

State of Arizona  
Senate  
Forty-eighth Legislature  
First Regular Session  
2007

## **SB 1605**

Introduced by  
Senator O'Halleran; Representative Meza; Senator Miranda; Representatives  
Brown, Mason

### AN ACT

AMENDING TITLE 36, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 11; AMENDING SECTIONS 41-1758 AND 41-1758.01, ARIZONA REVISED STATUTES; RELATING TO CAREGIVER SERVICES AGENCIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Title 36, Arizona Revised Statutes, is amended by adding  
3 chapter 11, to read:

4 CHAPTER 11

5 CAREGIVER SERVICES AGENCIES

6 ARTICLE 1. GENERAL PROVISIONS

7 36-1301. Definitions

8 IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

9 1. "ACTIVITIES OF DAILY LIVING":

10 (a) INCLUDES:

11 (i) AMBULATION.

12 (ii) TRANSFER.

13 (iii) TOILETING.

14 (iv) PERSONAL HYGIENE.

15 (v) FEEDING.

16 (vi) SELF-ADMINISTRATION OF MEDICATION.

17 (vii) LETTER WRITING.

18 (viii) READING.

19 (ix) MONITORING AND COMPANIONSHIP FOR A CLIENT WHO CANNOT SAFELY BE  
20 LEFT ALONE.

21 (x) LIGHT HOUSECLEANING, LAUNDRY AND FOOD PREPARATION.

22 (xi) ESSENTIAL ERRANDS, SUCH AS GROCERY SHOPPING AND SECURING MEDICAL  
23 SUPPLIES AND HOUSEHOLD ITEMS.

24 (xii) PROVIDING INTERMITTENT ASSISTANCE WITH PERSONAL AND PHYSICAL  
25 NEEDS, SUCH AS WASHING A CLIENT'S HAIR, BATHING A CLIENT AND DRESSING A  
26 CLIENT.

27 (b) DOES NOT INCLUDE:

28 (i) INCIDENTAL SERVICES PROVIDED BY A LICENSED HEALTH CARE INSTITUTION  
29 TO ITS PATIENTS.

30 (ii) SERVICES THAT REQUIRE THE ORDER OF A HEALTH CARE PROFESSIONAL FOR  
31 THE SERVICES TO BE LAWFULLY PERFORMED.

32 (iii) SKILLED MEDICAL SERVICES THAT MUST BE PERFORMED BY A PERSON WHO  
33 IS LICENSED PURSUANT TO TITLE 32, CHAPTER 15.

34 (iv) HOME HEALTH SERVICES PROVIDED BY HOME HEALTH AGENCIES. FOR THE  
35 PURPOSES OF THIS ITEM, "HOME HEALTH AGENCIES" AND "HOME HEALTH SERVICES" HAVE  
36 THE SAME MEANINGS PRESCRIBED IN SECTION 36-151.

37 2. "AGENCY" MEANS A CAREGIVER SERVICES AGENCY THAT IS LICENSED  
38 PURSUANT TO THIS CHAPTER TO PROVIDE CAREGIVER SERVICES TO CLIENTS BY A  
39 CAREGIVER.

40 3. "CAREGIVER" MEANS A PERSON WHO IS EMPLOYED BY A CAREGIVER SERVICES  
41 AGENCY TO ASSIST A CLIENT OR CLIENTS WITH THE ACTIVITIES OF DAILY LIVING.

42 4. "CAREGIVER SERVICES" MEANS SERVICES PROVIDED TO A CLIENT BY A  
43 CAREGIVER.

44 5. "CLIENT" MEANS A PERSON WHO HAS REQUESTED CAREGIVER SERVICES FROM A  
45 CAREGIVER SERVICES AGENCY.

1           36-1302. Caregiver services agencies; licensure; application

2           A. BEGINNING JULY 1, 2009, AN AGENCY THAT WISHES TO PROVIDE CAREGIVER  
3 SERVICES MUST HAVE A CURRENT LICENSE ISSUED BY THE DEPARTMENT. EACH  
4 APPLICANT FOR LICENSURE MUST SUBMIT AN APPLICATION TO THE DEPARTMENT ON A  
5 FORM PRESCRIBED AND FURNISHED BY THE DEPARTMENT AND MUST INCLUDE WITH THE  
6 APPLICATION AN INITIAL APPLICATION FEE PRESCRIBED BY THE DEPARTMENT BY RULE.  
7 THE APPLICATION MUST BE UNDER OATH AND CONTAIN:

8           1. THE NAME AND LOCATION OF THE AGENCY.

9           2. THE NAME OF THE PERSON OWNING THE AGENCY AND THE NAME OF THE PERSON  
10 DIRECTING THE AGENCY.

11           3. OTHER INFORMATION THE DEPARTMENT DETERMINES NECESSARY TO PROCESS  
12 THE APPLICATION.

13           B. THE DEPARTMENT SHALL ISSUE A LICENSE TO EACH APPLICANT IT  
14 DETERMINES MEETS THE REQUIREMENTS OF THIS CHAPTER AND RULES ADOPTED BY THE  
15 DEPARTMENT PURSUANT TO THIS CHAPTER. THE DIRECTOR MAY DENY A LICENSE BECAUSE  
16 AN APPLICANT OR ANYONE IN A BUSINESS RELATIONSHIP WITH THE APPLICANT,  
17 INCLUDING STOCKHOLDERS AND CONTROLLING PERSONS, HAS HAD A LICENSE TO OPERATE  
18 A HEALTH CARE INSTITUTION DENIED, REVOKED OR SUSPENDED OR A LICENSE OR  
19 CERTIFICATE ISSUED BY A HEALTH PROFESSION REGULATORY BOARD PURSUANT TO TITLE  
20 32 OR ISSUED BY A STATE AGENCY PURSUANT TO CHAPTER 6, ARTICLE 7 OR CHAPTER 17  
21 OF THIS TITLE DENIED, REVOKED OR SUSPENDED OR HAS A LICENSING HISTORY OF  
22 RECENT SERIOUS VIOLATIONS OCCURRING IN THIS STATE OR IN ANOTHER STATE THAT  
23 POSED A DIRECT RISK TO THE LIFE, HEALTH OR SAFETY OF PATIENTS OR RESIDENTS.

24           C. IN ADDITION TO THE REQUIREMENTS OF THIS CHAPTER, THE DIRECTOR MAY  
25 PRESCRIBE BY RULE OTHER LICENSURE REQUIREMENTS AND MAY PRESCRIBE PROCEDURES  
26 FOR CONDUCTING INVESTIGATIONS INTO AN APPLICANT'S CHARACTER AND  
27 QUALIFICATIONS.

28           D. A REGULAR LICENSE IS VALID FOR TWO YEARS AND MAY BE RENEWED ON  
29 PAYMENT OF AN APPLICATION FOR RENEWAL FEE PRESCRIBED BY THE DIRECTOR BY RULE  
30 IF THE AGENCY IS IN SUBSTANTIAL COMPLIANCE WITH THIS CHAPTER AND RULES  
31 ADOPTED PURSUANT TO THIS CHAPTER.

32           E. A PERSON WHO OPERATES AN AGENCY MUST DISPLAY IN A PROMINENT PLACE  
33 IN THE AGENCY THE LICENSE ISSUED PURSUANT TO THIS SECTION.

34           F. THE DEPARTMENT SHALL MAKE A LIST OF AGENCIES LICENSED PURSUANT TO  
35 THIS SECTION AVAILABLE TO THE PUBLIC ON REQUEST.

36           36-1303. Fees; deposit

37           A. THE DIRECTOR BY RULE SHALL ESTABLISH FEES FOR CONDUCTING ON-SITE  
38 INSPECTIONS, EVALUATION AND VERIFICATION OF INFORMATION SUBMITTED WITH AN  
39 APPLICATION AND OTHER ACTIVITIES RELATED TO LICENSURE OF AGENCIES PURSUANT TO  
40 THIS CHAPTER.

41           B. THE DEPARTMENT SHALL DEPOSIT FEES COLLECTED PURSUANT TO THIS  
42 CHAPTER IN THE STATE GENERAL FUND.

1           36-1304. Employees; fingerprinting; background investigations

2           A. AS A CONDITION OF LICENSURE OR CONTINUED LICENSURE OF AN AGENCY AND  
3 AS A CONDITION OF EMPLOYMENT BY AN AGENCY, EACH AGENCY OWNER AND EACH  
4 CAREGIVER MUST HAVE A VALID FINGERPRINT CLEARANCE CARD THAT IS ISSUED  
5 PURSUANT TO TITLE 41, CHAPTER 12, ARTICLE 3.1 OR MUST APPLY FOR A FINGERPRINT  
6 CLEARANCE CARD WITHIN TWENTY WORKING DAYS AFTER EMPLOYMENT.

7           B. EACH AGENCY OWNER MUST DOCUMENT THE OWNER'S GOOD FAITH EFFORT TO:

8           1. CONTACT PREVIOUS EMPLOYERS TO OBTAIN INFORMATION OR RECOMMENDATIONS  
9 THAT MAY BE RELEVANT TO A PERSON'S FITNESS TO PROVIDE CAREGIVER SERVICES.

10          2. VERIFY THE CURRENT STATUS OF A PERSON'S FINGERPRINT CLEARANCE CARD.

11          C. AN AGENCY SHALL NOT ALLOW A PERSON TO CONTINUE TO PROVIDE CAREGIVER  
12 SERVICES IF THE PERSON HAS BEEN DENIED A FINGERPRINT CLEARANCE CARD PURSUANT  
13 TO TITLE 41, CHAPTER 12, ARTICLE 3.1 OR HAS NOT RECEIVED AN INTERIM APPROVAL  
14 FROM THE BOARD OF FINGERPRINTING PURSUANT TO SECTION 41-619.55, SUBSECTION I.

15          D. NOTWITHSTANDING THE REQUIREMENTS OF SECTION 41-1758.02, SUBSECTION  
16 B, A PERSON WHO PROVIDES CAREGIVER SERVICES AFTER MEETING THE FINGERPRINTING  
17 AND CRIMINAL RECORDS CHECK REQUIREMENTS OF THIS SECTION IS NOT REQUIRED TO  
18 MEET THE FINGERPRINTING AND CRIMINAL RECORDS CHECK REQUIREMENTS OF THIS  
19 SECTION AGAIN IF THAT PERSON REMAINS EMPLOYED BY THE SAME EMPLOYER OR CHANGES  
20 EMPLOYMENT WITHIN TWO YEARS AFTER SATISFYING THE REQUIREMENTS OF THIS  
21 SECTION. FOR THE PURPOSES OF THIS SUBSECTION, IF THE EMPLOYER CHANGES  
22 THROUGH SALE, LEASE OR OPERATION OF LAW, A PERSON IS DEEMED TO BE EMPLOYED BY  
23 THE SAME EMPLOYER IF THAT PERSON REMAINS EMPLOYED BY THE NEW EMPLOYER.

24          E. IF A PERSON'S EMPLOYMENT RECORD CONTAINS A SIX-MONTH OR LONGER TIME  
25 FRAME DURING WHICH THE PERSON WAS NOT EMPLOYED BY ANY EMPLOYER, A COMPLETED  
26 APPLICATION WITH A NEW SET OF FINGERPRINTS SHALL BE SUBMITTED TO THE  
27 DEPARTMENT OF PUBLIC SAFETY.

28           36-1305. Competency tests; documentation

29          A. AS A CONDITION OF PLACEMENT BY AN AGENCY, EVERY TWO YEARS EACH  
30 CAREGIVER MUST PASS A COMPETENCY TEST THAT IS DESIGNED AND ADMINISTERED BY  
31 THE AGENCY. AN EMPLOYEE WHO DOES NOT PASS THE COMPETENCY TEST MUST  
32 PARTICIPATE IN A TRAINING PROGRAM DESIGNED AND ADMINISTERED BY THE AGENCY.  
33 THE COMPETENCY TEST MUST BE APPROVED BY THE DEPARTMENT AND MUST COMPLY EITHER  
34 WITH MINIMUM STANDARDS PRESCRIBED BY THE DEPARTMENT OR WITH ARIZONA LONG-TERM  
35 CARE SYSTEM GUIDELINES.

36          B. EACH AGENCY SHALL PROVIDE FOUR HOURS OF IN-SERVICE TRAINING  
37 ANNUALLY TO ALL CAREGIVER EMPLOYEES.

38          C. EACH AGENCY SHALL MAINTAIN RECORDS TO DOCUMENT THE AGENCY'S  
39 COMPLIANCE WITH THE REQUIREMENTS OF THIS SECTION.

40           36-1306. Inspections

41          A. THE DEPARTMENT MAY CONDUCT PERIODIC INSPECTIONS OF ANY AGENCY TO  
42 CONFIRM ITS COMPLIANCE WITH THE REQUIREMENTS OF THIS CHAPTER AND DEPARTMENT  
43 RULES.

44          B. SUBJECT TO THE CONFIDENTIALITY REQUIREMENTS OF CHAPTER 4, ARTICLES  
45 4 AND 5 OF THIS TITLE, TITLE 12, CHAPTER 13, ARTICLE 7.1 AND SECTION 12-2235,

1 THE LICENSEE SHALL KEEP CURRENT DEPARTMENT INSPECTION REPORTS AT THE AGENCY.  
2 UNLESS FEDERAL LAW REQUIRES OTHERWISE, THE LICENSEE SHALL CONSPICUOUSLY POST  
3 A NOTICE THAT IDENTIFIES THE LOCATION AT THAT AGENCY WHERE THE INSPECTION  
4 REPORTS ARE AVAILABLE FOR REVIEW.

5 36-1307. Suspension or revocation; hearing

6 A. AFTER A HEARING PURSUANT TO TITLE 41, CHAPTER 6, ARTICLE 10, THE  
7 DIRECTOR MAY SUSPEND OR REVOKE AN AGENCY'S LICENSE IF ITS OWNERS, OFFICERS,  
8 AGENTS OR EMPLOYEES:

9 1. VIOLATE THIS CHAPTER OR RULES ADOPTED PURSUANT TO THIS CHAPTER.

10 2. HAVE BEEN, ARE OR MAY CONTINUE TO BE IN SUBSTANTIAL VIOLATION OF  
11 THE REQUIREMENTS FOR LICENSURE AND AS A RESULT THE HEALTH OR SAFETY OF ONE OR  
12 MORE CLIENTS OR THE GENERAL PUBLIC IS IN IMMEDIATE DANGER.

13 B. IF THE LICENSEE REFUSES TO PERMIT THE DEPARTMENT OR ITS EMPLOYEES  
14 OR AGENTS THE RIGHT TO INSPECT ITS PREMISES, THIS ACTION IS REASONABLE CAUSE  
15 TO BELIEVE THAT A SUBSTANTIAL VIOLATION UNDER SUBSECTION A, PARAGRAPH 2 OF  
16 THIS SECTION EXISTS.

17 C. THE DEPARTMENT MAY INITIATE AN INVESTIGATION ON ITS OWN OR PURSUANT  
18 TO A COMPLAINT RECEIVED FROM THE PUBLIC.

19 36-1308. Removal of licensee; temporary management; continued  
20 operation

21 A. IF THE DIRECTOR REASONABLY BELIEVES THAT A VIOLATION OF THIS  
22 CHAPTER BY A LICENSEE ENDANGERS THE HEALTH, SAFETY OR WELFARE OF ONE OR MORE  
23 OF THE LICENSEE'S CLIENTS, IN ADDITION TO OTHER REMEDIES PROVIDED BY THIS  
24 CHAPTER, THE DIRECTOR MAY ENTER INTO AN AGREEMENT WITH THE LICENSEE OR BRING  
25 AN ACTION REQUESTING THE SUPERIOR COURT TO:

26 1. REMOVE THE LICENSEE'S ADMINISTRATIVE OFFICERS, AGENTS OR EMPLOYEES  
27 BY INJUNCTION, ENJOIN THE LICENSEE FROM CONTINUED OPERATION AND REVOKE THE  
28 LICENSE.

29 2. APPOINT TEMPORARY PERSONNEL TO CONTINUE OPERATION OF THE AGENCY  
30 UNDER CONDITIONS AND REQUIREMENTS SET BY THE COURT PENDING CORRECTION OF THE  
31 VIOLATION AND RESTORATION OF THE LICENSEE, REVOCATION OF THE LICENSE OR  
32 CORRECTION OF THE VIOLATION AND CHANGE OF OWNERSHIP.

33 B. THE ACTION SHALL BE BROUGHT IN THE NAME OF THE PEOPLE OF THE STATE  
34 THROUGH THE ATTORNEY GENERAL IN THE SUPERIOR COURT IN THE COUNTY IN WHICH THE  
35 HEALTH CARE INSTITUTION IS LOCATED.

36 36-1309. Unlicensed operation; prohibition; injunction

37 THE ATTORNEY GENERAL MAY BRING AN ACTION FOR AN INJUNCTION TO ENJOIN  
38 THE CONTINUED OPERATION OF AN AGENCY THAT IS NOT LICENSED PURSUANT TO THIS  
39 CHAPTER OR THAT IS NOT IN COMPLIANCE WITH THE REQUIREMENTS OF THIS CHAPTER OR  
40 RULES ADOPTED PURSUANT TO THIS CHAPTER.

41 36-1310. Violation; classification

42 A. A PERSON WHO OPERATES AN AGENCY WITHOUT HAVING A CURRENT LICENSE  
43 ISSUED PURSUANT TO THIS CHAPTER IS GUILTY OF A CLASS 3 MISDEMEANOR.

44 B. EACH DAY THAT A VIOLATION CONTINUES CONSTITUTES A SEPARATE  
45 VIOLATION.

1           36-1311. Civil penalties  
2           A. THE DIRECTOR MAY ASSESS AND COLLECT A CIVIL PENALTY OF NOT MORE  
3 THAN FIVE HUNDRED DOLLARS FOR EACH VIOLATION OF THIS CHAPTER OR RULE ADOPTED  
4 PURSUANT TO THIS CHAPTER. EACH DAY THAT A VIOLATION OCCURS CONSTITUTES A  
5 SEPARATE VIOLATION.  
6           B. THE DIRECTOR SHALL TRANSMIT CIVIL PENALTIES COLLECTED PURSUANT TO  
7 THIS SECTION TO THE STATE TREASURER FOR DEPOSIT IN THE STATE GENERAL FUND.  
8           36-1312. Program termination  
9           THE PROGRAM ESTABLISHED BY THIS CHAPTER ENDS ON JULY 1, 2017 PURSUANT  
10 TO SECTION 41-3102.  
11           Sec. 2. Section 41-1758, Arizona Revised Statutes, is amended to read:  
12           41-1758. 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 or  
16 the department of juvenile corrections.  
17           2. "Division" means the fingerprinting division in the department of  
18 public safety.  
19           ~~3. "Facility or program" means state facilities or programs that~~  
20 ~~provide direct services to adults with developmental disabilities or to~~  
21 ~~juveniles.~~  
22           ~~4.~~ 3. "Good cause exception" means the issuance of a fingerprint  
23 clearance card to an employee pursuant to section 41-619.55.  
24           ~~5.~~ 4. "Person" means a person who is required to be fingerprinted  
25 pursuant to any of the following:  
26           (a) Section 8-105.  
27           (b) Section 8-322.  
28           (c) Section 8-509.  
29           (d) Section 8-802.  
30           (e) Section 15-183.  
31           (f) Section 15-534.  
32           (g) Section 15-1330.  
33           (h) Section 36-411.  
34           (i) Section 36-425.03.  
35           (j) Section 36-594.01.  
36           (k) Section 36-594.02.  
37           (l) Section 36-882.  
38           (m) Section 36-883.02.  
39           (n) Section 36-897.01.  
40           (o) Section 36-897.03.  
41           (p) SECTION 36-1304.  
42           ~~(p)~~ (q) Section 36-3008.  
43           ~~(q)~~ (r) Section 41-1964.  
44           ~~(r)~~ (s) Section 41-1967.01.  
45           ~~(s)~~ (t) Section 41-1968.

1           ~~(t)~~ (u) Section 41-1969.

2           ~~(u)~~ (v) Section 41-2814.

3           ~~(v)~~ (w) Section 46-141, subsection A.

4           ~~(w)~~ (x) Section 46-321.

5           ~~6.~~ 5. "Vulnerable adult" has the same meaning prescribed in section  
6 13-3623.

7           Sec. 3. Section 41-1758.01, Arizona Revised Statutes, is amended to  
8 read:

9           41-1758.01. Fingerprinting division; duties

10           The fingerprinting division is established in the department of public  
11 safety and shall:

12           1. Conduct fingerprint background checks for persons and applicants  
13 who are seeking employment with licensees, contract providers and state  
14 agencies that require fingerprint background checks pursuant to sections  
15 8-105, 8-322, 8-509, 8-802, 15-183, 15-534, 15-1330, 36-411, 36-425.03,  
16 36-594.01, 36-594.02, 36-882, 36-883.02, 36-897.01, 36-897.03, 36-1304,  
17 36-3008, 41-1964, 41-1967.01, 41-1968, 41-1969 and 41-2814, section 46-141,  
18 subsection A and section 46-321.

19           2. Issue fingerprint clearance cards. On issuance, a fingerprint  
20 clearance card becomes the personal property of the cardholder and the  
21 cardholder shall retain possession of the fingerprint clearance card.

22           3. On submission of an application for a fingerprint clearance card,  
23 collect the fees established by the board of fingerprinting pursuant to  
24 section 41-619.53 and deposit, pursuant to sections 35-146 and 35-147, the  
25 monies collected in the board of fingerprinting fund.

26           4. Inform in writing each person who submits fingerprints for a  
27 fingerprint background check of the person's right to petition the board of  
28 fingerprinting for a good cause exception pursuant to section 41-1758.03.

29           5. Administer and enforce this article.