

REFERENCE TITLE: nursing care board; DHS; transfer

State of Arizona  
Senate  
Forty-eighth Legislature  
Second Regular Session  
2008

## **SB 1402**

Introduced by  
Senators Aboud: Aguirre, Pesquiera; Representative Sinema

### AN ACT

AMENDING SECTIONS 36-117, 36-424, 36-446, 36-446.03, 36-446.04, 36-446.05, 36-446.06, 36-446.07, 36-446.09, 36-446.10, 36-446.11, 36-446.12, 36-446.13, 41-619.51, 41-1092 AND 41-1758, ARIZONA REVISED STATUTES; REPEALING SECTIONS 36-446.02, 36-446.08 AND 41-3011.11, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 4, ARTICLE 6, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 36-446.08; RELATING TO THE LICENSING OF NURSING CARE INSTITUTION ADMINISTRATORS AND CERTIFICATION OF ASSISTED LIVING FACILITY MANAGERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 36-117, Arizona Revised Statutes, is amended to  
3 read:

4 36-117. Services for licensing agencies; costs

5 A. The department, at the discretion of the director, may contract to  
6 provide personal and other administrative services and facilities to the  
7 following health licensing agencies:

- 8 1. State dental board.
- 9 2. Arizona medical board.
- 10 3. State board of nursing.
- 11 4. State board of optometry.
- 12 5. Arizona board of osteopathic examiners in medicine and surgery.
- 13 6. State board of podiatry examiners.
- 14 7. Arizona state board of pharmacy.

15 ~~8. Board of examiners of nursing care institution administrators.~~

16 B. The professional health licensing agency shall reimburse the  
17 department for the actual costs of services or the reasonable value of  
18 facilities provided to that agency.

19 Sec. 2. Section 36-424, Arizona Revised Statutes, is amended to read:

20 36-424. Inspections; suspension or revocation of license

21 A. Every applicant for initial licensure or relicensure as a health  
22 care institution shall submit to the director a properly completed  
23 application for a license accompanied by the necessary fee.

24 B. Subject to the limitation prescribed by subsection C of this  
25 section, the director shall inspect the premises of the health care  
26 institution and investigate the character and other qualifications of the  
27 applicant to ascertain whether the applicant and the health care institution  
28 are in substantial compliance with the requirements of this chapter and the  
29 rules established pursuant to this chapter. The director may prescribe rules  
30 regarding department background investigations into an applicant's character  
31 and qualifications.

32 C. The director shall accept proof that a health care institution is  
33 an accredited hospital or is an accredited health care institution in lieu of  
34 all licensing inspections required by this chapter if the director receives a  
35 copy of the institution's accreditation report.

36 D. ~~Upon~~ **ON** a determination by the director that there is reasonable  
37 cause to believe a health care institution is not adhering to the licensing  
38 requirements established pursuant to this chapter, the director and any duly  
39 designated employee or agent ~~thereof~~ **OF THE DIRECTOR**, including county health  
40 representatives and county or municipal fire inspectors, ~~shall,~~ consistent  
41 with standard medical practices, ~~have the right to~~ **MAY** enter ~~upon and~~  
42 the premises of any health care institution ~~which~~ **THAT** is licensed, or  
43 required to be licensed, pursuant to this chapter at any reasonable time for  
44 the purpose of determining the state of compliance with ~~the provisions of~~  
45 this chapter, ~~the rules of the department~~ adopted pursuant ~~thereto,~~ **TO THIS**

1 CHAPTER and local fire ordinances or rules. Any application for licensure  
2 under this chapter shall constitute GRANTS permission for and complete  
3 acquiescence in any such entry or inspection of the premises during the  
4 pendency of the application and, if licensed, during the term of the license.  
5 If an inspection reveals that the health care institution is not adhering to  
6 the licensing requirements established pursuant to this chapter, the director  
7 may take action authorized by this chapter. Any health care institution,  
8 including an accredited hospital, whose license has been suspended or revoked  
9 in accordance with this section is subject to inspection upon ON application  
10 for relicensure or reinstatement of license.

11 ~~E. The director shall immediately report to the board of examiners of~~  
12 ~~nursing care institution administrators information identifying that a~~  
13 ~~nursing care institution administrator's conduct may be grounds for~~  
14 ~~disciplinary action as defined pursuant to section 36-446.07.~~

15 Sec. 3. Section 36-446, Arizona Revised Statutes, is amended to read:

16 36-446. Definitions

17 In this article, unless the context otherwise requires:

18 1. "Administrator" or "nursing care institution administrator" means a  
19 person who is charged with the general administration of a nursing care  
20 institution, whether or not that person has an ownership interest in the  
21 institution and whether or not the person's functions and duties are shared  
22 with others.

23 2. "Assisted living facility" has the same meaning prescribed in  
24 section 36-401.

25 3. "Assisted living facility manager" means a person who has  
26 responsibility for the administration or management of an assisted living  
27 facility, whether or not that person has an ownership interest in the  
28 institution and whether or not the person's functions and duties are shared  
29 with others.

30 ~~4. "Board" means the board of examiners of nursing care institution~~  
31 ~~administrators and assisted living facility managers.~~

32 ~~5.~~ 4. "Department" means the department of health services.

33 ~~6.~~ 5. "Directed care services" has the same meaning prescribed in  
34 section 36-401.

35 ~~7.~~ 6. "Director" means the director of the department of health  
36 services.

37 ~~8.~~ 7. "Nursing care institution" means an institution or other place,  
38 however named, whether for profit or not, including facilities operated by  
39 the state or a subdivision of the state, which is advertised, offered,  
40 maintained or operated for the express or implied purpose of providing care  
41 to persons who need nursing services on a continuing basis but who do not  
42 require hospital care or care under the daily direction of a physician.  
43 Nursing care institution does not include an institution for the care and  
44 treatment of the sick that is operated only for those who rely solely on  
45 treatment by prayer or spiritual means in accordance with the tenets of a

1 recognized religious denomination. Nursing care institution also does not  
2 include nursing care services that are an integral part of a hospital  
3 licensed pursuant to this chapter.

4 ~~9-~~ 8. "Unprofessional conduct" includes:

5 (a) Dishonesty, fraud, incompetency or gross negligence in the  
6 performance of administrative duties.

7 (b) Gross immorality or proselytizing religious views on patients  
8 without their consent.

9 (c) Other abuses of official responsibilities, which may include  
10 intimidation or neglect of patients.

11 Sec. 4. Repeal

12 Section 36-446.02, Arizona Revised Statutes, is repealed.

13 Sec. 5. Section 36-446.03, Arizona Revised Statutes, is amended to  
14 read:

15 36-446.03. Powers and duties of the department and director

16 A. The ~~board~~ DEPARTMENT may adopt, amend or repeal reasonable and  
17 necessary rules and standards for the administration of this article in  
18 compliance with title XIX of the social security act, as amended.

19 B. The ~~board~~ DEPARTMENT by rule may adopt nonrefundable fees that do  
20 not exceed the following:

21 1. For initial application for certification as an assisted living  
22 facility manager, one hundred dollars.

23 2. For examination for certification as an assisted living facility  
24 manager, one hundred dollars.

25 3. For issuance of a certificate as an assisted living facility  
26 manager, one hundred dollars prorated monthly.

27 4. For biennial renewal of a certificate as an assisted living  
28 facility manager, one hundred dollars.

29 5. For the issuance of a temporary certificate as an assisted living  
30 facility manager, fifty dollars.

31 6. For readministering an examination for certification as an assisted  
32 living facility manager, one hundred dollars.

33 7. For issuance of a duplicate certificate as an assisted living  
34 facility manager, fifty dollars.

35 8. For reviewing the sponsorship of continuing education programs,  
36 twenty dollars.

37 9. As a penalty for failure to renew a certificate as an assisted  
38 living facility manager as required by this article in a timely fashion,  
39 fifty dollars per year.

40 ~~C. The board may elect officers it deems necessary.~~

41 ~~D.~~ C. The ~~board~~ DEPARTMENT shall apply appropriate techniques,  
42 including examinations and investigations, for determining whether a person  
43 meets the qualifications set forth in section 36-446.04.

44 ~~E. D. On its own motion or~~ In response to any complaint against or  
45 report of a violation by an administrator of a nursing care institution, or a

1 manager of an assisted living facility, the ~~board~~ DEPARTMENT may conduct  
2 investigations, hearings and other proceedings concerning any violation of  
3 ~~the provisions of~~ this article or of rules adopted by the ~~board or by the~~  
4 department.

5 ~~F.~~ E. In connection with an investigation or administrative hearing,  
6 the ~~board~~ DIRECTOR OR THE DIRECTOR'S DESIGNEE may administer oaths and  
7 affirmations, subpoena witnesses, take evidence and require by subpoena the  
8 production of documents, records or other information in any form concerning  
9 matters the ~~board~~ DEPARTMENT deems relevant to the investigation or hearing.  
10 If any subpoena issued by the ~~board~~ DEPARTMENT is disobeyed, the ~~board~~  
11 DEPARTMENT may invoke the aid of any court in this state in requiring the  
12 attendance and testimony of witnesses and the production of evidence.

13 ~~G.~~ F. The ~~board~~ DEPARTMENT may employ persons to provide  
14 investigative, professional and clerical assistance as required to perform  
15 its powers and duties under this article. ~~Compensation for board employees~~  
16 ~~shall be as determined pursuant to section 38-611. The board may contract~~  
17 ~~with other state or federal agencies as required to carry out the provisions~~  
18 ~~of this article.~~

19 ~~H.~~ G. The ~~board~~ DEPARTMENT may appoint review committees to make  
20 recommendations concerning enforcement matters and the administration of this  
21 article.

22 ~~I.~~ H. The ~~board~~ DEPARTMENT by rule may establish a program to monitor  
23 licensees and certificate holders who are chemically dependent and who enroll  
24 in rehabilitation programs that meet ~~board~~ DEPARTMENT requirements. The  
25 ~~board~~ DEPARTMENT may take disciplinary action if a licensee or a certificate  
26 holder refuses to enter into an agreement to enroll in and complete a ~~board~~  
27 DEPARTMENT approved rehabilitation program or fails to abide by that  
28 agreement.

29 ~~J. The board shall adopt and use an official seal.~~

30 ~~K.~~ I. The ~~board~~ DEPARTMENT shall adopt rules for the examination and  
31 licensure of nursing care institution administrators and the examination and  
32 certification of assisted living facility managers.

33 ~~L.~~ J. The ~~board~~ DEPARTMENT shall adopt rules governing payment to a  
34 person for the direct or indirect solicitation or procurement of assisted  
35 living facility patronage.

36 ~~M. The board must provide the senate and the house of representatives~~  
37 ~~health committee chairmen with copies of all board minutes and executive~~  
38 ~~decisions.~~

39 Sec. 6. Section 36-446.04, Arizona Revised Statutes, is amended to  
40 read:

41 36-446.04. Qualifications; period of validity; exemption

42 A. The ~~board~~ DEPARTMENT shall issue a license as a nursing care  
43 institution administrator pursuant to its rules to any person who meets the  
44 following qualifications:

- 1           1. Is of good character.
- 2           2. Has satisfactorily completed a course of instruction and training
- 3 approved by the ~~board~~ DEPARTMENT that:
- 4           (a) Is designed and sufficiently administered to give the applicant
- 5 knowledge of the proper needs to be served by nursing care institutions.
- 6           (b) Includes a thorough background in the laws and rules governing the
- 7 operation of nursing care institutions and the protection of the interests of
- 8 the patients in nursing care institutions.
- 9           (c) Includes thorough training in elements of good health care
- 10 facilities administration.
- 11          3. Has passed an examination administered by the ~~board~~ DEPARTMENT
- 12 designed to test for competency in the subject matter referred to in this
- 13 subsection.
- 14          4. Has met one of the following fingerprinting requirements:
- 15           (a) Has a valid fingerprint clearance card issued pursuant to title
- 16 41, chapter 12, article 3.1.
- 17           (b) Has provided proof of the submission of an application for a
- 18 fingerprint clearance card. An applicant who has been denied a fingerprint
- 19 clearance card must also provide proof that the applicant qualifies for a
- 20 good cause exception hearing pursuant to section 41-619.55.
- 21          B. A person who is licensed pursuant to this section must maintain a
- 22 valid fingerprint clearance card during the valid period of the person's
- 23 license.
- 24          C. The ~~board~~ DEPARTMENT shall issue a certificate as an assisted
- 25 living facility manager pursuant to its rules to a person who meets the
- 26 following qualifications:
- 27           1. Is of good character.
- 28           2. Has satisfactorily completed a course of instruction and training
- 29 approved by the department.
- 30           3. Has passed an examination administered by the ~~board~~ DEPARTMENT.
- 31           4. Provides documentation satisfactory to the ~~board~~ DEPARTMENT that
- 32 the applicant has completed two thousand eighty hours of paid work experience
- 33 in a health related field within the preceding five years as prescribed by
- 34 ~~board~~ DEPARTMENT rule.
- 35           5. Has met one of the following fingerprinting requirements:
- 36           (a) Has a valid fingerprint clearance card issued pursuant to title
- 37 41, chapter 12, article 3.1.
- 38           (b) Has provided proof of the submission of an application for a
- 39 fingerprint clearance card. An applicant who has been denied a fingerprint
- 40 clearance card must also provide proof that the applicant qualifies for a
- 41 good cause exception hearing pursuant to section 41-619.55.
- 42          D. A person who is certified pursuant to this section must maintain a
- 43 valid fingerprint clearance card during the valid period of the person's
- 44 certificate.

1 E. In lieu of the requirements contained in subsection A, paragraph 2  
2 or subsection C, paragraph 2, an applicant may present satisfactory evidence  
3 to the ~~board~~ DEPARTMENT of sufficient education and training in the areas  
4 listed in that paragraph.

5 F. A license is nontransferable and remains in effect until the  
6 following June 30 of an even numbered year at which time the license may be  
7 renewed if the licensee otherwise complies with this article and unless the  
8 license has been surrendered, suspended or revoked.

9 G. A certificate is nontransferable and remains in effect until the  
10 following June 30 of an odd numbered year at which time the certificate may  
11 be renewed if the certificate holder otherwise complies with this article and  
12 the certificate has not been surrendered, suspended or revoked.

13 H. This section does not apply to managers of adult foster care as  
14 defined in section 36-401.

15 Sec. 7. Section 36-446.05, Arizona Revised Statutes, is amended to  
16 read:

17 36-446.05. Reciprocity; present administrators

18 The ~~board~~ DEPARTMENT may issue a nursing care institution  
19 administrator's license, without examination or with partial examination, to  
20 any person who holds a current license from another state or territory of the  
21 United States ~~provided~~ IF the standards for licensure in ~~such other~~ THAT  
22 state or territory ~~of the United States~~ are at least substantially equivalent  
23 to those prevailing in this state, ~~and provided that~~ the applicant is  
24 otherwise qualified.

25 Sec. 8. Section 36-446.06, Arizona Revised Statutes, is amended to  
26 read:

27 36-446.06. Temporary licenses and certificates

28 A. The ~~board~~ DEPARTMENT may issue a temporary nursing care institution  
29 administrator's license or assisted living facility manager's certificate to  
30 individuals determined to meet standards established by the ~~board~~ DEPARTMENT  
31 and revoke or suspend temporary licenses or certificates previously issued by  
32 the ~~board~~ DEPARTMENT in any case where the individual holding a license or  
33 certificate is determined to have substantially failed to conform to the  
34 requirements of ~~such~~ THESE standards during the term of the temporary license  
35 or certificate.

36 B. A temporary license or certificate is automatically revoked if the  
37 licensee or certificate holder fails either the state or national examination  
38 during the term of the license OR CERTIFICATE.

39 C. Temporary licenses or certificates may be issued without  
40 examination, for a single nonrenewable period of one hundred fifty days, to a  
41 qualified individual for the purpose of enabling the individual to fill a  
42 nursing care administrator or assisted living facility manager position.  
43 Qualifications for a temporary license or certificate ~~shall~~ include good  
44 character and the ability to meet ~~such~~ other standards ~~as are~~ established by  
45 the ~~board~~ DEPARTMENT.

1 D. An applicant for a temporary license or certificate shall not have  
2 failed a state or national examination either before or after applying for  
3 the temporary license or certificate.

4 Sec. 9. Section 36-446.07, Arizona Revised Statutes, is amended to  
5 read:

6 36-446.07. Disciplinary actions; grounds for disciplinary  
7 action; renewal; continuing education; inactive  
8 status; hearings; settlement; judicial review

9 A. The ~~board~~ DEPARTMENT may suspend or revoke the license of any  
10 nursing care institution administrator, censure or place on probation any  
11 licensed nursing care institution administrator or deny a license as a  
12 nursing care institution administrator to any person for any of the following  
13 reasons:

- 14 1. Conviction of a felony or conviction of any misdemeanor involving  
15 moral turpitude.
- 16 2. Obtaining or renewing a license by fraud or deceit.
- 17 3. Unprofessional conduct.
- 18 4. Practicing without biennial licensure.
- 19 5. Addiction to or dependency on drugs or alcohol.
- 20 6. Wrongful transfer of a license or falsely impersonating another  
21 licensee.
- 22 7. Unauthorized disclosure of information relating to a patient or a  
23 patient's records.
- 24 8. Payment to any person for solicitation or procurement, either  
25 directly or indirectly, of nursing home patronage.
- 26 9. Violation of this article or a rule adopted pursuant to this  
27 article.

28 B. The ~~board~~ DEPARTMENT may suspend or revoke the certificate of an  
29 assisted living facility manager, censure or place on probation an assisted  
30 living facility manager or deny a certificate as an assisted living facility  
31 manager to a person for any of the following reasons:

- 32 1. Conviction of a felony or conviction of a misdemeanor involving  
33 moral turpitude.
- 34 2. Obtaining or renewing a certificate by fraud or deceit.
- 35 3. Unprofessional conduct.
- 36 4. Practicing without biennial certification.
- 37 5. Addiction to or dependency on drugs or alcohol.
- 38 6. Wrongful transfer of a certificate or falsely impersonating another  
39 certificate holder.
- 40 7. Unauthorized disclosure of information relating to a resident or a  
41 resident's records.
- 42 8. Violation of this article or a rule adopted pursuant to this  
43 article.

44 C. The ~~board~~ DEPARTMENT may impose a civil penalty in an amount of not  
45 to exceed five hundred dollars on any nursing care institution administrator



1 or assisted living facility manager who violates this article or any rule  
2 adopted pursuant to this article. Actions to enforce the collection of these  
3 penalties shall be brought in the name of this state by the attorney general  
4 or the county attorney in the justice court or the superior court in the  
5 county in which the violation occurred. Penalties imposed under this section  
6 are in addition to and not in limitation of other penalties imposed pursuant  
7 to this article.

8 D. The ~~board~~ DEPARTMENT may file a letter of concern if, in the  
9 opinion of the ~~board~~ DEPARTMENT, while there is insufficient evidence to  
10 support direct action against the license of the administrator or the  
11 certificate of the manager, there is sufficient evidence for the ~~board~~  
12 DEPARTMENT to notify the administrator or manager of its concern.

13 E. Every holder of a nursing care institution administrator's license  
14 shall renew it biennially by making application to the ~~board~~ DEPARTMENT. The  
15 renewals shall be granted as a matter of course if the holder has  
16 successfully completed at least fifty hours of continuing education every two  
17 years as established by the ~~board~~ DEPARTMENT in its rules, unless the  
18 applicant has acted or failed to act in such a manner or under such  
19 circumstances as would constitute grounds for taking any of the disciplinary  
20 actions permitted by this section. The ~~board~~ DEPARTMENT shall maintain a log  
21 of each complaint substantiated by the ~~board~~ DEPARTMENT or deficiency report  
22 concerning an administrator and shall retain in the administrator's file a  
23 copy of each such complaint or report and the action taken on it, if any.  
24 The ~~board~~ DEPARTMENT shall review and consider the administrator's file in  
25 determining whether to renew the administrator's license.

26 F. Every holder of an assisted living facility manager's certificate  
27 shall renew it biennially by making application to the ~~board~~ DEPARTMENT. The  
28 renewals shall be granted as a matter of course if the holder has  
29 successfully completed continuing education every two years as established by  
30 the ~~board~~ DEPARTMENT in its rules, unless the applicant has acted or failed  
31 to act in a manner or under circumstances that constitute grounds for taking  
32 disciplinary action permitted by this section. The ~~board~~ DEPARTMENT shall  
33 maintain a log of each complaint substantiated by the ~~board~~ DEPARTMENT or  
34 deficiency report concerning a manager and shall retain in the manager's file  
35 a copy of each complaint or report and the action taken on it, if any. The  
36 ~~board~~ DEPARTMENT shall review and consider the manager's file in determining  
37 whether to renew the manager's certificate.

38 G. Failure on the part of any licensed nursing care institution  
39 administrator or certified assisted living facility manager to furnish  
40 evidence of having attended the required continuing education hours during  
41 the preceding two years shall preclude renewal of the license or certificate  
42 unless the continuing education requirement is fulfilled within one hundred  
43 twenty days.

1 H. On written request to the ~~board~~ DEPARTMENT, a nursing care  
2 institution administrator in good standing may cause the administrator's name  
3 and license to be transferred to an inactive list. Any nursing care  
4 institution administrator on inactive license status shall pay a license  
5 renewal fee. On written request to the ~~board~~ DEPARTMENT, and subsequent  
6 approval by the ~~board~~ DEPARTMENT, a nursing care institution administrator on  
7 inactive license status may resume active license status on meeting  
8 twenty-five hours of continuing education requirements within six months and  
9 payment of the current fee.

10 I. On written request to the ~~board~~ DEPARTMENT, the ~~board~~ DEPARTMENT  
11 shall transfer an assisted living facility manager in good standing to an  
12 inactive list. An assisted living facility manager on inactive certificate  
13 status shall pay a certificate renewal fee prescribed by the ~~board~~ DEPARTMENT  
14 of not more than one hundred dollars every two years. On written request to  
15 the ~~board~~ DEPARTMENT, and subsequent approval by the ~~board~~ DEPARTMENT, an  
16 assisted living facility manager on inactive certificate status may resume  
17 active certificate status on meeting requirements for six hours of continuing  
18 education within six months and payment of the current fee.

19 J. Suspension, revocation or denial of renewal of a license or  
20 certificate or censure or probation of a licensee or certificate holder by  
21 the ~~board~~ DEPARTMENT becomes effective only on the ~~board's~~ DEPARTMENT'S first  
22 giving the licensee or certificate holder prior written notice and affording  
23 the licensee or certificate holder the right to request a hearing within  
24 twenty days of the receipt of notice. A hearing is not required before the  
25 denial of an original application for a license or a certificate. All  
26 hearings shall be conducted pursuant to title 41, chapter 6, article 10.

27 K. Any person wishing to make a complaint against a licensee or  
28 certificate holder under this article shall file a written complaint with the  
29 ~~board~~ DEPARTMENT within one year from the date of the action causing the  
30 complaint. If the ~~board~~ DEPARTMENT determines that the charges made in the  
31 complaint are sufficient, if true, to warrant suspension or revocation of a  
32 license or certificate issued under this article or censure or probation of a  
33 licensee or certificate holder under this article, it shall issue an order  
34 fixing the time and place for a hearing and requiring the licensee or  
35 certificate holder complained against to appear and answer the complaint.  
36 The order shall have affixed to it a copy of the complaint and both shall be  
37 served on the licensee or certificate holder either personally or by  
38 certified mail sent to the licensee's or the certificate holder's last known  
39 address at least twenty days before the date set for the hearing. All  
40 hearings shall be conducted pursuant to title 41, chapter 6, article 10.

41 L. The ~~board~~ DEPARTMENT and an administrator or manager may enter into  
42 a settlement of any matter under investigation either before or after a  
43 notice of the hearing has been issued if the ~~board~~ DEPARTMENT determines that  
44 the proposed settlement adequately protects the public safety, health and

1 welfare. The ~~board~~ DEPARTMENT shall record the terms of each settlement  
2 entered into and shall make the record available for public inspection.

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

6 N. If the ~~board~~ DEPARTMENT has initiated an investigation pursuant to  
7 this section, the ~~board~~ DEPARTMENT may continue the investigation and  
8 discipline the person under investigation even if that person resigns from  
9 practice after the ~~board~~ DEPARTMENT has initiated the investigation.

10 Sec. 10. Repeal

11 Section 36-446.08, Arizona Revised Statutes, is repealed.

12 Sec. 11. Title 36, chapter 4, article 6, Arizona Revised Statutes, is  
13 amended by adding a new section 36-446.08, to read:

14 36-446.08. Placement of monies collected

15 THE DEPARTMENT SHALL DEPOSIT, PURSUANT TO SECTIONS 35-146 AND 35-147,  
16 ALL FEES AND MONIES DERIVED FROM CIVIL PENALTIES COLLECTED UNDER THIS ARTICLE  
17 IN THE STATE GENERAL FUND UNLESS OTHERWISE PRESCRIBED BY LAW.

18 Sec. 12. Section 36-446.09, Arizona Revised Statutes, is amended to  
19 read:

20 36-446.09. Violations; classification

21 A. Any person who manages, directs and controls the operation of a  
22 nursing care institution or an assisted living facility without a current  
23 and valid license or certificate as required by this article or who otherwise  
24 violates any provisions of this article is guilty of a class 2 misdemeanor.  
25 Each day of violation shall constitute a separate offense.

26 B. Action taken under subsection A shall not be a bar to enforcement  
27 of this article and the standards and rules issued and adopted pursuant to  
28 this article, by injunction or other appropriate remedy, and the ~~board~~  
29 DEPARTMENT may institute and maintain in the name of this state any such  
30 enforcement proceeding.

31 Sec. 13. Section 36-446.10, Arizona Revised Statutes, is amended to  
32 read:

33 36-446.10. Confidentiality of records; release of complainant's  
34 name and nature of complaint

35 A. Except as provided in subsection B, all records concerning a  
36 pending investigation, examination materials, records of examination grading  
37 and applicants' performance and transcripts of educational institutions  
38 concerning applicants are confidential and are not public records. ~~"Records~~  
39 ~~of applicants' performance"~~ does not include records of whether an applicant  
40 passed or failed an examination.

41 B. During a pending investigation, the ~~board~~ DEPARTMENT shall inform  
42 the administrator or manager who is the subject of the complaint of the name  
43 of the complainant and the nature of the complaint if so requested.

1           Sec. 14. Section 36-446.11, Arizona Revised Statutes, is amended to  
2 read:

3           36-446.11. Relief from civil liability

4           ~~Members, employees and agents of the board~~ THE DEPARTMENT and members  
5 of review committees ~~shall not be held~~ ARE NOT civilly liable for acts done  
6 or actions taken ~~by any of these persons if such persons act~~ in good faith  
7 following the requirements of this article. A person who in good faith  
8 reports or provides information to the ~~board shall~~ DEPARTMENT IS not ~~be held~~  
9 civilly liable as a result of doing so.

10          Sec. 15. Section 36-446.12, Arizona Revised Statutes, is amended to  
11 read:

12          36-446.12. Fees

13          A. The ~~board~~ DEPARTMENT shall establish nonrefundable fees and  
14 penalties that do not exceed the following for nursing care institution  
15 administrators:

- 16           1. For initial application, one hundred dollars.
- 17           2. For examination for licensure as a nursing care institution  
18 administrator, five hundred dollars.
- 19           3. For a license as a nursing care institution administrator, two  
20 hundred sixty dollars.
- 21           4. For renewing an active biennial license, three hundred dollars.
- 22           5. For renewing an inactive biennial license, one hundred dollars.
- 23           6. For a temporary license as a nursing care institution  
24 administrator, two hundred fifty dollars.
- 25           7. For readministering the state examination, one hundred fifty  
26 dollars.
- 27           8. For readministering the national examination, three hundred  
28 dollars.
- 29           9. For a duplicate license, fifty dollars.
- 30           10. For late renewal of a license, a penalty of fifty dollars.
- 31           11. For certifying licensure status, ten dollars.
- 32           12. For reviewing the sponsorship of continuing education programs,  
33 twenty dollars.

34          B. The ~~board~~ DEPARTMENT shall prorate on a monthly basis fees paid for  
35 an initial license as a nursing care institution administrator.

36          Sec. 16. Section 36-446.13, Arizona Revised Statutes, is amended to  
37 read:

38          36-446.13. Unlawful act; unlicensed operation; injunction

39          A. On application by the ~~board~~ DEPARTMENT, the superior court may  
40 issue an injunction to enjoin the activities of a person who purports to be  
41 licensed pursuant to this article or who is engaging in the activities of a  
42 nursing care institution administrator without a license.

43          B. In a petition for injunction filed pursuant to this section, it is  
44 sufficient to charge that the respondent on a certain day in a named county  
45 engaged in the activities of a nursing care institution administrator without

1 a license and without being exempt from the licensing requirements of this  
2 article.

3 C. For the purposes of this section, damage or injury is presumed.

4 D. A petition for an injunction to enjoin unlicensed activities shall  
5 be filed in the name of this state in the superior court in the county where  
6 the respondent resides or may be found or in Maricopa county. On request of  
7 the board, the attorney general shall file the injunction.

8 E. Issuance of an injunction does not relieve the respondent from  
9 being subject to other proceedings as provided in this article.

10 Sec. 17. Section 41-619.51, Arizona Revised Statutes, is amended to  
11 read:

12 41-619.51. Definitions

13 In this article, unless the context otherwise requires:

14 1. "Agency" means the supreme court, the department of economic  
15 security, the department of education, the department of health services, the  
16 department of juvenile corrections, ~~OR the department of emergency and~~  
17 ~~military affairs or the board of examiners of nursing care institution~~  
18 ~~administrators and assisted living facility managers.~~

19 2. "Board" means the board of fingerprinting.

20 3. "Expedited review" means an examination, in accordance with board  
21 rule, of the documents an applicant submits by the board or its hearing  
22 officer without the applicant being present.

23 4. "Good cause exception" means the issuance of a fingerprint  
24 clearance card to an employee pursuant to section 41-619.55.

25 5. "Person" means a person who is required to be fingerprinted  
26 pursuant to any of the following:

- 27 (a) Section 8-105.
- 28 (b) Section 8-322.
- 29 (c) Section 8-509.
- 30 (d) Section 8-802.
- 31 (e) Section 15-183.
- 32 (f) Section 15-534.
- 33 (g) Section 15-1330.
- 34 (h) Section 15-1881.
- 35 (i) Section 26-102.
- 36 (j) Section 36-411.
- 37 (k) Section 36-425.03.
- 38 (l) Section 36-446.04.
- 39 (m) Section 36-594.01.
- 40 (n) Section 36-594.02.
- 41 (o) Section 36-882.
- 42 (p) Section 36-883.02.
- 43 (q) Section 36-897.01.
- 44 (r) Section 36-897.03.
- 45 (s) Section 36-3008.

- 1 (t) Section 41-1964.
- 2 (u) Section 41-1967.01.
- 3 (v) Section 41-1968.
- 4 (w) Section 41-1969.
- 5 (x) Section 41-2814.
- 6 (y) Section 46-141, subsection A.
- 7 (z) Section 46-321.

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

10 **41-1092. Definitions**

11 In this article, unless the context otherwise requires:

12 1. "Administrative law judge" means an individual or an agency head,  
13 board or commission that sits as an administrative law judge, that conducts  
14 administrative hearings in a contested case or an appealable agency action  
15 and that makes decisions regarding the contested case or appealable agency  
16 action.

17 2. "Administrative law judge decision" means the findings of fact,  
18 conclusions of law and recommendations or decisions issued by an  
19 administrative law judge.

20 3. "Appealable agency action" means an action that determines the  
21 legal rights, duties or privileges of a party and that is not a contested  
22 case. Appealable agency actions do not include interim orders by  
23 self-supporting regulatory boards or rules, orders, standards or statements  
24 of policy of general application issued by an administrative agency to  
25 implement, interpret or make specific the legislation enforced or  
26 administered by it, nor does it mean or include rules concerning the internal  
27 management of the agency that do not affect private rights or interests. For  
28 the purposes of this paragraph, administrative hearing does not include a  
29 public hearing held for the purpose of receiving public comment on a proposed  
30 agency action.

31 4. "Director" means the director of the office of administrative  
32 hearings.

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

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

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

- 37 (a) The ARIZONA state board of accountancy.
- 38 (b) The state board of appraisal.
- 39 (c) The board of barbers.
- 40 (d) The board of behavioral health examiners.
- 41 (e) The Arizona state boxing commission.
- 42 (f) The state board of chiropractic examiners.
- 43 (g) The board of cosmetology.
- 44 (h) The state board of dental examiners.
- 45 (i) The state board of funeral directors and embalmers.

- 1 (j) The Arizona game and fish commission.
- 2 (k) The board of homeopathic medical examiners.
- 3 (l) The Arizona medical board.
- 4 (m) The naturopathic physicians board of medical examiners.
- 5 (n) The state board of nursing.
- 6 ~~(o) The board of examiners of nursing care institution administrators~~
- 7 ~~and adult care home managers.~~
- 8 ~~(p)~~ (o) The board of occupational therapy examiners.
- 9 ~~(q)~~ (p) The state board of dispensing opticians.
- 10 ~~(r)~~ (q) The state board of optometry.
- 11 ~~(s)~~ (r) The Arizona board of osteopathic examiners in medicine and
- 12 surgery.
- 13 ~~(t)~~ (s) The Arizona peace officer standards and training board.
- 14 ~~(u)~~ (t) The Arizona state board of pharmacy.
- 15 ~~(v)~~ (u) The board of physical therapy examiners.
- 16 ~~(w)~~ (v) The state board of podiatry examiners.
- 17 ~~(x)~~ (w) The state board for private postsecondary education.
- 18 ~~(y)~~ (x) The state board of psychologist examiners.
- 19 ~~(z)~~ (y) The board of respiratory care examiners.
- 20 ~~(aa)~~ (z) The structural pest control commission.
- 21 ~~(bb)~~ (aa) The state board of technical registration.
- 22 ~~(cc)~~ (bb) The Arizona state veterinary medical examining board.
- 23 ~~(dd)~~ (cc) The acupuncture board of examiners.
- 24 ~~(ee)~~ (dd) The Arizona regulatory board of physician assistants.
- 25 ~~(ff)~~ (ee) The board of athletic training.
- 26 ~~(gg)~~ (ff) The board of massage therapy.

27 Sec. 19. Section 41-1758, Arizona Revised Statutes, is amended to  
28 read:

29 41-1758. Definitions

30 In this article, unless the context otherwise requires:

31 1. "Agency" means the supreme court, the department of economic  
32 security, the department of education, the department of health services, the  
33 department of juvenile corrections, ~~OR the department of emergency and~~  
34 ~~military affairs or the board of examiners of nursing care institution~~  
35 ~~administrators and assisted living facility managers.~~

36 2. "Division" means the fingerprinting division in the department of  
37 public safety.

38 3. "Good cause exception" means the issuance of a fingerprint  
39 clearance card to an employee pursuant to section 41-619.55.

40 4. "Person" means a person who is required to be fingerprinted  
41 pursuant to any of the following:

- 42 (a) Section 8-105.
- 43 (b) Section 8-322.
- 44 (c) Section 8-509.
- 45 (d) Section 8-802.

- 1 (e) Section 15-183.
- 2 (f) Section 15-534.
- 3 (g) Section 15-1330.
- 4 (h) Section 15-1881.
- 5 (i) Section 26-102.
- 6 (j) Section 36-411.
- 7 (k) Section 36-425.03.
- 8 (l) Section 36-446.04.
- 9 (m) Section 36-594.01.
- 10 (n) Section 36-594.02.
- 11 (o) Section 36-882.
- 12 (p) Section 36-883.02.
- 13 (q) Section 36-897.01.
- 14 (r) Section 36-897.03.
- 15 (s) Section 36-3008.
- 16 (t) Section 41-1964.
- 17 (u) Section 41-1967.01.
- 18 (v) Section 41-1968.
- 19 (w) Section 41-1969.
- 20 (x) Section 41-2814.
- 21 (y) Section 46-141, subsection A.
- 22 (z) Section 46-321.
- 23 5. "Vulnerable adult" has the same meaning prescribed in section
- 24 13-3623.
- 25 Sec. 20. Repeal
- 26 Section 41-3011.11, Arizona Revised Statutes, is repealed.
- 27 Sec. 21. Succession; transfer of powers and authority
- 28 A. As provided by this act, the director of the department of health
- 29 services, or the director's designee, succeeds to the authority, powers,
- 30 duties and responsibilities of the board of examiners of nursing care
- 31 institution administrators and assisted living facility managers.
- 32 B. This act does not alter the effect of any actions that were taken
- 33 or impair the valid obligations of the board before the effective date of
- 34 this act.
- 35 C. Administrative rules and orders that were adopted by the board
- 36 continue in effect until superseded by administrative action by the director
- 37 of the department of health services.
- 38 D. All administrative matters, contracts and judicial and
- 39 quasi-judicial actions, whether completed, pending or in process, of the
- 40 board on the effective date of this act are transferred to and retain the
- 41 same status with the director of the department of health services.
- 42 E. All certificates, licenses, registrations, permits and other
- 43 indicia of qualification and authority that were issued by the board retain
- 44 their validity for the duration of their terms of validity as provided by
- 45 law.



1           F. All equipment, records, furnishings and other property, all data  
2 and investigative findings and all appropriated monies that remain unexpended  
3 and unencumbered on the effective date of this act of the board are  
4 transferred to the department of health services.