations of this chapter or rules adopted pursuant to this chapter.
7. Issuance of a letter of reprimand informing a person regulated under this chapter of a violation of this chapter or rules adopted by the board.

B. The board may issue a letter of concern if the board believes there is insufficient evidence to support disciplinary action against the registrant or home inspector but sufficient evidence for the board to notify the registrant or home inspector of the board's concern. A letter of concern is a public document.

C. The board may take disciplinary action against the holder of a certificate or registration under this chapter who is charged with the commission of any of the following acts:

1. Fraud or misrepresentation in obtaining a certificate of qualification, whether in the application or qualification examination.
2. Gross negligence, incompetence, bribery or other misconduct in the practice of the profession.
3. Aiding or abetting an unregistered or uncertified person to evade this chapter or knowingly combining or conspiring with an unregistered or uncertified person, or allowing one's registration or certification to be used by an unregistered or uncertified person or acting as agent, partner, associate or otherwise of an unregistered or uncertified person, with intent to evade this chapter.
4. Violation of this chapter or board rules.
5. Failing to pay a collaborating registered professional within seven calendar days after the registrant receives payment from a client unless specified otherwise contractually between the prime professional and the collaborating registered professional. For the purposes of this paragraph, "collaborating registered professional" means a registered professional with whom the prime professional has a contract to perform professional services.

D. The board may make investigations, employ investigators and expert witnesses, appoint members of advisory committees and conduct hearings to determine whether a disciplinary action should be taken against the holder of a certificate or registration under this chapter.

E. An investigation may be initiated on receipt of an oral or written complaint. The board, on its own motion, may direct the executive director to file a verified complaint charging a person with a violation of this chapter or board rules and shall give notice of the hearing pursuant to title 41, chapter 6, article 10. The executive director shall then serve on the accused, by either personal service or certified mail, a copy of the complaint together

with notice setting forth the charge or charges to be heard and the time and place of the hearing, which shall not be less than thirty days after the service or mailing of notice.

F. A person who has been notified of charges pending against the person shall file with the board an answer in writing to the charges not more than thirty days after service of the complaint and notice of hearing. If a person fails to answer in writing, it is deemed an admission by the person of the act or acts charged in the complaint and notice of hearing. The board may then take disciplinary action pursuant to this chapter without a hearing.

G. A disciplinary action may be informally settled by the board and the accused either before or after initiation of hearing proceedings.

H. On its determination that any person has violated this chapter or a rule adopted pursuant to this chapter, the board may assess the person with its reasonable costs and expenses, including attorney fees, incurred in conducting the investigation and administrative hearing. All monies collected pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the technical registration fund established by section 32-109 and shall only be used by the board to defray its expenses in connection with investigation related training, disciplinary investigations and hearings. Notwithstanding section 35-143.01, these monies may be spent without legislative appropriation.

I. The board shall immediately notify the clerk of the board of supervisors of each county in the state of the suspension or revocation of a certificate or of the reissuance of a suspended or revoked certificate.

J. Except as provided in section 41-1092.08, subsection H, final decisions of the board are subject to judicial review pursuant to title 12, chapter 7, article 6.

32-129. Confidentiality

A. Examination material, file records of examination grading and performance, transcripts of educational institutions, letters of inquiry and reference concerning applicants and board inquiry forms concerning applicants are confidential and are not subject to inspection pursuant to title 39, chapter 1, article 2.

B. Investigation files of any investigation are confidential and are not subject to inspection pursuant to title 39, chapter 1, article 2 until the matter is final, a hearing notice is issued pursuant to title 41, chapter 6, article 10 or the matter is settled by consent order. However, the registrant shall be informed of and have access to the complaint and investigative assessments and the public may obtain information that an investigation is being conducted and of its general nature.

C. Informal conferences held by advisory committees are confidential and are not open to the public. All information, including any minutes or reports created or obtained pursuant to an informal conference, is confidential until the matter is final, a hearing notice is issued pursuant to title 41, chapter 6, article 10 or the matter is settled by consent order. The board may discuss matters that are being reviewed by an advisory committee in open session but may not introduce confidential documents into public board records.

32-130. Review of drawings, plans or design specifications by public agencies

Any modifications, except for building code compliance reviews, field inspections and applicable design standards, to drawings, plans or design specifications submitted for review to the state or a political subdivision of the state and that are made by a professional registrant employed or under contract with the state or a political subdivision of the state shall be signed by and issued under the seal of the reviewing registrant.

32-131. Assayer emeritus status

The board shall grant assayer emeritus status to an assayer who is registered by the board pursuant to this chapter on August 6, 2016 if both of the following apply:

1. The assayer has not received any complaints during the assayer's active registration.
2. The assayer analyzes metals, ores, minerals or alloys to ascertain the quantity of gold or silver or any other substance present in the metals, ores, minerals or alloys.

32-141. Firm registration

- A. A firm shall not engage in the practice of any board-regulated profession or occupation unless the firm is registered with the board and the professional services are conducted under the full authority and responsible charge of a principal of the firm, who is also a registrant.
- B. A person shall file a registration application for each branch office that is located in this state and that is part of a firm registered with the board. The branch office application shall list a designated registrant having full authority and responsible charge of the professional services of that branch office. The designated registrant in a branch office need not be a principal of the firm.
- C. A firm wishing to offer professional services in this state shall file with the board an application for registration on a form that is provided by the board and accompanied by the appropriate application fee as prescribed by the board. Firms shall also identify responsible registrants by the registrant's registration certificate number. Each firm shall list a description of the services the firm is offering to the public. The board shall be notified in writing within thirty days of any change occurring in the registered principals, any change in the firm's name or address or any change in a branch office address or designated registrant. Except as provided in section 32-4301, a new application shall be filed each year by the firm within thirty days of the anniversary date of the original firm registration.
- D. No firm may advertise its availability to perform home inspections by home inspectors certified pursuant to this chapter unless each home inspection is performed by a home inspector certified pursuant to this chapter and each home inspection report is prepared as a result of the inspector's on-site observation.

32-142. Public works

- A. Drawings, plans, specifications, estimates and construction observation for public works of this state or a political subdivision of this state involving architecture, engineering, geology, landscape architecture or land surveying shall be prepared by or under the direct supervision of a registrant within the category involved.
- B. Surveys or maps required in connection with public land surveying shall be made by or under the personal direction of a qualified registrant.
- C. Drawings, plans, design specifications and construction observation of public works facilities of the state or a political subdivision of this state for the use or storage of hazardous materials shall be made by or under the direct supervision of a qualified registrant in the appropriate field.

32-143. Exceptions

An architect, geologist, engineer or landscape architect registered under this chapter may engage in practice in another category regulated pursuant to this chapter only to the extent that the person is qualified and to the extent that the work may be necessary and incidental to the work of the registrant's profession on a specific project. This exception does not apply to public works projects.

32-144. Exemptions and limitations; definition

A. Professions and occupations regulated by the board may be practiced without compliance with the requirements of this chapter by:

1. An officer or employee of the United States, practicing as such.
2. An employee of a registrant or of a person exempt from registration, if such employment does not involve direct responsibility for design, inspection or supervision.
3. A nonregistrant who designs, alters or adds to either of the following:
 - (a) A detached single family dwelling.
 - (b) An individual unit in a multifamily dwelling if the walls that are designed, altered or added in the unit are not bearing walls, shear walls or firewalls, which shall be determined by a registrant following an evaluation of the walls to be designed, altered or added.
4. A nonregistrant who designs a one or two story building or structure in which the square footage of the floor area measured to the outside surface of the exterior walls does not exceed three thousand square feet, that is not intended for occupancy by more than twenty persons on a continuous basis and in which the maximum span of any structural member does not exceed twenty feet unless a greater span is achieved by the use of wood or steel roof or floor trusses or lintels approved by an engineer registered by the board.
5. A nonregistrant who designs additions or alterations to a one or two story building or structure subject to the limitations set forth in paragraph 4 of this subsection. A nonregistrant may exceed the maximum three thousand square foot limitation set forth in paragraph 4 of this subsection for a one-time single addition not exceeding one thousand five hundred square feet as measured to the outside surface of the exterior walls and designed for the purpose of storage of chattels.
6. A nonregistrant who designs a water or wastewater treatment plant, or extensions, additions, modifications or revisions, or extensions to water distribution or collection systems, if the total cost of such construction does not exceed twelve thousand five hundred dollars.
7. A nonregistrant who designs buildings or structures to be erected on property owned or leased by the nonregistrant or by a person, firm or corporation, including a utility, telephone, mining or railroad company, which employs the nonregistrant on a full-time basis, if the buildings or structures are intended solely for the use of the owner or lessee of the property, are not ordinarily occupied by more than twenty people, are not for sale to, rental to or use by the public and conform to the building code adopted by the city, town or county in which the building is to be erected or altered.
8. A nonregistrant who provides horticultural consultations or prepares planting plans for plant installations.

B. A registrant who performs any of the activities described in subsection A, paragraphs 3 through 8 of this section is subject to the requirements of this chapter.

C. The requirements of this chapter shall not apply to work done by any communications common carrier or its affiliates or any public service corporation or manufacturing industry or by full-time employees of any of them, provided such work is in connection with or incidental to the products, systems or nonengineering services of such communications common carrier or its affiliates or public service corporation or manufacturing industry, and provided that the engineering service is not offered directly to the public.

D. An individual shall not perform home inspections unless the individual is certified as a home inspector pursuant to this chapter, except that nothing in this chapter prevents:

1. A person who is licensed, certified or registered pursuant to this chapter or another chapter in this title from acting within the scope of the person's license, certification or registration.
 2. A person who is employed by a governmental entity from inspecting residential structures if the inspection is within official duties and responsibilities.
 3. A person from performing a home inspection if the inspection will be used solely by a bank, savings and loan association or credit union to monitor progress on the construction of a residential structure, unless otherwise required by federal law or regulation.
 4. A person who is employed as a property manager for a residential structure and whose official duties and responsibilities include inspecting the residential structure from performing a home inspection on the structure if the person does not receive separate compensation for the inspection work.
- E. No person including a person described in subsection D of this section may use any letterhead, advertisement, communication or other device to represent that the person is a home inspector unless the person is certified as a home inspector pursuant to this chapter.
- F. A trained geologist may engage in a geological practice without being registered under this chapter. A trained geologist may not engage in a geological practice if any of the following applies:
1. The trained geologist has been convicted of a felony in this state or any other state.
 2. The trained geologist has been registered or licensed in this state or any other state and has had the registration or license suspended or revoked by this state or the other state.
 3. The trained geologist has been prohibited from engaging in a geological practice in this state or any other state due to any private, civil or professional complaint related to an ethical or technical violation while engaged in the practice of geology.
 4. The trained geologist fails to disclose to a person employing or hiring the trained geologist:
 - (a) Any disciplinary action taken against the trained geologist in this state or any other state due to any private, civil or professional complaint that is related to an ethical or technical violation while engaged in the practice of geology.
 - (b) That the trained geologist is not a registered geologist pursuant to this title.
 5. The trained geologist is required to be registered by another law in this state or by federal law.
 6. State or federal law conditions the issuance of a license or permit, including permits issued under title 27, 37, 45 or 49, on the issuance of a report that is sealed by a registered geologist.
- G. "Trained geologist" means a person who has both:
1. Earned a geology degree from an accredited educational institution.
 2. Participated in geological work experience outside of an educational institution for at least four years.

32-145. Violations; classification

Any person who commits any of the following acts is guilty of a class 2 misdemeanor:

1. Practices, offers to practice or by any implication holds himself out as qualified to practice any board regulated profession or occupation if the person is not registered or certified as provided by this chapter.
2. Advertises or displays any card, sign or other device that may indicate to the public that the person is certified or registered or is qualified to practice any board regulated profession or occupation if the person is not certified or registered as provided by this chapter.
3. Uses "certified", "professional certified", "professional", "PE", "registered", "registered professional" or "professional registered" in conjunction with any board regulated profession or occupation if the person is not certified or registered as provided by this chapter.
4. Uses a certification or certificate of registration of another, or uses an expired or revoked certification or certificate of registration.
5. Presents false evidence to the board with the intent to obtain a certification or a certificate of registration.
6. Otherwise violates any provision of this chapter.

32-146. Malpractice claim review

A. On the filing of a complaint in any malpractice action the plaintiff's attorney shall forward a copy of the complaint to the board and a report containing the information required in subsection B.

B. The report required by subsection A shall contain the following information:

1. The name and address of each defendant.
2. The name and address of each plaintiff.
3. The names and addresses of each registrant providing services to the plaintiff.
4. A statement specifying the nature of the occurrence resulting in the malpractice action.

C. The report required by subsection A is not discoverable and not admissible as evidence.

D. On receipt of a report required by subsection A, the board shall initiate an investigation into the matter to determine if the registrant against whom the claim is filed is in violation of any provision of this chapter or any rule promulgated under this chapter.

32-147. Board reports; immunity.

Any person may report to the board any information the person may have which appears to show grounds for disciplinary action under the provisions of this chapter or rules of the board. A person who reports or provides information to the board in good faith is not subject to an action for civil damages as a result, and the person's name shall not be disclosed if confidentiality is requested by the person, unless the person's testimony is essential to the disciplinary proceedings conducted under this section.

32-148. Refusal to obey a subpoena; contempt

A person who refuses to obey a subpoena issued by the board shall be certified by the board to the superior court in the county in which service was made for contempt proceedings.

32-149. Transcript copies; cost

The board shall provide copies of the written transcript of a hearing conducted under the authority of this chapter and all evidence submitted to a person appealing a board decision at that person's expense and without charge to the court in which an appeal is taken.

32-150. Failure to comply with board orders; penalty.

Failure to comply with any final order of the board, including an order of censure or probation, is cause for suspension or revocation of a license.

32-151. Certify; certification

The use of the word "certify" or "certification" by a person or firm that is registered or certified by the board is an expression of professional opinion regarding facts or findings that are the subject of the certification and does not constitute an express or implied warranty or guarantee.

32-152. Record documents; definition

A. If a person or firm that is registered or certified by the board is required to provide record documents for improvements or grading, and the plans show changes during the construction process, the following apply:

1. If the registered or certified professional provided construction phase services on the project that include supervision of the construction of engineering structures, the plans shall be based on field observations of the registered or certified professional or the professional's agents and information received from the project owner, project contractors and public agencies.
2. If the registered or certified professional did not provide construction phase services on the project that include supervision of the construction of engineering structures, the plans shall be based on information received from the project owner, project contractors and public agencies, but need not be based on a field verification or investigation of the improvements or grades unless the registered or certified professional is engaged to provide the field verification services.
3. The registered or certified professional shall not be required to include a certificate or statement on record documents that is inconsistent with or varies from this section.

B. For the purposes of this section, "record documents" means plans that document the registered or certified professional's final plans and that include all changes made to the plans in the actual project construction. Record documents include as-constructed plans or as-built plans.

32-4301. License, certificate or registration expiration; military active duty; one hundred eighty-day extension

A. Except as otherwise provided in this section, a license, certificate or registration that is issued pursuant to this title to any member of the national guard or the United States armed forces reserves shall not expire while the member is serving on federal active duty and shall be extended one hundred eighty days after the member returns from federal active duty, provided that the member, or the legal representative of the member, notifies the license, certificate or registration issuing authority of the federal active duty status of the member. A license, certificate or registration that is issued pursuant to this title to any member serving in the regular component of the United States armed forces shall be extended one hundred eighty days from the date of expiration, provided that the member, or the legal representative of the member, notifies the license, certificate or registration issuing authority of the federal active duty status of the member.

B. A license, certificate or registration that is issued pursuant to this title to any member of the national guard, the United States armed forces reserves or the regular component of the United States armed forces shall not expire and shall be extended one hundred eighty days from the date the military member is able to perform activities necessary under the license, certificate or registration if the member both:

1. Is released from active duty service.
2. Suffers an injury as a result of active duty service that temporarily prevents the member from being able to perform activities necessary under the license, certificate or registration.

C. If the license, certificate or registration is renewed during the applicable extended time period after the member returns from federal active duty, the member is responsible only for normal fees and activities relating to renewal of the license, certificate or registration and shall not be charged any additional costs such as late fees or delinquency fees.

D. The member, or the legal representative of the member, shall present to the authority issuing the license, certificate or registration a copy of the member's official military orders, a redacted military identification card or a written verification from the member's commanding officer before the end of the applicable extended time period in order to qualify for the extension.

E. This section does not apply to licenses that are issued pursuant to chapter 10 of this title if a person other than the person who is a member of the national guard, the United States armed forces reserves or the regular component of the United States armed forces is authorized to renew the license.

F. A license or certificate that is issued pursuant to chapter 36 of this title to any member of the national guard, the United States armed forces reserves or the regular component of the United States armed forces shall be placed in active status for ninety days after the member returns from federal active duty, provided that the member, or the legal representative of the member, notifies the department of financial institutions of the federal active duty status of the member.

32-4302. Out-of-state applicants; military spouses; reciprocity.

A. Notwithstanding any other law, a license or certificate shall be issued, in the discipline applied for and at the same practice level as determined by the regulating entity, pursuant to this title without an examination to a person who is married to an active duty member of the armed forces of the United States and who is accompanying the member to an official permanent change of station to a military installation located in this state if all of the following apply:

1. The person is currently licensed or certified in at least one other state in the discipline applied for and at the same practice level as determined by the regulating entity and the license or certification is in good standing in all states in which the person holds a license or certification.
2. The person has been licensed or certified by another state for at least one year. If the person has been licensed or certified for fewer than five years, the regulating entity may require the person to practice under the direct supervision of a licensee or certificate holder in the practice area in this state.
3. When the person was licensed or certified by another state there were minimum education requirements and, if applicable, work experience and clinical supervision requirements in effect and the other state verifies that the person met those requirements in order to be licensed or certified in that state.
4. The person previously passed an examination required for the license or certification.
5. The person has not had a license or certificate revoked and has not voluntarily surrendered a license or certificate in any other state or country while under investigation for unprofessional conduct.
6. The person has not had discipline imposed by any other regulating entity. If another jurisdiction has taken disciplinary action against the person, the regulating entity shall determine if the cause for the action was corrected and the matter resolved. If the matter has not been resolved by that jurisdiction, the regulating entity may not issue or deny a license until the matter is resolved.
7. The person does not have a complaint, allegation or investigation pending before another regulating entity in another state or country that relates to unprofessional conduct. If an applicant has any complaints, allegations or investigations pending, the regulating entity in this state shall suspend the application process and may not issue or deny a license to the applicant until the complaint, allegation or investigation is resolved.
8. The person pays all applicable fees.

B. This section does not prevent a regulating entity under this title from entering into a reciprocity agreement with another state or jurisdiction for persons married to active duty members of the armed forces of the United States, except that the agreement may not allow out-of-state licensees or certificate holders to obtain a license or certificate by reciprocity in this state if the applicant has not met standards that are substantially equivalent to or greater than the standards required in this state as determined by the regulating entity on a case-by-case basis.

C. This section does not apply to a regulating entity under this title that has entered into a licensing compact with another state for the regulation of practice under the regulating entity's jurisdiction.

32-4303. Military education, training and experience

NOTwithstanding any other law, the education, training or experience requirements for a license, certificate or registration issued pursuant to this title are completely or partially satisfied, as determined by the regulating entity, on presentation of satisfactory evidence that the applicant received substantially equivalent education, training or experience as a member of the United States armed forces or any national guard or other reserve component. The regulating entity shall work in conjunction with the department of veterans' services to access information regarding the applicant's military education, training or experience.

32-4404. Board actions; records; website; compliance deadline

- A. If a nonhealth profession regulatory board dismisses a complaint, the record of that complaint is available to that regulatory board and the public pursuant to section 39-121 but may not appear on the board's website. For the purposes of this subsection, "dismisses a complaint" means that a board does not issue a disciplinary or nondisciplinary order or action against a licensee or certificate holder.
- B. If a nonhealth profession regulatory board issues a nondisciplinary order or action against a licensee or certificate holder, the record of the nondisciplinary order or action is available to that board and the public pursuant to section 39-121, but may not appear on the board's website, except that a practice limitation or restriction, and documentation relating to that action, may appear on the board's website.
- C. If a nonhealth profession regulatory board maintains a website, the board must display on its website a statement that a person may obtain additional public records related to any licensee or certificate holder, including dismissed complaints and nondisciplinary actions and orders, by contacting the board directly.
- D. This section does not prohibit a nonhealth profession regulatory board from conducting its authorized duties in a public meeting.
- E. Subsections A and B of this section do not apply to meeting minutes and notices kept by the board in accordance with the public meeting requirements of title 38, chapter 3, article 3.1.
- F. A nonhealth profession regulatory board must comply with the requirements of this section on or before January 1, 2012.

32-4701. Provisional license; eligibility; report; definition

A. Unless subsection K of this section applies, a licensing authority shall have the authority to issue to an otherwise qualified applicant who has been convicted of an offense either of the following:

1. The regular license for which the applicant applied.

2. A provisional license.

B. The provisional license shall be valid for a term of not more than one year as specified by the licensing authority by rule.

C. The licensing authority may revoke a provisional license if the provisional licensee:

1. Is charged with a new felony.

2. Commits an act or omission that causes the provisional licensee's community supervision, probation or parole to be revoked, if applicable.

3. Violates the law or rules governing the practice of the occupation for which the provisional license is issued.

D. If the licensing authority revokes a provisional license under subsection C of this section, the provisional licensee is not entitled to receive another provisional license or the regular license for which the applicant originally applied, even if otherwise qualified. The ability of such a person to subsequently obtain another such license in the future is within the discretion of the licensing authority.

E. An applicant who is on community supervision, probation or parole and who is issued a provisional license under this section shall provide to the licensing authority the name and contact information of the community supervision, probation or parole officer to whom the applicant reports. The licensing authority shall notify the community supervision, probation or parole officer that a provisional license has been issued.

F. If the licensing authority issues a regular or provisional license to an applicant and the applicant has been ordered by a court to pay restitution, the licensing authority shall notify the prosecutor that a regular or provisional license has been issued to the applicant for the purposes of recovering restitution that the applicant may owe.

G. If an applicant is employed in a licensed assisted living or skilled nursing facility, the provisional license must include a condition that the provisional licensee may only work under the direct supervision of another licensee who is not a provisional licensee, and the supervising licensee must sign a verifying affidavit.

H. If a provisional licensee was convicted of an offense that involves a violation of title 13, chapter 15 or 19 within the last ten years and if the occupation is one in which a licensee regularly enters private residences, the provisional license must include a condition that the provisional licensee only work under the direct supervision of another licensee who has no criminal record during all home visits and the supervising licensee must sign a verifying affidavit. If the offense occurred more than ten years ago, the condition is discretionary with the licensing authority. The regular license may include this condition if the licensing authority determines that the condition is warranted. The licensing authority may conduct reasonable enforcement activities to ensure this supervision condition is complied with over the course of the license term.

I. This section does not preclude a licensing authority from exercising its existing discretion to issue a license to individuals who are not covered under this section.

J. A person who is incarcerated may not apply for a provisional license until after the person's release.

K. This section does not apply to:

1. A person who is convicted of:

(a) A violent crime as defined in section 13-901.03.

(b) A violation of section 13-1403, subsection B.

(c) A sexual offense as defined in section 13-1420.

(d) Kidnapping under section 13-1304.

(e) An offense in violation of title 13, chapter 20, 21 or 22 or section 13-2310 or 13-2311 if the licensed occupation is one in which the licensee owes a fiduciary duty to a client.

2. Any occupation where the licensee would be supervising vulnerable adults as defined in section 46-451 or children.

3. Any initial or renewal license application where the applicant was convicted of committing an offense in the course of performing the duties of the occupation or a substantially similar occupation.

4. Repetitive offenders pursuant to section 13-703.

L. Each licensing authority shall submit a report on or before July 1 each year to the governor and provide a copy of this report to the secretary of state. The report shall include the following information for the previous calendar year:

1. The number of provisional license applications that were received.

2. The number of provisional licenses that were granted.

3. The number of provisional license applications that were denied.

4. The number of provisional licenses that were revoked.

M. For the purposes of this section, "licensing authority" means any agency, department, board or commission of this state that issues a license pursuant to this title, except chapter 40 of this title, for the purposes of operating a business in this state to an individual who provides a service to any person.

32-4801. Public meetings; digital recordings; posting; definition

A. Each licensing authority shall:

1. In addition to the requirements prescribed in title 38, chapter 3, article 3.1, provide for a digital recording of each licensing authority meeting, except for executive sessions.
2. Post on its website the digital recording of the meeting not later than five days after the meeting and retain the recording on its website for at least three years.
3. Except as prescribed by sections 32-3214 and 41-1092.09, post on its website all final decisions, orders and actions the licensing authority takes not later than five days after the meeting and retain this information on its website for at least three years.

B. For the purposes of this section, "licensing authority" has the same meaning prescribed in section 32-4701.

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 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 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 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 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.
 21. Pursuant to section 41-1009, subsection E, may correct deficiencies identified during an inspection unless otherwise provided by law.
- 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. The agency shall provide a written document of the small business bill of rights to the authorized on-site representative of the regulated small business. 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.

41-1003. Required rule making

Each agency shall make rules of practice setting forth the nature and requirements of all formal procedures available to the public.

41-1006. Employees providing agency assistance; identification and publication

Each state agency shall publish annually in the register, in the state directory and in a telephone directory for Maricopa county the name or names of those employees who are designated by the agency to assist members of the public or regulated community in seeking information or assistance from the agency.

41-1008. Fees; specific statutory authority

A. Except as provided in subsection C of this section, an agency shall not:

1. Charge or receive a fee or make a rule establishing a fee unless the fee for the specific activity is expressly authorized by statute or tribal state gaming compact.
2. Make a rule establishing a fee that is solely based on a statute that generally authorizes an agency to recover its costs or to accept gifts or donations.

B. An agency shall identify the statute or tribal state gaming compact that authorizes the fee on documents relating to collection of the fee.

C. An agency authorized by statute or tribal state gaming compact to conduct background checks may charge a fingerprint fee without a statute expressly authorizing the fee.

D. Unless the legislature grants an express exemption through statute or session law from all requirements of this chapter for establishing or increasing a fee, an agency shall comply with all applicable rule making provisions to establish or increase the fee. The agency shall not charge or receive the fee until the rule establishing or increasing the fee is effective under the applicable law of this state.

E. A fee that is established or increased by exempt rule making from and after September 30, 2012 is effective for two years unless an extension is granted by the council.

F. After the expiration of the applicable period under subsection E of this section, the agency shall not charge or receive the fee unless the agency has complied with the rule making requirements of this chapter to establish or increase the fee.

G. A person regulated by the rule may petition the council to establish a date that is different than the date under subsection E of this section but no earlier than two years after the exempt rule is made. The agency shall respond to the petition within two weeks after the council notifies the agency that the petition has been filed. Within sixty days the council shall grant or deny the petition after considering whether the public interest requires a different date.

41-1010. Complaints; public record

Notwithstanding any other law, a person shall disclose the person's name during the course of reporting an alleged violation of law or rule. During the course of an investigation or enforcement action, the name of the complainant shall be a public record unless the affected agency determines that the release of the complainant's name may result in substantial harm to any person or to the public health or safety.

41-1080. Licensing eligibility; authorized presence; documentation; applicability; definitions

A. Subject to subsections C and D of this section, an agency or political subdivision of this state shall not issue a license to an individual if the individual does not provide documentation of citizenship or alien status by presenting any of the following documents to the agency or political subdivision indicating that the individual's presence in the United States is authorized under federal law:

1. An Arizona driver license issued after 1996 or an Arizona nonoperating identification license.
2. A driver license issued by a state that verifies lawful presence in the United States.
3. A birth certificate or delayed birth certificate issued in any state, territory or possession of the United States.
4. A United States certificate of birth abroad.
5. A United States passport.
6. A foreign passport with a United States visa.
7. An I-94 form with a photograph.
8. A United States citizenship and immigration services employment authorization document or refugee travel document.
9. A United States certificate of naturalization.
10. A United States certificate of citizenship.
11. A tribal certificate of Indian blood.
12. A tribal or bureau of Indian affairs affidavit of birth.
13. Any other license that is issued by the federal government, any other state government, an agency of this state or a political subdivision of this state that requires proof of citizenship or lawful alien status before issuing the license.

B. This section does not apply to an individual if either:

1. Both of the following apply:
 - (a) The individual is a citizen of a foreign country or, if at the time of application, the individual resides in a foreign country.
 - (b) The benefits that are related to the license do not require the individual to be present in the United States in order to receive those benefits.
2. All of the following apply:
 - (a) The individual is a resident of another state.
 - (b) The individual holds an equivalent license in that other state and the equivalent license is of the same type being sought in this state.
 - (c) The individual seeks the Arizona license to comply with this state's licensing laws and not to establish residency in this state.

C. If, pursuant to subsection A of this section, an individual has affirmatively established citizenship of the United States or a form of nonexpiring work authorization issued by the federal government, the individual, on renewal or reinstatement of a license, is not required to provide subsequent documentation of that status.

D. If, on renewal or reinstatement of a license, an individual holds a limited form of work authorization issued by the federal government that has expired, the individual shall provide documentation of that status.

E. If a document listed in subsection A, paragraphs 1 through 12 of this section does not contain a photograph of the individual, the individual shall also present a government issued document that contains a photograph of the individual.

F. For the purposes of this section:

1. "Agency" means any agency, department, board or commission of this state or any political subdivision of this state that issues a license for the purposes of operating a business in this state or to an individual who provides a service to any person.

2. "License" means any agency permit, certificate, approval, registration, charter or similar form of authorization that is required by law and that is issued by any agency for the purposes of operating a business in this state or to an individual who provides a service to any person where the license is necessary in performing that service.

41-1093. Definitions

In this article, unless the context otherwise requires:

1. "Health, safety or welfare":

(a) Means the protection of members of the public against harm, fraud or loss, including the preservation of public security, order or health.

(b) Does not include the protection of existing businesses or agencies, whether publicly or privately owned, against competition.

2. "Individual" means a natural person.

3. "Occupational regulation":

(a) Means a rule, regulation, practice or policy that allows an individual to use an occupational title or work in a lawful occupation, trade or profession or a cease and desist demand or other regulatory requirement that prevents an individual from using an occupational title or working in a lawful occupation, trade or profession.

(b) Does not include:

(i) A business license, facility license, building permit or zoning and land use regulation.

(ii) Any rule or regulation relating to an institution or individual that is subject to title 36, chapter 4, article 10 or chapter 20.

(iii) Any license or regulation that is required by federal law.

(iv) Any rule or regulation adopted by an agency that is authorized by statute and has been approved by the council pursuant to section 41-1052.

(v) Any rule or regulation relating to emergency medical and transportation services that originated with a public access system or medical transportation requested by a medical authority or by the patient for which a certificate of necessity is required under section 36-2233.

(vi) Any rule relating to the licensing of a securities dealer, securities salesman, investment adviser or investment adviser representative.

41-1093.02. Administrative proceedings

A. Any individual harmed by an occupational regulation may petition an agency to repeal or modify any occupational regulation within the agency's jurisdiction.

B. Within ninety days after a petition is filed, the agency shall repeal the occupational regulation, modify the occupational regulation to comply with section 41-1093.01, recommend legislative action, if required, to repeal or amend the occupational regulation to comply with section 41-1093.01 or state the basis on which the agency concludes that the occupational regulation complies with section 41-1093.01.

41-1093.03. Enforcement; fees and costs

A. Whether or not a petition is filed pursuant to section 41-1093.02, any individual may file an action in a court of general jurisdiction to challenge an occupational regulation.

B. To prevail in an action challenging the occupational regulation, the court must find by a preponderance of the evidence that the challenged occupational regulation on its face or in its effect burdens the entry into or participation in an occupation, trade or profession and that this state has failed to prove by a preponderance of the evidence that the challenged occupational regulation is demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern.

C. If the court finds for the plaintiff, the court shall enjoin further enforcement of the challenged occupational regulation and shall award reasonable attorney fees and costs to the plaintiff.

41-1093.04. Occupational license, permit or certificate or other state recognition rights; petition for review of criminal record; annual report

A. A person with a criminal record may petition an agency, at any time, including before obtaining any required education or experience, taking any examination or paying any fee for a determination of whether the person's criminal record disqualifies the person from obtaining a license, permit, certificate or other state recognition.

B. In the petition, the person shall include:

1. the person's complete criminal history record.
2. Any additional information about the person's current circumstances, including the time since the offense was committed and the sentence was completed, the payment of any court-ordered restitution, evidence of rehabilitation, testimonials, employment history and employment aspirations.

C. The agency shall determine whether the person's criminal record disqualifies the person from obtaining a license, permit, certificate or other state recognition.

D. Notwithstanding any other law or rule, the agency may determine that the person's criminal record disqualifies the person from obtaining a license, permit, certificate or other state recognition only if both of the following apply:

1. The person was convicted of any of the following and the conviction has not been set aside or expunged:

- (a) A felony offense.
- (b) A violent crime as defined in section 13-901.03.
- (c) An offense included in title 13, chapter 20, 21 or 23 or section 13-2310 or 13-2311 if the license, permit, certificate or other state recognition is for an occupation in which the applicant would owe a fiduciary duty to a client.
- (d) Any offense that a law specifically requires the agency to consider when issuing a license, permit, certificate or other state recognition.

2. The agency concludes that the state has an important interest in protecting public safety that is superior to the person's right. The agency may make this conclusion only if the agency determines, by clear and convincing evidence at the time of the petition, that both of the following apply:

- (a) The specific offense that the person was convicted of is substantially related to the state's interest.
- (b) The person, based on the nature of the specific offense that the person was convicted of and the person's current circumstances, is more likely to reoffend by virtue of having the license, permit, certificate or other state recognition than if the person did not have the license, permit, certificate or other state recognition.

E. The agency shall issue a determination on the petition within ninety days after the agency receives the petition. The determination on the petition must be in writing and include findings of fact and conclusions of law.

F. If the agency determines that the state's interest is superior to the person's right, the agency may advise the person of the actions that the person may take to remedy the disqualification, including:

1. An appeal of the determination as provided in title 12, chapter 7, article 6.
2. The submission of a new petition to the same agency at any time within two years after the final determination of the initial petition.

G. The agency shall rescind the determination any time after the determination is made but before issuing a license, permit, certificate or other state recognition if the person is convicted of an additional offense that is included in subsection D, paragraph 1 of this section.

H. Subsection D of this section does not apply to any of the following:

1. Any law enforcement agency or the Arizona peace officer standards and training board.
2. Any license or registration certificate that is issued pursuant to title 32, chapter 24 or 26.
3. Any certification, license or permit that is issued pursuant to title 15.
4. Statutory requirements for a fingerprint clearance card issued pursuant to title 41, chapter 12, article 3.1.
5. Any criteria for license, permit or certificate eligibility that is established by an interstate compact.

I. Each agency shall submit a report on or before July 1 of each year to the governor and the legislature and provide a copy of this report to the secretary of state. The report shall include the following information for the previous calendar year:

1. The number of applicants that petition the agency for a determination.
2. The number of petitions that were granted and the types of offenses at issue.
3. The number of petitions that were denied and the types of offenses at issue.
4. The number of determinations that were rescinded.