

REFERENCE TITLE: behavioral health board; regulation; repeal

State of Arizona
House of Representatives
Fifty-third Legislature
Second Regular Session
2018

HB 2406

Introduced by
Representative Mosley

AN ACT

REPEALING SECTION 9-499.12, ARIZONA REVISED STATUTES; AMENDING SECTIONS 13-1418, 20-3151, 28-3005, 32-3101 AND 32-3201, ARIZONA REVISED STATUTES; REPEALING TITLE 32, CHAPTER 33, ARIZONA REVISED STATUTES; AMENDING SECTIONS 36-509, 36-601.01, 36-2171, 36-2601, 36-3601, 38-672 AND 41-1092, ARIZONA REVISED STATUTES; REPEALING SECTION 41-3025.14, ARIZONA REVISED STATUTES; AMENDING SECTION 42-3106, ARIZONA REVISED STATUTES; RELATING TO THE BOARD OF BEHAVIORAL HEALTH EXAMINERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Repeal

3 Section ~~9-499.12~~, Arizona Revised Statutes, is repealed.

4 Sec. 2. Section 13-1418, Arizona Revised Statutes, is amended to
5 read:

6 13-1418. Sexual misconduct; behavioral health professionals;
7 classification

8 A. ~~A behavioral health professional licensed pursuant to title 32,~~
9 ~~chapter 33 or~~ A psychiatrist or psychologist licensed pursuant to title
10 32, chapter 13, 17 or 19.1 commits sexual misconduct by intentionally or
11 knowingly engaging in sexual intercourse with a client who is currently
12 under the care or supervision of the licensed ~~behavioral health~~
13 ~~professional~~, psychiatrist or psychologist.

14 B. Sexual misconduct by a licensed ~~behavioral health professional~~,
15 psychiatrist or psychologist is a class 6 felony.

16 C. This section does not apply to any act of sexual conduct that
17 occurs between a licensed ~~behavioral health professional~~, psychiatrist or
18 psychologist and a client after the client has completed a course of
19 treatment or if the client is not under the care of the licensed
20 ~~behavioral health professional~~, psychiatrist or psychologist.

21 Sec. 3. Section 20-3151, Arizona Revised Statutes, is amended to
22 read:

23 20-3151. Definitions

24 ~~For the purposes of~~ IN this ~~section~~ CHAPTER, UNLESS THE CONTEXT
25 OTHERWISE REQUIRES:

26 1. "Enrollee" means an individual who is enrolled in a health care
27 plan provided by a health care insurer.

28 2. "Health care insurer" means a disability insurer, group
29 disability insurer, blanket disability insurer, health care services
30 organization, hospital service corporation, medical service corporation or
31 hospital and medical service corporation.

32 3. "Health care plan" means a policy, contract or evidence of
33 coverage issued to an enrollee. Health care plan does not include limited
34 benefit coverage as defined in section 20-1137.

35 4. "Health care professional" means a professional who is regulated
36 pursuant to title 32, chapter 7, 8, 11, 13, 14, 15, 15.1, 16, 17, 18, 19,
37 19.1, 25, 28, 29, ~~33~~, 34, 35, 39 or 41, title 36, chapter 6, article 7 or
38 title 36, chapter 17.

39 Sec. 4. Section 28-3005, Arizona Revised Statutes, is amended to
40 read:

41 28-3005. Medical or psychological reports; immunity;
42 definitions

43 A. For medical conditions, a physician or registered nurse
44 practitioner, OR for psychological conditions, a psychologist, physician,
45 psychiatric mental health nurse practitioner or substance abuse counselor,

1 who provides information to the director in good faith and at the written
2 request of a driver license applicant or licensee concerning a person's
3 medical or psychological condition with respect to operation of a motor
4 vehicle is immune from personal liability with respect to the information
5 provided.

6 B. Notwithstanding the physician-patient, nurse-patient or
7 psychologist-client confidentiality relationship, a physician, registered
8 nurse practitioner or psychologist may voluntarily report a patient to the
9 department who has a medical or psychological condition that in the
10 opinion of the physician, registered nurse practitioner or psychologist
11 could significantly impair the person's ability to safely operate a motor
12 vehicle. If a report is made, the physician, registered nurse
13 practitioner or psychologist shall make the report in writing, including
14 the name, address and date of birth of the patient. On receipt of the
15 report, the department may require an examination of the person reported
16 in the manner provided by section 28-3314. A person shall not bring an
17 action against a physician, registered nurse practitioner or psychologist
18 for not making a report pursuant to this subsection. The physician,
19 registered nurse practitioner or psychologist submitting the report in
20 good faith is immune from civil or criminal liability for making the
21 report pursuant to this subsection. The physician's, registered nurse
22 practitioner's or psychologist's report is subject to subpoena or order to
23 produce in an action except an action against the physician, registered
24 nurse practitioner or psychologist submitting the report.

25 C. ~~It~~ FOR THE PURPOSES OF this section:

26 1. "Medical or psychological condition" means a condition that
27 could affect a person's functional ability to safely operate a motor
28 vehicle.

29 2. "Physician" means a medical doctor, optometrist, chiropractor,
30 naturopathic physician, ~~doctor of osteopathy~~ OSTEOPATHIC PHYSICIAN or
31 doctor of homeopathy who is licensed to practice in this state or another
32 state or who is employed by the federal government and practicing in this
33 state or their agents.

34 3. "Psychiatric mental health nurse practitioner" means a person
35 certified as a registered nurse practitioner in a psychiatric mental
36 health specialty area under ~~the provisions of~~ title 32, chapter 15.

37 4. "Psychologist" means a person who is licensed pursuant to title
38 32, chapter 19.1, who is licensed to practice psychology in another state
39 or who is employed by the federal government and practicing in this state.

40 5. "Registered nurse practitioner" has the same meaning prescribed
41 in section 32-1601.

42 6. "Substance abuse counselor" means a person ~~who is licensed by~~
43 ~~the board of behavioral health examiners in this state,~~ who is licensed or
44 certified in another state, who is certified by a board for certification

1 of addiction counselors, who is a nationally certified addiction counselor
2 or who is employed by the federal government and practicing in this state.

3 Sec. 5. Section 32-3101, Arizona Revised Statutes, is amended to
4 read:

5 32-3101. Definitions

6 In this chapter, unless the context otherwise requires:

7 1. "Applicant group" means any health professional group or
8 organization, any individual or any other interested party that proposes
9 that any health professional group not presently regulated be regulated or
10 that proposes to increase the scope of practice of a health profession.

11 2. "Certification" means a voluntary process by which a regulatory
12 entity grants recognition to an individual who has met certain
13 prerequisite qualifications specified by that regulatory entity and who
14 may assume or use the word "certified" in a title or designation to
15 perform prescribed health professional tasks.

16 3. "Grandfather clause" means a provision applicable to
17 practitioners actively engaged in the regulated health profession before
18 the effective date of a law that exempts the practitioners from meeting
19 the prerequisite qualifications set forth in the law to perform prescribed
20 occupational tasks.

21 4. "Health professions" means professions regulated pursuant to
22 chapter 7, 8, 11, 13, 14, 15, 15.1, 16, 17, 18, 19, 19.1, 21, 25, 28, 29,
23 ~~33~~, 34, 35, 39 or 41 of this title, title 36, chapter 6, article 7 or
24 title 36, chapter 17.

25 5. "Increase the scope of practice" means to engage in conduct
26 beyond the authority granted to a health profession by law.

27 6. "Inspection" means the periodic examination of practitioners by
28 a state agency in order to ascertain whether the practitioners' occupation
29 is being carried out in a fashion consistent with the public health,
30 safety and welfare.

31 7. "Legislative committees of reference" means joint subcommittees
32 composed of the members of the appropriate standing committees of the
33 house of representatives and senate appointed pursuant to section 41-2954.

34 8. "Licensure" or "license" means an individual, nontransferable
35 authorization to carry on a health activity that would otherwise be
36 unlawful in this state in the absence of the permission, and that is based
37 on qualifications that include graduation from an accredited or approved
38 program and acceptable performance on a qualifying examination or a series
39 of examinations.

40 9. "Practitioner" means an individual who has achieved knowledge
41 and skill by practice and who is actively engaged in a specified health
42 profession.

43 10. "Public member" means an individual who is not and never has
44 been a member or spouse of a member of the health profession being
45 regulated and who does not have and never has had a material financial

1 interest in either the rendering of the health professional service being
2 regulated or an activity directly related to the profession being
3 regulated.

4 11. "Registration" means the formal notification that, before
5 rendering services, a practitioner shall submit to a state agency setting
6 forth the name and address of the practitioner, the location, nature and
7 operation of the health activity to be practiced and, if required by a
8 regulatory entity, a description of the service to be provided.

9 12. "Regulatory entity" means any board, commission, agency or
10 department of this state that regulates one or more health professions in
11 this state.

12 13. "State agency" means any department, board, commission or
13 agency of this state.

14 Sec. 6. Section 32-3201, Arizona Revised Statutes, is amended to
15 read:

16 32-3201. Definitions

17 In this chapter, unless the context otherwise requires:

18 ~~2.~~ 1. "Health professional" means a person who is certified or
19 licensed pursuant to chapter 7, 8, 11, 13, 14, 15, 15.1, 16, 17, 18, 19,
20 19.1, 21, 25, 28, 29, ~~33~~, 34, 35, 39, 41 or 42 of this title, title 36,
21 chapter 4, article 6, title 36, chapter 6, article 7 or title 36,
22 chapter 17.

23 ~~1.~~ 2. "Health profession regulatory board" means any board that
24 regulates one or more health professionals in this state.

25 3. "Medical ~~record~~ RECORDS" has the same meaning prescribed in
26 section 12-2291 but does not include prescription orders.

27 Sec. 7. Repeal

28 Title 32, chapter 33, Arizona Revised Statutes, is repealed.

29 Sec. 8. Section 36-509, Arizona Revised Statutes, is amended to
30 read:

31 36-509. Confidential records; immunity; definition

32 A. A health care entity must keep records and information contained
33 in records confidential and not as public records, except as provided in
34 this section. Records and information contained in records may only be
35 disclosed to:

36 1. Physicians and providers of health, mental health or social and
37 welfare services involved in caring for, treating or rehabilitating the
38 patient.

39 2. Individuals to whom the patient or the patient's health care
40 decision maker has given authorization to have information disclosed.

41 3. Persons authorized by a court order.

42 4. Persons doing research only if the activity is conducted
43 pursuant to applicable federal or state laws and regulations governing
44 research.

1 5. The state department of corrections in cases in which prisoners
2 confined to the state prison are patients in the state hospital on
3 authorized transfers either by voluntary admission or by order of the
4 court.

5 6. Governmental or law enforcement agencies if necessary to:

6 (a) Secure the return of a patient who is on unauthorized absence
7 from any agency where the patient was undergoing evaluation and treatment.

8 (b) Report a crime on the premises.

9 (c) Avert a serious and imminent threat to an individual or the
10 public.

11 7. Persons, including family members, other relatives, close
12 personal friends or any other person identified by the patient, as
13 otherwise authorized or required by state or federal law, including the
14 health insurance portability and accountability act of 1996 privacy
15 standards (45 Code of Federal Regulations part 160 and part 164, subpart
16 E), or pursuant to one of the following:

17 (a) If the patient is present or otherwise available and has the
18 capacity to make health care decisions, the health care entity may
19 disclose the information if one of the following applies:

20 (i) The patient agrees verbally or agrees in writing by signing a
21 consent form that permits disclosure.

22 (ii) The patient is given an opportunity to object and does not
23 express an objection.

24 (iii) The health care entity reasonably infers from the
25 circumstances, based on the exercise of professional judgment, that the
26 patient does not object to the disclosure.

27 (b) If the patient is not present or the opportunity to agree or
28 object to the disclosure of information cannot practicably be provided
29 because of the patient's incapacity or an emergency circumstance, the
30 health care entity may disclose the information if the entity determines
31 that the disclosure of the information is in the best interests of the
32 patient. In determining whether the disclosure of information is in the
33 best interests of the patient, in addition to all other relevant factors,
34 the health care entity shall consider all of the following:

35 (i) The patient's medical and treatment history, including the
36 patient's history of compliance or noncompliance with an established
37 treatment plan based on information in the patient's medical record and on
38 reliable and relevant information received from the patient's family
39 members, friends or others involved in the patient's care, treatment or
40 supervision.

41 (ii) Whether the information is necessary or, based on professional
42 judgment, would be useful in assisting the patient in complying with the
43 care, treatment or supervision prescribed in the patient's treatment plan.

44 (iii) Whether the health care entity has reasonable grounds to
45 believe that the release of the information may subject the patient to

1 domestic violence, abuse or endangerment by family members, friends or
2 other persons involved in the patient's care, treatment or supervision.

3 (c) The health care entity believes the patient presents a serious
4 and imminent threat to the health or safety of the patient or others, and
5 the health care entity believes that family members, friends or others
6 involved in the patient's care, treatment or supervision can help to
7 prevent the threat.

8 (d) In order for the health care entity to notify a family member,
9 friend or other person involved in the patient's care, treatment or
10 supervision of the patient's location, general condition or death.

11 8. A state agency that licenses health professionals pursuant to
12 title 32, chapter 13, 15, 17, ~~OR~~ 19.1 ~~or 33~~ and that requires these
13 records in the course of investigating complaints of professional
14 negligence, incompetence or lack of clinical judgment.

15 9. A state or federal agency that licenses health care providers.

16 10. A governmental agency or a competent professional, as defined
17 in section 36-3701, in order to comply with chapter 37 of this title.

18 11. Human rights committees established pursuant to title 41,
19 chapter 35. Any information released pursuant to this paragraph shall
20 comply with the requirements of section 41-3804 and applicable federal law
21 and shall be released without personally identifiable information unless
22 the personally identifiable information is required for the official
23 purposes of the human rights committee. Case information received by a
24 human rights committee shall be maintained as confidential. For the
25 purposes of this paragraph, "personally identifiable information" includes
26 a person's name, address, date of birth, social security number, tribal
27 enrollment number, telephone or telefacsimile number, driver license
28 number, places of employment, school identification number and military
29 identification number or any other distinguishing characteristic that
30 tends to identify a particular person.

31 12. A patient or the patient's health care decision maker.

32 13. The department of public safety or another law enforcement
33 agency by the court to comply with the requirements of section 36-540,
34 subsections O and P.

35 14. A third-party payor or the payor's contractor as permitted by
36 the health insurance portability and accountability act privacy standards,
37 45 Code of Federal Regulations part 160 and part 164, subpart E.

38 15. A private entity that accredits the health care provider and
39 with whom the health care provider has an agreement requiring the agency
40 to protect the confidentiality of patient information.

41 16. The legal representative of a health care entity in possession
42 of the record for the purpose of securing legal advice.

43 17. A person or entity as otherwise required by state or federal
44 law.

1 18. A person or entity as permitted by the federal regulations on
2 alcohol and drug abuse treatment (42 Code of Federal Regulations part 2).

3 19. A person or entity to conduct utilization review, peer review
4 and quality assurance pursuant to section 36-441, 36-445, 36-2402 or
5 36-2917.

6 20. A person maintaining health statistics for public health
7 purposes as authorized by law.

8 21. A grand jury as directed by subpoena.

9 22. A person or entity that provides services to the patient's
10 health care provider, as defined in section 12-2291, and with whom the
11 health care provider has a business associate agreement that requires the
12 person or entity to protect the confidentiality of patient information as
13 required by the health insurance portability and accountability act
14 privacy standards, 45 Code of Federal Regulations part 164, subpart E.

15 B. Information disclosed pursuant to subsection A, paragraph 7 of
16 this section may include only information that is directly relevant to the
17 person's involvement with the patient's health care or payment related to
18 the patient's health care. Subsection A, paragraph 7 of this section does
19 not prevent a health care entity from obtaining or receiving information
20 about the patient from a family member, friend or other person involved in
21 the patient's care, treatment or supervision. A health care entity shall
22 keep a record of the name and contact information of any person to whom
23 any patient information is released pursuant to subsection A, paragraph 7
24 of this section. A decision to release or withhold information pursuant
25 subsection A, paragraph 7 of this section is subject to review pursuant to
26 section 36-517.01.

27 C. Information and records obtained in the course of evaluation,
28 examination or treatment and submitted in any court proceeding pursuant to
29 this chapter or title 14, chapter 5 are confidential and are not public
30 records unless the hearing requirements of this chapter or title 14,
31 chapter 5 require a different procedure. Information and records that are
32 obtained pursuant to this section and submitted in a court proceeding
33 pursuant to title 14, chapter 5 and that are not clearly identified by the
34 parties as confidential and segregated from nonconfidential information
35 and records are considered public records.

36 D. Notwithstanding subsections A, B and C of this section, the
37 legal representative of a patient who is the subject of a proceeding
38 conducted pursuant to this chapter and title 14, chapter 5 has access to
39 the patient's information and records in the possession of a health care
40 entity or filed with the court.

41 E. A health care entity that acts in good faith under this article
42 is not liable for damages in any civil action for the disclosure of
43 records or payment records that is made pursuant to this article or as
44 otherwise provided by law. The health care entity is presumed to have

1 acted in good faith. This presumption may be rebutted by clear and
2 convincing evidence.

3 F. For the purposes of this section, "information" means records
4 and the information contained in records.

5 Sec. 9. Subject to the requirements of article IV, part 1,
6 section 1, Constitution of Arizona, section 36-601.01, Arizona Revised
7 Statutes, is amended to read:

8 36-601.01. Smoke-free Arizona act

9 A. Definitions. The following words and phrases, whenever used in
10 this section, shall be construed as defined in this section:

11 1. "Employee" means any person who performs any service on a
12 full-time, part-time or contracted basis whether or not the person is
13 denominated an employee, independent contractor or otherwise and whether
14 or not the person is compensated or is a volunteer.

15 2. "Employer" means a person, A business, A partnership, AN
16 association, the state of Arizona and its political subdivisions,
17 corporations, including ~~a~~ municipal corporations, A trust, ~~or non-profit~~
18 A NONPROFIT entity that employs the services of one or more individual
19 persons.

20 3. "Enclosed area" means all space between a floor and ceiling that
21 is enclosed on all sides by permanent or temporary walls or windows
22 (exclusive of doorways), ~~which~~ THAT extend from the floor to the ceiling.
23 Enclosed area includes a reasonable distance from any entrances, windows
24 and ventilation systems so that persons entering or leaving the building
25 or facility ~~shall~~ ARE not ~~be~~ subjected to breathing tobacco smoke and so
26 that tobacco smoke does not enter the building or facility through
27 entrances, windows, ventilation systems or any other means.

28 4. "Health care facility" means any enclosed area utilized by any
29 health care institution licensed according to ~~title 36 chapter 4,~~
30 ~~chapter 6~~ article 7, ~~OF THIS CHAPTER~~ or chapter 4 OR 17 OF THIS TITLE, or
31 any health care professional licensed according to title 32, ~~chapters~~
32 CHAPTER 7, 8, 11, 13, 14, 15, 15.1, 16, 17, 18, 19, 19.1, 21, 25, 28, 29,
33 ~~33,~~ 34, 35, 39, 41, ~~or 42.~~

34 5. "Person" means an individual, partnership, corporation, limited
35 liability company, entity, association, governmental subdivision or unit
36 of a governmental subdivision, or a public or private organization of any
37 character.

38 6. "Physically separated" means all space between a floor and
39 ceiling ~~which~~ THAT is enclosed on all sides by solid walls or windows
40 (exclusive of door or passageway) and independently ventilated from
41 smoke-free areas, so that air within permitted smoking areas does not
42 drift or get vented into smoke-free areas.

43 7. "Places of employment" means an enclosed area under the control
44 of a public or private employer that employees normally frequent during
45 the course of employment, including office buildings, work areas,

1 auditoriums, employee lounges, restrooms, conference rooms, meeting rooms,
2 classrooms, cafeterias, hallways, stairs, elevators, health care
3 facilities, private offices and vehicles owned and operated by the
4 employer during working hours when the vehicle is occupied by more than
5 one person. A private residence is not a ~~"place of employment"~~ unless
6 it is used as a child care, adult day care, ~~or health care facility.~~

7 ~~9.~~ 8. "Public place" means any enclosed area to which the public
8 is invited or in which the public is permitted, including airports, banks,
9 bars, common areas of apartment buildings, condominiums or other
10 multifamily housing facilities, educational facilities, entertainment
11 facilities or venues, health care facilities, hotel and motel common
12 areas, laundromats, public transportation facilities, reception areas,
13 restaurants, retail food production and marketing establishments, retail
14 service establishments, retail stores, shopping malls, sports facilities,
15 theaters, ~~and waiting rooms.~~ A private residence is not a ~~"public~~
16 ~~place"~~ unless it is used as a child care, adult day care, ~~or health care~~
17 facility.

18 ~~10.~~ 9. "Retail tobacco store" means a retail store that derives
19 the majority of its sales from tobacco products and accessories.

20 ~~11.~~ 10. "Smoking" means inhaling, exhaling, burning, ~~or carrying~~
21 or possessing any lighted tobacco product, including cigars, cigarettes,
22 pipe tobacco and any other lighted tobacco product.

23 ~~12.~~ 11. "Sports facilities" means enclosed areas of sports
24 pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming
25 pools, roller and ice rinks, billiard halls, bowling alleys, ~~and other~~
26 similar places where members of the general public assemble to engage in
27 physical exercise, participate in athletic competition, ~~or witness~~
28 sporting events.

29 ~~8.~~ 12. "Veteran and fraternal clubs" means a club as defined in
30 ~~A.R.S. 4-101(7)(a)(b) or (c)~~ SECTION 4-101, PARAGRAPH 7, SUBDIVISION (a),
31 (b) OR (c).

32 B. Smoking is prohibited in all public places and places of
33 employment within the state of Arizona, except the following:

34 1. Private residences, except when used as a licensed child care,
35 adult day care, ~~or health care facility.~~

36 2. Hotel and motel rooms that are rented to guests and are
37 designated as smoking rooms; ~~provided, however, that~~ IF not more than
38 fifty percent of rooms rented to guests in a hotel or motel are so
39 designated.

40 3. Retail tobacco stores that are physically separated so that
41 smoke from retail tobacco stores does not infiltrate into areas where
42 smoking is prohibited under ~~the provisions of~~ this section.

43 4. Veterans and fraternal clubs when they are not open to the
44 general public.

1 5. Smoking when associated with a religious ceremony practiced
2 pursuant to the American Indian religious freedom act of 1978.

3 6. Outdoor patios so long as tobacco smoke does not enter areas
4 where smoking is prohibited through entrances, windows, ventilation
5 systems, or other means.

6 7. A theatrical performance ~~upon~~ ON a stage or in the course of a
7 film or television production if the smoking is part of the performance or
8 production.

9 C. The prohibition on smoking in places of employment shall be
10 communicated to all existing employees ~~by the effective date of this~~
11 ~~section~~ and to all prospective employees ~~upon~~ ON their application for
12 employment.

13 D. Notwithstanding any other provision of this section, an owner,
14 operator, manager, or other person or entity in control of an
15 establishment, facility, or outdoor area may declare that entire
16 establishment, facility, or outdoor area as a nonsmoking place.

17 E. Posting of signs and ashtray removal.

18 1. ~~"No smoking"~~ signs or the international ~~"no smoking"~~ symbol
19 (consisting of a pictorial representation of a burning cigarette enclosed
20 in a red circle with a red bar across it) shall be clearly and
21 conspicuously posted by the owner, operator, manager, or other person in
22 control of that place identifying where smoking is prohibited by this
23 section and where complaints regarding violations may be registered.

24 2. Every public place and place of employment where smoking is
25 prohibited by this section shall have posted at every entrance a
26 conspicuous sign clearly stating that smoking is prohibited.

27 3. All ashtrays shall be removed from any area where smoking is
28 prohibited by this section by the owner, operator, manager, or other
29 person having control of the area.

30 F. ~~No~~ AN employer may NOT discharge or retaliate against an
31 employee because that employee exercises any rights afforded by this
32 section or reports or attempts to prosecute a violation of this section.

33 G. ~~The law~~ THIS SECTION shall be implemented and enforced by the
34 department of health services as follows:

35 1. The department shall design and implement a program, including
36 the establishment of an internet website, to educate the public regarding
37 the provisions of this ~~law~~ SECTION.

38 2. The department shall inform persons who own, manage, operate or
39 otherwise control a public place or place of employment of the
40 requirements of this ~~law~~ SECTION and how to comply with its provisions,
41 including making information available and providing a toll-free telephone
42 number and e-mail address to be used exclusively for this purpose.

1 3. Any member of the public may report a violation of this ~~law~~
2 SECTION to the department. The department shall accept oral and written
3 reports of violation and establish an e-mail address(es) and toll-free
4 telephone number(s) to be used exclusively for the purpose of reporting
5 violations. A person shall not be required to disclose the person's
6 identity when reporting a violation.

7 4. If the department has reason to believe a violation of this ~~law~~
8 SECTION exists, the department may enter ~~upon~~ ON and into any public place
9 or place of employment for purposes of determining compliance with this
10 ~~law~~ SECTION. However, the department may inspect public places where food
11 or alcohol is served at any time to determine compliance with this ~~law~~
12 SECTION.

13 5. If the department determines that a violation of this ~~law~~
14 SECTION exists at a public place or place of employment, the department
15 shall issue a notice of violation to the person who owns, manages,
16 operates or otherwise controls the public place or place of employment.
17 The notice shall include the nature of each violation, date and time each
18 violation occurred, and department contact person.

19 6. The department shall impose a civil penalty on the person in an
20 amount of not less than \$100, but not more than \$500 for each violation.
21 In considering whether to impose a fine and the amount of the fine, the
22 department may consider whether the person has been cited previously and
23 what efforts the person has taken to prevent or cure the violation,
24 including reporting the violation or taking action under subsection J OF
25 THIS SECTION. Each day that a violation occurs constitutes a separate
26 violation. The director may issue a notice that includes the proposed
27 amount of the civil penalty assessment. A person may appeal the
28 assessment of a civil penalty by requesting a hearing. If a person
29 requests a hearing to appeal an assessment, the director shall not take
30 further action to enforce and collect the assessment until the hearing
31 process is complete. The director shall impose a civil penalty only for
32 those days on which the violation has been documented by the department.

33 7. If a civil penalty imposed by this section is not paid, the
34 attorney general or a county attorney shall file an action to collect the
35 civil penalty in a justice court or the superior court in the county in
36 which the violation occurred.

37 8. The department may apply for injunctive relief to enforce these
38 provisions in the superior court in the county in which the violation
39 occurred. The court may impose appropriate injunctive relief and impose a
40 penalty of not less than \$100 but not more than \$500 for each violation.
41 Each day that a violation occurs constitutes a separate violation. If the
42 superior court finds the violations are ~~willful~~ WILFUL or evidence a
43 pattern of noncompliance, the court may impose a fine up to \$5000 per
44 violation.

1 9. The department may contract with a third party to determine
2 compliance with this law.

3 10. The department may delegate to a state agency or political
4 subdivision of this state any functions, powers or duties under this law.

5 11. The director of the department may ~~promulgate~~ ADOPT rules for
6 the implementation and enforcement of this ~~law~~ SECTION. The department is
7 exempt from the rulemaking procedures in ~~A.R.S. §~~ title 41, chapter 6
8 except the department shall publish draft rules and thereafter take public
9 input, including hold at least two public hearings ~~prior to~~ BEFORE
10 implementing the rules. This exemption expires May 1, 2007.

11 H. Beginning on June 1, 2008 and every other June 1 thereafter, the
12 director of the ~~Arizona~~ department of health services shall issue a report
13 analyzing its activities to enforce this law, including the activities of
14 all of the state agencies or political subdivisions to whom the department
15 has delegated responsibility under this ~~law~~ SECTION.

16 I. An owner, manager, operator or employee of place regulated by
17 this ~~law~~ SECTION shall inform any person who is smoking in violation of
18 this ~~law~~ SECTION that smoking is illegal and request that the illegal
19 smoking stop immediately.

20 J. This ~~law~~ SECTION does not create any new private right of action
21 nor does it extinguish any existing common law causes of action.

22 K. A person who smokes where smoking is prohibited is guilty of a
23 petty offense with a fine of not less than fifty dollars and not more than
24 three hundred dollars.

25 L. Smoke-free Arizona fund

26 1. The smoke-free Arizona fund is established consisting of all
27 revenues deposited in the fund pursuant to ~~§42-3251.02~~ SECTION 42-3251.02
28 and interest earned on those monies. The Arizona department of health
29 services shall administer the fund. On notice from the department, the
30 state treasurer shall invest and divest monies in the fund as provided by
31 ~~§35-313~~ SECTION 35-313 and monies earned from investment shall be credited
32 to the fund.

33 2. All money in the smoke-free Arizona fund shall be used to
34 enforce the provisions of this section, ~~provided however~~ EXCEPT that if
35 there is money remaining after the department has met its enforcement
36 obligations, that remaining money shall be deposited in the tobacco
37 products tax fund and used for education programs to reduce and eliminate
38 tobacco use and for no other purpose.

39 3. Monies in this fund are continuously appropriated, are not
40 subject to further approval, do not revert to the general fund and are
41 exempt from the provisions of ~~§36-190~~ SECTION 35-190 relating to the
42 lapsing of appropriations.

1 M. This section does not prevent a political subdivision of ~~the~~
2 **THIS** state from adopting ordinances or regulations that are more
3 restrictive than this section nor does this section repeal any existing
4 ordinance or regulation that is more restrictive than this section.

5 N. Tribal sovereignty – this section has no application on Indian
6 reservations as defined in ~~ARS 42-3301(2)~~ **SECTION 42-3301**.

7 Sec. 10. Section 36-2171, Arizona Revised Statutes, is amended to
8 read:

9 **36-2171. Definitions**

10 In this chapter, unless the context otherwise requires:

11 1. "Advance practice provider" means a physician assistant as
12 defined in section 32-2501 or a registered nurse practitioner as defined
13 in section 32-1601.

14 2. "Behavioral health provider" means a physician who is a
15 board-certified or board-eligible psychiatrist, a psychologist, a
16 physician assistant or a registered nurse practitioner who is certified to
17 practice as a behavioral health specialist ~~or a person who is licensed~~
18 ~~pursuant to title 32 as a clinical social worker, professional counselor~~
19 ~~or marriage and family therapist.~~

20 3. "Department" means the department of health services.

21 4. "Pharmacist" has the same meaning prescribed in section 32-1901.

22 5. "Rural" means either of the following:

23 (a) A county with a population of less than four hundred thousand
24 persons ~~according to the most recent United States decennial census.~~

25 (b) A census county division with less than fifty thousand persons
26 in a county with a population of four hundred thousand or more persons
27 ~~according to the most recent United States decennial census.~~

28 Sec. 11. Section 36-2601, Arizona Revised Statutes, is amended to
29 read:

30 **36-2601. Definitions**

31 In this article, unless the context otherwise requires:

32 1. "Board" means the Arizona state board of pharmacy or its
33 designee.

34 2. "Dispenser" means a medical practitioner or pharmacy that is
35 authorized to dispense controlled substances.

36 3. "Licensed health care provider" means a person who is licensed
37 pursuant to title 32, chapter 7, 11, 13, 14, 15, 16, 17, 18, 19.1, 25, ~~OR~~
38 ~~29 or 33.~~

39 4. "Medical practitioner" means any person who is licensed and
40 authorized by law to use and prescribe drugs and devices for the treatment
41 of sick and injured human beings or for the diagnosis or prevention of
42 sickness in human beings in this state or any state, territory or district
43 of the United States.

44 5. "Person" means an individual, partnership, corporation or
45 association and the person's duly authorized agents.

1 6. "Program" means the controlled substances prescription
2 monitoring program.

3 Sec. 12. Section 36-3601, Arizona Revised Statutes, is amended to
4 read:

5 36-3601. Definitions

6 For the purposes of this chapter:

7 1. "Health care decision maker" has the same meaning prescribed in
8 section 12-2801.

9 2. "Health care provider" means a person licensed pursuant to title
10 32, chapter 7, 13, 14, 15, 17, 18, 19.1, 25, 28, ~~OR 29~~ ~~or 33~~.

11 3. "Telemedicine" means the practice of health care delivery,
12 diagnosis, consultation and treatment and the transfer of medical data
13 through interactive audio, video or data communications that occur in the
14 physical presence of the patient, including audio or video communications
15 sent to a health care provider for diagnostic or treatment consultation.

16 Sec. 13. Section 38-672, Arizona Revised Statutes, is amended to
17 read:

18 38-672. Traumatic event counseling for peace officers,
19 firefighters and public safety employees;
20 exceptions; definitions

21 A. Notwithstanding any other law, this state or a political
22 subdivision of this state shall establish a program to provide any of the
23 following persons who are exposed to any one of the following events while
24 in the course of duty up to twelve visits of licensed counseling, which
25 may be provided via telemedicine, paid for by the employer:

26 1. In the case of ~~the A~~ peace officer, the use of deadly force or
27 subjection to deadly force in the line of duty, regardless of whether the
28 officer was physically injured.

29 2. In the case of a firefighter, witnessing the death of another
30 firefighter while engaged in the line of duty.

31 3. In the case of a public safety employee:

32 (a) Visually witnessing the death or maiming or visually witnessing
33 the immediate aftermath of ~~such~~ a death or maiming of one or more human
34 beings.

35 (b) Responding to or being directly involved in a criminal
36 investigation of **AN OFFENSE INVOLVING** a dangerous crime against ~~a child~~
37 ~~punishable under~~ **CHILDREN AS DEFINED IN** section 13-705.

38 (c) Requiring rescue in the line of duty where one's life was
39 endangered.

40 B. Payment by the employer for licensed counseling pursuant to this
41 section does not create a presumption that a claim is compensable under
42 section 23-1043.01, subsection B.

43 C. This section does not apply to a state employer that provides a
44 program to its public safety employees that is characterized by all of the
45 following:

- 1 1. The program is paid for by the employer.
- 2 2. The program provides licensed counseling for any issue. For
3 licensed counseling related to trauma experienced while in the line of
4 duty, the licensed counseling is provided on the request of the public
5 safety employee and ~~shall be IS~~ in person.
- 6 3. Before July 1, 2017, the program offers at least six visits per
7 year.
- 8 4. On or after July 1, 2017, the program offers at least twelve
9 visits per year.
- 10 D. For the purposes of this section:
- 11 1. "Licensed counseling" means counseling provided by a licensed
12 mental health professional pursuant to title 32, chapter 19.1 ~~or chapter~~
13 ~~33 if licensees under title 32, chapter 33 have training and expertise in~~
14 ~~treating trauma.~~
- 15 2. "Public safety employee" means:
- 16 (a) An individual who is a member of the public safety personnel
17 retirement system or the corrections officer retirement plan.
- 18 (b) A probation officer, surveillance officer or juvenile detention
19 officer who is employed by this state or a political subdivision of this
20 state.
- 21 Sec. 14. Section 41-1092, Arizona Revised Statutes, is amended to
22 read:
- 23 41-1092. Definitions
- 24 In this article, unless the context otherwise requires:
- 25 1. "Administrative law judge" means an individual or an agency
26 head, board or commission that sits as an administrative law judge, that
27 conducts administrative hearings in a contested case or an appealable
28 agency action and that makes decisions regarding the contested case or
29 appealable agency action.
- 30 2. "Administrative law judge decision" means the findings of fact,
31 conclusions of law and recommendations or decisions issued by an
32 administrative law judge.
- 33 3. "Appealable agency action" means an action that determines the
34 legal rights, duties or privileges of a party and that is not a contested
35 case. Appealable agency actions do not include interim orders by
36 self-supporting regulatory boards, rules, orders, standards or statements
37 of policy of general application issued by an administrative agency to
38 implement, interpret or make specific the legislation enforced or
39 administered by it or clarifications of interpretation, nor does it mean
40 or include rules concerning the internal management of the agency that do
41 not affect private rights or interests. For the purposes of this
42 paragraph, administrative hearing does not include a public hearing held
43 for the purpose of receiving public comment on a proposed agency action.
- 44 4. "Director" means the director of the office of administrative
45 hearings.

1 5. "Final administrative decision" means a decision by an agency
2 that is subject to judicial review pursuant to title 12, chapter 7,
3 article 6.

4 6. "Office" means the office of administrative hearings.

5 7. "Self-supporting regulatory board" means any one of the
6 following:

7 (a) The Arizona state board of accountancy.

8 (b) The board of barbers.

9 ~~(c) The board of behavioral health examiners.~~

10 ~~(d)~~ (c) The Arizona state boxing and mixed martial arts
11 commission.

12 ~~(e)~~ (d) The state board of chiropractic examiners.

13 ~~(f)~~ (e) The board of cosmetology.

14 ~~(g)~~ (f) The state board of dental examiners.

15 ~~(h)~~ (g) The state board of funeral directors and embalmers.

16 ~~(i)~~ (h) The Arizona game and fish commission.

17 ~~(j)~~ (i) The board of homeopathic and integrated medicine
18 examiners.

19 ~~(k)~~ (j) The Arizona medical board.

20 ~~(l)~~ (k) The naturopathic physicians medical board.

21 ~~(m)~~ (l) The state board of nursing.

22 ~~(n)~~ (m) The board of examiners of nursing care institution
23 administrators and adult care home managers.

24 ~~(o)~~ (n) The board of occupational therapy examiners.

25 ~~(p)~~ (o) The state board of dispensing opticians.

26 ~~(q)~~ (p) The state board of optometry.

27 ~~(r)~~ (q) The Arizona board of osteopathic examiners in medicine and
28 surgery.

29 ~~(s)~~ (r) The Arizona peace officer standards and training board.

30 ~~(t)~~ (s) The Arizona state board of pharmacy.

31 ~~(u)~~ (t) The board of physical therapy.

32 ~~(v)~~ (u) The state board of podiatry examiners.

33 ~~(w)~~ (v) The state board for private postsecondary education.

34 ~~(x)~~ (w) The state board of psychologist examiners.

35 ~~(y)~~ (x) The board of respiratory care examiners.

36 ~~(z)~~ (y) The state board of technical registration.

37 ~~(aa)~~ (z) The Arizona state veterinary medical examining board.

38 ~~(bb)~~ (aa) The acupuncture board of examiners.

39 ~~(cc)~~ (bb) The Arizona regulatory board of physician assistants.

40 ~~(dd)~~ (cc) The board of athletic training.

41 ~~(ee)~~ (dd) The board of massage therapy.

42 Sec. 15. Repeal

43 Section ~~41-3025.14~~, Arizona Revised Statutes, is repealed.

1 Sec. 16. Section 42-3106, Arizona Revised Statutes, is amended to
2 read:

3 42-3106. Monies allocated to the drug treatment and education
4 fund; state department of corrections revolving
5 fund; exemption

6 A. Notwithstanding any law to the contrary, seven percent of the
7 monies collected pursuant to section 42-3052, paragraph 1 and eighteen
8 percent of the monies collected pursuant to section 42-3052, paragraphs 2,
9 3 and 4 shall be deposited in the drug treatment and education fund
10 established by section 13-901.02.

11 B. Notwithstanding any law to the contrary, three percent of the
12 monies collected pursuant to section 42-3052, paragraph 1 and seven
13 percent of the monies collected pursuant to section 42-3052, paragraphs 2,
14 3 and 4 shall be deposited in a separate revolving fund of the state
15 department of corrections.

16 C. Monies in the separate revolving fund of the state department of
17 corrections shall be used for the following purposes:

18 1. Implementing section 31-411.01.

19 2. Offender participation in appropriate drug treatment programs
20 that are administered by the state department of corrections or by a
21 qualified agency, organization or individual that is approved or licensed
22 by the department of health services ~~or the board of behavioral health~~
23 ~~examiners.~~

24 3. Reentry, education or mental health assistance programs that are
25 administered by the state department of corrections or by a qualified
26 agency, organization or individual.

27 D. Monies that are deposited in the state department of corrections
28 revolving fund pursuant to subsection B of this section shall not revert
29 to the state general fund if unexpended at the close of the fiscal year.

30 E. If the state department of corrections receives a federal grant,
31 any portion of the monies that are deposited pursuant to subsection B of
32 this section may be used as a cash match.

33 Sec. 17. Requirements for enactment; three-fourths vote

34 Pursuant to article IV, part 1, section 1, Constitution of Arizona,
35 section 36-601.01, Arizona Revised Statutes, as amended by this act, is
36 effective only on the affirmative vote of at least three-fourths of the
37 members of each house of the legislature.