

REFERENCE TITLE: **massage therapy; regulation; repeal**

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

HB 2409

Introduced by
Representative Mosley

AN ACT

AMENDING SECTIONS 32-3201 AND 32-3218, ARIZONA REVISED STATUTES; REPEALING TITLE 32, CHAPTER 42, ARIZONA REVISED STATUTES; AMENDING SECTIONS 36-601.01, 41-114 AND 41-1092, ARIZONA REVISED STATUTES; REPEALING SECTION 41-3023.10, ARIZONA REVISED STATUTES; RELATING TO MASSAGE THERAPY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 32-3201, Arizona Revised Statutes, is amended to
3 read:

4 32-3201. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Health profession regulatory board" means any board that
7 regulates one or more health professionals in this state.

8 2. "Health professional" means a person who is certified or
9 licensed pursuant to chapter 7, 8, 11, 13, 14, 15, 15.1, 16, 17, 18, 19,
10 19.1, 21, 25, 28, 29, 33, 34, 35, 39, ~~OR 41 or 42~~ of this title, title
11 36, chapter 4, article 6, title 36, chapter 6, article 7 or title 36,
12 chapter 17.

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

15 Sec. 2. Section 32-3218, Arizona Revised Statutes, is amended to
16 read:

17 32-3218. Health profession regulatory boards; members;
18 training; definitions

19 A. ~~Beginning January 1, 2015,~~ Each member of a health profession
20 regulatory board shall complete a twelve-hour training within one year
21 after the member's initial appointment to the board. ~~Any member of a~~
22 ~~health profession regulatory board whose initial appointment was before~~
23 ~~January 1, 2015 has until January 1, 2016 to complete the training~~
24 ~~required by this subsection.~~ The training must include the subjects of
25 governance and administrative management, disciplinary procedures, conduct
26 of quasi-judicial proceedings, administrative procedure and rule adoption
27 and licensure as they apply to the health profession regulatory board.
28 Any training completed by a current board member on and after January 1,
29 2014 on the topics specified in this subsection may count toward the
30 requirements of this subsection.

31 B. The training of board members required by this section may be
32 provided by the staff of any health profession regulatory board, the
33 office of the attorney general, the department of administration, the
34 auditor general or an outside educational institution or any other
35 provider that is approved by the health profession regulatory board on
36 which the member is serving.

37 C. Any board action taken by a health profession regulatory board
38 is not subject to challenge or invalidation because a board member has not
39 completed the training required by this section.

40 D. For the purposes of this section:

41 ~~1.~~ 1. "Health professional" means a person who is certified or
42 licensed pursuant to chapter 7, 8, 11, 13, 14, 15, 15.1, 16, 17, 18, 19,
43 19.1, 21, 25, 28, 29, 34, 35, 39, ~~OR 41 or 42~~ of this title.

44 ~~2.~~ 2. "Health profession regulatory board" means any board that
45 regulates one or more health ~~professiona~~ PROFESSIONALS in this state.

1 Sec. 3. Repeal

2 Title 32, chapter 42, Arizona Revised Statutes, is repealed.

3 Sec. 4. Subject to the requirements of article IV, part 1,
4 section 1, Constitution of Arizona, section 36-601.01, Arizona Revised
5 Statutes, is amended to read:

6 36-601.01. Smoke-free Arizona act

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

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

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

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

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

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

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

41 7. "Places of employment" means an enclosed area under the control
42 of a public or private employer that employees normally frequent during
43 the course of employment, including office buildings, work areas,
44 auditoriums, employee lounges, restrooms, conference rooms, meeting rooms,
45 classrooms, cafeterias, hallways, stairs, elevators, health care

1 facilities, private offices and vehicles owned and operated by the
2 employer during working hours when the vehicle is occupied by more than
3 one person. A private residence is not a ~~“place of employment”~~ unless
4 it is used as a child care, adult day care,~~—~~ or health care facility.

5 ~~9.~~ 8. "Public place" means any enclosed area to which the public
6 is invited or in which the public is permitted, including airports, banks,
7 bars, common areas of apartment buildings, condominiums or other
8 multifamily housing facilities, educational facilities, entertainment
9 facilities or venues, health care facilities, hotel and motel common
10 areas, laundromats, public transportation facilities, reception areas,
11 restaurants, retail food production and marketing establishments, retail
12 service establishments, retail stores, shopping malls, sports facilities,
13 theaters,~~—~~ and waiting rooms. A private residence is not a ~~“public~~
14 ~~place”~~ unless it is used as a child care, adult day care,~~—~~ or health care
15 facility.

16 ~~10.~~ 9. "Retail tobacco store" means a retail store that derives the
17 majority of its sales from tobacco products and accessories.

18 ~~11.~~ 10. "Smoking" means inhaling, exhaling, burning,~~—~~ or carrying
19 or possessing any lighted tobacco product, including cigars, cigarettes,
20 pipe tobacco and any other lighted tobacco product.

21 ~~12.~~ 11. "Sports facilities" means enclosed areas of sports
22 pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming
23 pools, roller and ice rinks, billiard halls, bowling alleys,~~—~~ and other
24 similar places where members of the general public assemble to engage in
25 physical exercise, participate in athletic competition,~~—~~ or witness
26 sporting events.

27 ~~8.~~ 12. "Veteran and fraternal clubs" means a club as defined in
28 ~~A.R.S. 4-101(7)(a)(b) or (c)~~ SECTION 4-101, PARAGRAPH 7, SUBDIVISION (a),
29 (b) OR (c).

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

32 1. Private residences, except when used as a licensed child care,
33 adult day care,~~—~~ or health care facility.

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

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

41 4. Veterans and fraternal clubs when they are not open to the
42 general public.

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

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

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

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

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

15 E. Posting of signs and ashtray removal.

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

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

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

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

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

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

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

41 3. Any member of the public may report a violation of this ~~law~~
42 SECTION to the department. The department shall accept oral and written
43 reports of violation and establish an e-mail address(es) and toll-free
44 telephone number(s) to be used exclusively for the purpose of reporting

1 violations. A person shall not be required to disclose the person's
2 identity when reporting a violation.

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

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

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

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

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

41 9. The department may contract with a third party to determine
42 compliance with this law.

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

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

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

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

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

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

21 L. Smoke-free Arizona fund

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

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

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

39 M. This section does not prevent a political subdivision of ~~the~~
40 THIS state from adopting ordinances or regulations that are more
41 restrictive than this section nor does this section repeal any existing
42 ordinance or regulation that is more restrictive than this section.

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

1 Sec. 5. Section 41-114, Arizona Revised Statutes, is amended to
2 read:

3 41-114. Human trafficking victim assistance fund; definition

4 A. The human trafficking victim assistance fund is established
5 consisting of monies received pursuant to ~~sections~~ SECTION 9-500.10 ~~and~~
6 ~~32-4260~~. The director shall administer the fund for the purposes
7 prescribed in this section.

8 B. The governor's office for children, youth and families shall
9 establish program priorities for the fund. The office shall spend monies
10 in the fund to provide assistance to victims of sex trafficking prescribed
11 in section 13-1307, child sex trafficking prescribed in section 13-3212,
12 subsection A, paragraph 9 or 10 and trafficking of persons for forced
13 labor or services prescribed in section 13-1308.

14 C. Monies in the fund do not revert to the state general fund.

15 D. For the purposes of this section, "director" means the director
16 of the governor's office for children, youth and families.

17 Sec. 6. Section 41-1092, Arizona Revised Statutes, is amended to
18 read:

19 41-1092. Definitions

20 In this article, unless the context otherwise requires:

21 1. "Administrative law judge" means an individual or an agency
22 head, board or commission that sits as an administrative law judge, that
23 conducts administrative hearings in a contested case or an appealable
24 agency action and that makes decisions regarding the contested case or
25 appealable agency action.

26 2. "Administrative law judge decision" means the findings of fact,
27 conclusions of law and recommendations or decisions issued by an
28 administrative law judge.

29 3. "Appealable agency action" means an action that determines the
30 legal rights, duties or privileges of a party and that is not a contested
31 case. Appealable agency actions do not include interim orders by
32 self-supporting regulatory boards, rules, orders, standards or statements
33 of policy of general application issued by an administrative agency to
34 implement, interpret or make specific the legislation enforced or
35 administered by it or clarifications of interpretation, nor does it mean
36 or include rules concerning the internal management of the agency that do
37 not affect private rights or interests. For the purposes of this
38 paragraph, administrative hearing does not include a public hearing held
39 for the purpose of receiving public comment on a proposed agency action.

40 4. "Director" means the director of the office of administrative
41 hearings.

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

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

1 7. "Self-supporting regulatory board" means any one of the
2 following:
3 (a) The Arizona state board of accountancy.
4 (b) The board of barbers.
5 (c) The board of behavioral health examiners.
6 (d) The Arizona state boxing and mixed martial arts commission.
7 (e) The state board of chiropractic examiners.
8 (f) The board of cosmetology.
9 (g) The state board of dental examiners.
10 (h) The state board of funeral directors and embalmers.
11 (i) The Arizona game and fish commission.
12 (j) The board of homeopathic and integrated medicine examiners.
13 (k) The Arizona medical board.
14 (l) The naturopathic physicians medical board.
15 (m) The state board of nursing.
16 (n) The board of examiners of nursing care institution
17 administrators and adult care home managers.
18 (o) The board of occupational therapy examiners.
19 (p) The state board of dispensing opticians.
20 (q) The state board of optometry.
21 (r) The Arizona board of osteopathic examiners in medicine and
22 surgery.
23 (s) The Arizona peace officer standards and training board.
24 (t) The Arizona state board of pharmacy.
25 (u) The board of physical therapy.
26 (v) The state board of podiatry examiners.
27 (w) The state board for private postsecondary education.
28 (x) The state board of psychologist examiners.
29 (y) The board of respiratory care examiners.
30 (z) The state board of technical registration.
31 (aa) The Arizona state veterinary medical examining board.
32 (bb) The acupuncture board of examiners.
33 (cc) The Arizona regulatory board of physician assistants.
34 (dd) The board of athletic training.
35 ~~(ee) The board of massage therapy.~~
36 Sec. 7. Repeal
37 Section 41-3023.10, Arizona Revised Statutes, is repealed.
38 Sec. 8. Requirements for enactment; three-fourths vote
39 Pursuant to article IV, part 1, section 1, Constitution of Arizona,
40 section 36-601.01, Arizona Revised Statutes, as amended by this act, is
41 effective only on the affirmative vote of at least three-fourths of the
42 members of each house of the legislature.