

State of Arizona
Senate
Fifty-first Legislature
First Regular Session
2013

SENATE BILL 1099

AN ACT

AMENDING SECTIONS 11-1135, 39-101, 41-151, 41-151.09, 41-151.12, 41-151.14, 41-151.15, 41-151.16, 41-151.18, 41-151.19 AND 41-2752, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 1, ARTICLE 2.1, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 41-151.24 AND 41-151.25; MAKING AN APPROPRIATION; RELATING TO THE ARIZONA STATE LIBRARY, ARCHIVES AND PUBLIC RECORDS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 11-1135, Arizona Revised Statutes, is amended to
3 read:

4 11-1135. Transmitting affidavit or data to county assessor,
5 Arizona state library, archives and public records
6 and department of revenue

7 A. The county recorder shall:

8 1. Place the fee or recording number of the deed and the date of
9 recording on the original affidavit.

10 2. Scan the affidavit and transmit an electronic copy to the
11 department ~~and the Arizona state library, archives and public records~~, and
12 transmit either the original or an electronic copy of the original to the
13 county assessor.

14 B. The county assessor shall transmit the data contained within the
15 affidavit to the department.

16 C. The county shall transmit the original affidavit, when no longer in
17 active use, to the Arizona state library, archives and public records.

18 Sec. 2. Section 39-101, Arizona Revised Statutes, is amended to read:

19 39-101. Permanent public records; quality; storage; violation;
20 classification

21 A. Permanent public records of ~~the state, a county, city or town, or~~
22 ~~other political subdivision~~ OFFICERS AND THEIR OFFICES OR ANY PUBLIC BODY of
23 ~~the~~ THIS state, shall be transcribed or kept on paper or other material
24 ~~which~~ THAT is of durable or permanent quality and ~~which~~ THAT conforms to
25 standards established by the director of the Arizona state library, archives
26 and public records.

27 B. Permanent public records transcribed or kept as provided in
28 subsection A OF THIS SECTION shall be stored and maintained according to
29 standards for the storage of permanent public records established by the
30 director of the Arizona state library, archives and public records.

31 C. ~~A public~~ AN officer OR A HEAD OF ANY PUBLIC BODY WHO IS charged
32 with transcribing or keeping such public records AND who violates this
33 section is guilty of a class 2 misdemeanor.

34 Sec. 3. Section 41-151, Arizona Revised Statutes, is amended to read:

35 41-151. Definitions

36 In this article, unless the context otherwise requires:

37 1. "Director" means the director of the state library.

38 2. "OFFICER" MEANS ANY PERSON ELECTED OR APPOINTED TO HOLD ANY
39 ELECTIVE OR APPOINTIVE OFFICE OF ANY PUBLIC BODY AND ANY CHIEF ADMINISTRATIVE
40 OFFICER, HEAD, DIRECTOR, SUPERINTENDENT OR CHAIRPERSON OF ANY PUBLIC BODY.

41 3. "PUBLIC BODY" MEANS THIS STATE, ANY COUNTY, CITY, TOWN, SCHOOL
42 DISTRICT, POLITICAL SUBDIVISION OR SPECIAL TAXING DISTRICT OF THIS STATE, ANY
43 BRANCH, OTHER THAN THE JUDICIAL BRANCH, DEPARTMENT, BOARD, BUREAU,
44 COMMISSION, COUNCIL OR COMMITTEE OF THE FOREGOING, OR ANY PUBLIC ORGANIZATION
45 OR AGENCY THAT IS SUPPORTED IN WHOLE OR IN PART BY MONIES FROM THIS STATE OR

1 ANY POLITICAL SUBDIVISION OF THIS STATE, OR EXPENDING MONIES PROVIDED BY THIS
2 STATE OR ANY POLITICAL SUBDIVISION OF THIS STATE.

3 ~~2-~~ 4. "State library" means the Arizona state library, archives and
4 public records.

5 Sec. 4. Section 41-151.09, Arizona Revised Statutes, is amended to
6 read:

7 41-151.09. Depository of official archives

8 A. The state library is the central depository of all official books,
9 records and documents, INCLUDING ELECTRONIC RECORDS, not in current use of
10 the various state officers and departments of this state, ~~the counties and~~
11 ~~incorporated cities and towns~~ AND ALL PUBLIC BODIES. THE DIRECTOR OF THE
12 STATE ARCHIVES AND HISTORY DIVISION AND THE DIRECTOR OF THE ADMINISTRATIVE
13 OFFICE OF THE COURTS SHALL AGREE AS TO THE BOOKS, RECORDS AND DOCUMENTS,
14 INCLUDING ELECTRONIC RECORDS, OF THE JUDICIAL BRANCH THAT SHALL BE SENT TO
15 THE STATE LIBRARY. These materials constitute the state archives. The state
16 archives shall be carefully kept and preserved, classified, catalogued and
17 made available for inspection under rules the director adopts.

18 B. State officers in possession of official state or territorial
19 archives shall deposit those archives with the state library.

20 C. Any county, municipal or other public official shall either retain
21 or deposit with the state library for permanent preservation PURSUANT TO
22 SECTION 39-101 official books, records, documents and original papers not in
23 current use. The clerk of the superior court shall deposit and the state
24 library shall preserve all permanent superior court case files pursuant to
25 court rules.

26 D. The state library shall make birth and death records held in the
27 state library archives available for inspection as follows:

28 1. Birth records if seventy-five years have passed after the date of
29 birth as recorded on the birth certificate.

30 2. Death records if fifty years have passed after the date of death.

31 Sec. 5. Section 41-151.12, Arizona Revised Statutes, is amended to
32 read:

33 41-151.12. Records; records management; powers and duties of
34 director; fees; records services fund

35 A. The director is responsible for the preservation and management of
36 records. In addition to other powers and duties, the director shall:

37 1. Establish standards, procedures and techniques for effective
38 management of records.

39 2. Make continuing surveys of record keeping operations and recommend
40 improvements in current record management practices, including the use of
41 space, equipment and supplies employed in creating, maintaining, storing and
42 servicing records.

43 3. Establish standards and procedures for the preparation of schedules
44 providing for the retention of records of continuing value and for the prompt

1 and orderly disposal of records no longer possessing sufficient
2 administrative, legal or fiscal value to warrant their further keeping.

3 4. Establish criteria for designation of essential records within the
4 following general categories:

5 (a) Records containing information necessary to the operations of
6 government in the emergency created by a disaster.

7 (b) Records containing information necessary to protect the rights and
8 interests of persons or to establish and affirm the powers and duties of
9 governments in the resumption of operations after a disaster.

10 5. Reproduce or cause to be reproduced essential records and prescribe
11 the place and manner of their safekeeping.

12 6. Obtain ~~such~~ reports and documentation from ~~agencies~~ OFFICERS AND
13 THEIR OFFICES AND PUBLIC BODIES as are required for the administration of
14 this program.

15 7. Request transmittal of the originals of records produced or
16 reproduced by ~~agencies of the state or its political subdivisions~~ OFFICERS
17 AND THEIR OFFICES AND PUBLIC BODIES pursuant to section 41-151.16 or
18 certified negatives, films or electronic media of such originals, or both, if
19 in the director's judgment ~~such~~ THOSE records may be of historical or other
20 value.

21 8. On request, assist and advise in the establishment of records
22 management programs in the legislative and judicial branches of this state
23 and provide program services similar to those available to ~~the executive~~
24 ~~branch of state government~~ OFFICERS AND THEIR OFFICES AND PUBLIC BODIES
25 pursuant to this article.

26 9. Establish a fee schedule to systematically charge ~~state agencies,~~
27 ~~political subdivisions of this state and other governmental units of this~~
28 ~~state~~ OFFICERS AND THEIR OFFICES AND PUBLIC BODIES AND MUSEUMS, HISTORICAL
29 SOCIETIES, CULTURAL INSTITUTIONS AND OTHER ENTITIES DESIGNATED BY THE STATE
30 LIBRARIAN OR STATE ARCHIVIST OR THE STATE LIBRARIAN'S OR STATE ARCHIVIST'S
31 DESIGNEE for services described in this section and section 41-151.13 and
32 deposit monies received from fees in the records services fund established by
33 subsection B of this section.

34 10. Subject to approval of the secretary of state, establish a fee
35 schedule to charge ~~state agencies, political subdivisions of this state and~~
36 ~~other governmental units of this state~~ OFFICERS AND THEIR OFFICES AND PUBLIC
37 BODIES for services and expenses incurred by the state library in obtaining
38 copies of those reports, documents and publications that are required to be
39 delivered, supplied or provided pursuant to sections 35-103, 41-151.05 and
40 41-151.08 and deposit these monies in the records services fund established
41 by subsection B of this section.

42 B. A records services fund is established consisting of monies
43 deposited pursuant to subsection A, paragraphs 9 and 10 of this section. The
44 director shall administer the fund for the purposes provided in subsection A
45 of this section. Monies in the fund are subject to legislative appropriation

1 and are exempt from the provisions of section 35-190 relating to lapsing of
2 appropriations.

3 Sec. 6. Section 41-151.14, Arizona Revised Statutes, is amended to
4 read:

5 41-151.14. Public records management: violation:
6 classification: definition

7 A. ~~The head of each state and local agency~~ ALL OFFICERS AND ALL HEADS
8 OF EVERY PUBLIC BODY shall:

9 1. Establish and maintain an active, continuing program for the
10 economical and efficient management of the public records of the ~~agency~~
11 OFFICERS AND THEIR OFFICES OR THE PUBLIC BODY.

12 2. Make and maintain records containing adequate and proper
13 documentation of the organization, functions, policies, decisions, procedures
14 and essential transactions of the ~~agency~~ OFFICERS AND THEIR OFFICES OR THE
15 PUBLIC BODY THAT ARE designed to furnish information to protect the rights of
16 ~~the~~ THIS state and of persons directly affected by the ~~agency's~~ OFFICERS' AND
17 THEIR OFFICES' OR THE PUBLIC BODY'S activities.

18 3. Submit to the director, in accordance with established standards,
19 schedules proposing the length of time each record series warrants retention
20 for administrative, legal or fiscal purposes after it has been received by
21 the ~~agency~~ OFFICERS AND THEIR OFFICES OR THE PUBLIC BODY.

22 4. Submit a list of public records in the ~~agency's~~ OFFICERS' AND THEIR
23 OFFICES' OR THE PUBLIC BODY'S custody that are not needed in the transaction
24 of current business and that are not considered to have sufficient
25 administrative, legal or fiscal value to warrant their inclusion in
26 established disposal schedules.

27 5. Once every five years submit to the director lists of all essential
28 public records in the custody of the ~~agency~~ OFFICERS AND THEIR OFFICES OR THE
29 PUBLIC BODY.

30 6. Cooperate with the director in the conduct of surveys.

31 7. Designate an individual within the ~~agency~~ OFFICER'S OFFICE OR THE
32 PUBLIC BODY to manage the records management program of the ~~agency~~ OFFICER
33 AND HIS OFFICE OR THE PUBLIC BODY. The ~~agency~~ OFFICER AND HIS OFFICE OR THE
34 PUBLIC BODY shall reconfirm the identity of this individual to the state
35 library every other year. The designated individual:

36 (a) Must be at a level of management sufficient to direct the records
37 management program in an efficient and effective manner.

38 (b) Shall act as coordinator and liaison for the ~~agency~~ OFFICER AND
39 HIS OFFICE OR THE PUBLIC BODY with the state library.

40 8. Comply with rules, standards and procedures adopted by the
41 director.

42 B. The ~~governing~~ OFFICERS AND THEIR OFFICES OR THE PUBLIC body ~~of each~~
43 ~~county, city, town or other political subdivision~~ shall promote the
44 principles of efficient record management for ~~local~~ public records. ~~Such~~
45 ~~governing~~ THE OFFICERS AND THEIR OFFICES OR THE PUBLIC body, as far as

1 practicable, shall follow the program established BY THE DIRECTOR for the
2 management of ~~state~~ records. The director, on request of the ~~governing~~
3 OFFICERS AND THEIR OFFICES OR THE PUBLIC body, shall provide advice and
4 assistance in the establishment of a ~~local~~ public records management program.

5 C. AN OFFICER OR a head of ~~a state or local agency~~ ANY PUBLIC BODY who
6 violates this section is guilty of a class 2 misdemeanor.

7 D. For the purposes of this section, "records management" means the
8 creation and implementation of systematic controls for records and
9 information activities from the point where they are created or received
10 through final disposition or archival retention, including distribution, use,
11 storage, retrieval, protection and preservation.

12 Sec. 7. Section 41-151.15, Arizona Revised Statutes, is amended to
13 read:

14 41-151.15. Preservation of public records; repository

15 A. All records made or received by ~~public officials~~ OFFICERS AND THEIR
16 OFFICES or employees OF PUBLIC BODIES of this state ~~or the counties and~~
17 ~~incorporated cities and towns of this state~~ in the course of their public
18 duties are the property of this state. Except as provided in this article,
19 the director and every other custodian of public records shall PROVIDE ACCESS
20 AND carefully protect and preserve the records from deterioration,
21 mutilation, loss or destruction and, when advisable, shall cause them to be
22 properly repaired and renovated. All paper, ink and other materials used ~~in~~
23 ~~public~~ BY OFFICERS AND THEIR offices OR PUBLIC BODIES for the purpose of
24 permanent records, INCLUDING ELECTRONIC RECORDS, shall be of durable quality
25 and shall comply with the standards established pursuant to section 39-101.
26 Additionally, the custodian of records that keeps photography, film,
27 microfiche, digital imaging or other types of reproduction or electronic
28 media pursuant to section 41-151.16, subsection A shall protect records from
29 loss or destruction pursuant to standards that are established by the
30 director.

31 B. THE STATE LIBRARY SHALL ESTABLISH, OPERATE AND MAINTAIN A TRUSTED
32 ELECTRONIC RECORDS REPOSITORY TO KEEP, PRESERVE, SECURE AND MAKE AVAILABLE
33 THE ELECTRONIC AND DIGITIZED RECORDS OF THE STATE ARCHIVES AND THE STATE
34 DOCUMENTS PROGRAM AND OF ANY DOCUMENTS AND PUBLIC RECORDS RECEIVED PURSUANT
35 TO SECTION 41-2956, SUBJECT TO LEGISLATIVE APPROPRIATION.

36 ~~B-~~ C. Records shall not be destroyed or otherwise disposed of by any
37 ~~agency~~ OFFICERS AND THEIR OFFICES OR ANY PUBLIC BODY of this state unless it
38 is determined by the state library that the record has no further
39 administrative, legal, fiscal, research or historical value. The original of
40 any record produced or reproduced pursuant to section 41-151.16 may be
41 determined by the state library to have no further administrative, legal,
42 fiscal, research or historical value. A person who destroys or otherwise
43 disposes of records without the specific authority of the state library is in
44 violation of section 38-421.

1 acquired solely for reference or exhibition purposes, extra copies of
2 documents preserved only for convenience of reference and stocks of
3 publications or documents intended for sale or distribution to interested
4 persons are not included within the definition of records as used in this
5 article.

6 Sec. 10. Section 41-151.19, Arizona Revised Statutes, is amended to
7 read:

8 41-151.19. Determination of value; disposition

9 ~~Every public officer who has~~ ALL OFFICERS AND ALL PUBLIC BODIES THAT
10 HAVE public records in the ~~public officer's~~ OFFICERS' OR THEIR OFFICES' OR
11 THE PUBLIC BODIES' custody shall consult periodically with the state library
12 and the state library shall determine whether the records in question are of
13 legal, administrative, historical or other value. Those records determined
14 to be of legal, administrative, historical or other value shall be preserved.
15 Those records determined to be of no legal, administrative, historical or
16 other value shall be disposed of by such method as the state library may
17 specify. A report of records destruction that includes a list of all records
18 disposed of shall be filed at least annually with the state library on a form
19 prescribed by the state library.

20 Sec. 11. Title 41, chapter 1, article 2.1, Arizona Revised Statutes,
21 is amended by adding sections 41-151.24 and 41-151.25, to read:

22 41-151.24. Museum gift shop revolving fund; exemption

23 A. THE MUSEUM GIFT SHOP REVOLVING FUND IS ESTABLISHED CONSISTING OF
24 GIFT SHOP PROCEEDS RECEIVED FROM THE SALE OF GOODS, GIFTS, NONFEDERAL GRANTS
25 AND DONATIONS. THE DIRECTOR SHALL ADMINISTER THE FUND. MONIES IN THE FUND
26 ARE CONTINUOUSLY APPROPRIATED. THE DIRECTOR SHALL USE THE MONIES IN THE FUND
27 TO PROVIDE THE PUBLIC WITH HISTORICALLY ACCURATE AND INTERESTING GOODS FOR
28 SALE THAT ARE REFLECTIVE OF THE THEMES OF THE ARIZONA CAPITOL MUSEUM AND THIS
29 STATE.

30 B. MONIES IN THE FUND ARE EXEMPT FROM THE PROVISIONS OF SECTION 35-190
31 RELATING TO LAPSING OF APPROPRIATIONS.

32 41-151.25. Electronic records repository fund; exemption

33 A. THE ELECTRONIC RECORDS REPOSITORY FUND IS ESTABLISHED CONSISTING OF
34 LEGISLATIVE APPROPRIATIONS, GIFTS, NONFEDERAL GRANTS, FEES AND DONATIONS.
35 THE DIRECTOR SHALL ADMINISTER THE FUND. MONIES IN THE FUND ARE SUBJECT TO
36 LEGISLATIVE APPROPRIATION. THE DIRECTOR SHALL USE THE MONIES IN THE FUND FOR
37 OPERATING EXPENSES FOR THE TRUSTED ELECTRONIC RECORDS REPOSITORY ESTABLISHED
38 PURSUANT TO SECTION 41-151.15.

39 B. MONIES IN THE FUND ARE EXEMPT FROM THE PROVISIONS OF SECTION 35-190
40 RELATING TO LAPSING OF APPROPRIATIONS.

1 Sec. 12. Section 41-2752, Arizona Revised Statutes, is amended to
2 read:

3 41-2752. State competition with private enterprise prohibited:
4 exceptions

5 A. A state agency shall not engage in the manufacturing, processing,
6 sale, offering for sale, rental, leasing, delivery, dispensing, distributing
7 or advertising of goods or services to the public that are also offered by
8 private enterprise unless specifically authorized by law other than
9 administrative law and executive orders.

10 B. A state agency shall not offer or provide goods or services to the
11 public for or through another state agency or a local agency, including by
12 intergovernmental or interagency agreement, in violation of this section or
13 section 41-2753.

14 C. The restrictions on activities that compete with private enterprise
15 contained in this section do not apply to:

16 1. The development, operation and management of state parks,
17 historical monuments and hiking or equestrian trails.

18 2. Correctional industries established and operated by the state
19 department of corrections if the prices charged for products sold by the
20 correctional industries are not less than the actual cost of producing and
21 marketing the product plus a reasonable allowance for overhead and
22 administrative costs.

23 3. The Arizona office of tourism.

24 4. The Arizona highways magazine, operated by the department of
25 transportation.

26 5. Printing and distributing information to the public if the agency
27 is otherwise authorized to do so, and printing or copying public records or
28 other material relating to the public agency's public business and recovering
29 through fees and charges the costs of such printing, copying and
30 distributing.

31 6. The department of public safety.

32 7. The construction, maintenance and operation of state transportation
33 facilities.

34 8. The development, distribution, maintenance, support, licensing,
35 leasing or sale of computer software by the department of transportation.

36 9. Agreements executed by the Arizona health care cost containment
37 system administration with other states to design, develop, install and
38 operate information technology systems and related services or other
39 administrative services pursuant to section 36-2925.

40 10. Agreements executed by the department of economic security with
41 other states to design, develop, install and operate support collection
42 technology systems and related services. The department shall deposit,
43 pursuant to sections 35-146 and 35-147, monies received pursuant to this
44 paragraph in the public assistance collections fund established by section
45 46-295.

1 11. Educational, vocational, treatment, training or work programs of
2 the department of juvenile corrections and contracts between the department
3 of juvenile corrections and this state, a political subdivision of this state
4 or a private entity in order to provide employment or vocational educational
5 experience.

6 12. The aflatoxin control technologies of the cotton research and
7 protection council.

8 13. The lease or sublease of lands or buildings by the department of
9 economic security pursuant to section 41-1958.

10 14. The Arizona commerce authority.

11 15. The Arizona game and fish commission, but only for the sale of
12 goods or services and not firearms.

13 16. RECORDS PRESERVATION SERVICES OFFERED BY THE STATE LIBRARY,
14 ARCHIVES AND PUBLIC RECORDS TO MUSEUMS, HISTORICAL SOCIETIES AND CULTURAL
15 INSTITUTIONS AND ANY OTHER ENTITIES DESIGNATED BY THE STATE LIBRARIAN OR
16 STATE ARCHIVIST OR THE STATE LIBRARIAN'S OR STATE ARCHIVIST'S DESIGNEE.

17 D. The restrictions on activities that compete with private enterprise
18 contained in subsection A of this section do not apply to community colleges
19 and universities under the jurisdiction of a governing board.

20 Sec. 13. Appropriation; trusted electronic records repository
21 and archives management software

22 The sum of \$482,700 is appropriated from the state general fund in
23 fiscal year 2013-2014 to the electronic records repository fund for trusted
24 electronic records repository and archives management software.