

REFERENCE TITLE: emergency executive powers; legislative oversight

State of Arizona
House of Representatives
Fifty-fifth Legislature
Second Regular Session
2022

HB 2578

Introduced by
Representatives Blackman: Payne

AN ACT

REPEALING SECTION 26-303, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2021, CHAPTER 405, SECTION 8; AMENDING SECTION 26-303, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2021, CHAPTER 348, SECTION 2 AND CHAPTER 367, SECTION 1; REPEALING SECTION 35-192, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2021, CHAPTER 405, SECTION 9; AMENDING SECTION 35-192, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2016, CHAPTER 128, SECTION 51; RELATING TO EMERGENCY MANAGEMENT.

(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 26-303, Arizona Revised Statutes, as amended by Laws 2021,
4 chapter 405, section 8, is repealed.

5 Sec. 2. Section 26-303, Arizona Revised Statutes, as amended by
6 Laws 2021, chapter 348, section 2 and chapter 367, section 1, is amended
7 to read:

8 26-303. Emergency powers of governor; termination;
9 authorization for adjutant general; limitation;
10 extension; report; notices; appeals

11 A. During a state of war emergency, the governor may:

12 1. Suspend the provisions of any statute prescribing the procedure
13 for conduct of state business, or the orders or rules of any state agency,
14 if the governor determines and proclaims that strict compliance with the
15 provisions of any such statute, order or rule would in any way prevent,
16 hinder or delay mitigation of the effects of the emergency.

17 2. Commandeer and use any property, except for firearms or
18 ammunition or firearms or ammunition components, or personnel deemed
19 necessary in carrying out the responsibilities vested in the office of the
20 governor by this chapter as chief executive of this state, and thereafter
21 this state shall pay reasonable compensation for the property as follows:

22 (a) If property is taken for temporary use, the governor, within
23 ten days after the taking, shall determine the amount of compensation to
24 be paid for the property. If the property is returned in a damaged
25 condition, the governor, within ten days after its return, shall determine
26 the amount of compensation to be paid for such damage.

27 (b) If the governor deems it necessary for this state to take title
28 to property under this section, the governor shall then cause the owner of
29 the property to be notified thereof in writing by registered mail, postage
30 prepaid, and then cause a copy of the notice to be filed with the
31 secretary of state.

32 (c) If the owner refuses to accept the amount of compensation fixed
33 by the governor for the property referred to in subdivisions (a) and (b)
34 of this paragraph, the amount of compensation shall be determined by
35 appropriate proceedings in the superior court in the county where the
36 property was originally taken.

37 B. During a state of war emergency, the governor shall have
38 complete authority over all agencies of the state government and shall
39 exercise all police power vested in this state by the constitution and
40 laws of this state in order to effectuate the purposes of this chapter.

41 C. The powers granted to the governor by this chapter with respect
42 to a state of war emergency shall terminate if the legislature is not in
43 session and the governor, within twenty-four hours after the beginning of
44 such a state of war emergency, has not issued a call for an immediate

1 special session of the legislature for the purpose of legislating on
2 subjects relating to such a state of war emergency.

3 D. The governor may proclaim a state of emergency, which shall take
4 effect immediately in an area affected or likely to be affected if the
5 governor finds that circumstances described in section 26-301, paragraph
6 15 exist.

7 E. During a state of emergency:

8 1. The governor shall have complete authority over all agencies of
9 the state government and the right to exercise, within the area
10 designated, all police power vested in this state by the constitution and
11 laws of this state in order to effectuate the purposes of this chapter.

12 2. The governor may direct all agencies of the state government to
13 use and employ state personnel, equipment and facilities to perform any
14 activities designed to prevent or alleviate actual and threatened damage
15 due to the emergency. The governor may direct such agencies to provide
16 supplemental services and equipment to political subdivisions to restore
17 any services in order to provide for the health and safety of the citizens
18 of the affected area.

19 F. EXCEPT AS PROVIDED IN SUBSECTIONS G AND I OF THIS SECTION, the
20 powers granted to the governor by this chapter with respect to a state of
21 emergency shall terminate when the state of emergency has been terminated
22 by proclamation of the governor or by concurrent resolution of the
23 legislature declaring it at an end.

24 G. BEGINNING JANUARY 2, 2023, THE GOVERNOR MAY ISSUE AN INITIAL
25 PROCLAMATION WITH RESPECT TO A STATE OF EMERGENCY FOR A PUBLIC HEALTH
26 EMERGENCY AS DESCRIBED IN SECTION 36-787 FOR A PERIOD OF NOT MORE THAN
27 THIRTY DAYS. THE GOVERNOR MAY EXTEND THE STATE OF EMERGENCY FOR NOT MORE
28 THAN ONE HUNDRED TWENTY DAYS, BUT ANY EXTENSION MAY NOT BE FOR A PERIOD OF
29 MORE THAN THIRTY DAYS. THE STATE OF EMERGENCY SHALL TERMINATE AFTER ONE
30 HUNDRED TWENTY DAYS, UNLESS THE STATE OF EMERGENCY IS EXTENDED, IN WHOLE
31 OR IN PART, BY PASSAGE OF A CONCURRENT RESOLUTION OF THE LEGISLATURE. THE
32 LEGISLATURE MAY EXTEND THE STATE OF EMERGENCY AS MANY TIMES AS NECESSARY
33 BY CONCURRENT RESOLUTION, BUT ANY EXTENSION MAY NOT BE FOR A PERIOD OF
34 MORE THAN THIRTY DAYS. IF A STATE OF EMERGENCY FOR A PUBLIC HEALTH
35 EMERGENCY IS NOT EXTENDED PURSUANT TO THIS SUBSECTION, THE GOVERNOR MAY
36 NOT PROCLAIM A NEW STATE OF EMERGENCY BASED ON THE SAME CONDITIONS WITHOUT
37 THE PASSAGE OF A CONCURRENT RESOLUTION BY THE LEGISLATURE CONSENTING TO
38 THE NEW STATE OF EMERGENCY.

39 H. ON THE EXTENSION OF A STATE OF EMERGENCY FOR A PUBLIC HEALTH
40 EMERGENCY PURSUANT TO SUBSECTION G OF THIS SECTION, THE GOVERNOR SHALL
41 SUBMIT A WRITTEN REPORT TO A JOINT COMMITTEE OF THE HEALTH COMMITTEES OF
42 THE SENATE AND THE HOUSE OF REPRESENTATIVES, OR THEIR SUCCESSOR
43 COMMITTEES. AFTER THE FIRST SIXTY DAYS OF A PUBLIC HEALTH EMERGENCY, THE
44 DIRECTOR OF THE DEPARTMENT OF HEALTH SERVICES AND A REPRESENTATIVE OF THE
45 GOVERNOR'S OFFICE SHALL PROVIDE A BRIEFING TO THE JOINT COMMITTEE, AND THE

1 JOINT COMMITTEE SHALL GIVE THE EXTENSION OF THE PUBLIC HEALTH EMERGENCY A
2 FAVORABLE OR UNFAVORABLE REVIEW. THE JOINT COMMITTEE SHALL PROVIDE THE
3 JOINT COMMITTEE'S RECOMMENDATION TO ALL MEMBERS OF THE LEGISLATURE AND THE
4 GOVERNOR. THE OUTCOME OF THE JOINT COMMITTEE'S REVIEW SHALL BE
5 CONSPICUOUSLY POSTED ON THE GOVERNOR'S AND THE DEPARTMENT OF HEALTH
6 SERVICE'S PUBLIC WEBSITES.

7 I. EXCEPT AS PROVIDED IN SUBSECTION G OF THIS SECTION, A STATE OF
8 EMERGENCY MAY NOT CONTINUE FOR MORE THAN THIRTY DAYS UNLESS RENEWED BY THE
9 GOVERNOR. THE GOVERNOR MAY RENEW THE INITIAL STATE OF EMERGENCY FOR ONE
10 ADDITIONAL THIRTY-DAY PERIOD. TO EXTEND THE STATE OF EMERGENCY BEYOND
11 SIXTY DAYS, IF THE LEGISLATURE IS OUT OF SESSION, THE SPEAKER OF THE HOUSE
12 OF REPRESENTATIVES AND THE PRESIDENT OF THE SENATE SHALL RECALL THE
13 LEGISLATURE AND SHALL CONVENE A SPECIAL SESSION WITHOUT THE GOVERNOR'S
14 CONSENT, FOR A PERIOD OF THIRTY DAYS DURING ANY ADDITIONAL THIRTY-DAY
15 STATE OF EMERGENCY. THE GOVERNOR SHALL REQUEST THAT THE LEGISLATURE
16 EXTEND THE STATE OF EMERGENCY, AND THE REQUEST MUST INCLUDE THE SPECIFIC
17 REASONS FOR THE EXTENSION, THE REQUESTED LENGTH OF THE EXTENSION AND A
18 PLAN OF ACTION TO ADDRESS THE CONDITIONS THAT NECESSITATE THE EXTENSION OF
19 THE STATE OF EMERGENCY. THE GOVERNOR SHALL SUBMIT ALL SUBSEQUENT REQUESTS
20 FOR AN EXTENSION TO THE LEGISLATURE BEFORE THE EXPIRATION OF THE EXTENSION
21 THAT IS IN EFFECT. THE EXTENSION MEASURE MUST PASS THE LEGISLATURE BY A
22 TWO-THIRDS VOTE NOT LATER THAN FIVE CALENDAR DAYS AFTER RECEIVING THE
23 GOVERNOR'S REQUEST. IF THE LEGISLATURE FAILS TO CONSIDER THE REQUEST
24 WITHIN FIVE CALENDAR DAYS, THE STATE OF EMERGENCY IS AUTOMATICALLY
25 EXTENDED FOR AN ADDITIONAL THIRTY-DAY PERIOD, AND THE LEGISLATURE MUST
26 REMAIN IN SPECIAL SESSION WITHOUT THE CONSENT OF THE GOVERNOR UNTIL EITHER
27 THE STATE OF EMERGENCY HAS ENDED OR THE LEGISLATURE ENDS THE STATE OF
28 EMERGENCY BY A TWO-THIRDS VOTE. THE LEGISLATURE MAY LIMIT OR MODIFY THE
29 EMERGENCY POWERS GRANTED TO THE GOVERNOR BY A TWO-THIRDS VOTE. IF THE
30 GOVERNOR DECLARES A STATE OF EMERGENCY WHILE THE LEGISLATURE IS IN REGULAR
31 SESSION, THE LEGISLATURE MAY NOT ADJOURN OR SINE DIE EXCEPT BY A
32 TWO-THIRDS VOTE OR IF THE GOVERNOR ENDS THE STATE OF EMERGENCY.

33 ~~G.~~ J. This chapter does not limit, modify or abridge the powers
34 vested in the governor under the constitution or statutes of this state.

35 ~~H.~~ K. If authorized by the governor, the adjutant general has the
36 powers prescribed in this subsection. If, in the judgment of the adjutant
37 general, circumstances described in section 26-301, paragraph 15 exist,
38 the adjutant general may:

39 1. Exercise those powers pursuant to statute and gubernatorial
40 authorization following the proclamation of a state of emergency under
41 subsection D of this section.

42 2. Incur obligations of \$100,000 or less for each emergency or
43 contingency payable pursuant to section 35-192 as though a state of
44 emergency had been proclaimed under subsection D of this section.

1 ~~L.~~ L. The powers exercised by the adjutant general pursuant to
2 subsection ~~H~~ K of this section expire seventy-two hours after the
3 adjutant general makes a determination under subsection ~~H~~ K of this
4 section.

5 ~~J.~~ M. Pursuant to the second amendment of the United States
6 Constitution and article II, section 26, Constitution of Arizona, and
7 notwithstanding any other law, the emergency powers of the governor, the
8 adjutant general or any other official or person do not allow the
9 imposition of additional restrictions on the lawful possession, transfer,
10 sale, transportation, carrying, storage, display or use of firearms or
11 ammunition or firearms or ammunition components. A store that sells
12 firearms or ammunition, or firearms or ammunition components, is an
13 essential business and is protected from a qualified civil liability
14 action pursuant to section 12-721.

15 ~~K.~~ N. This section does not:

16 1. Prohibit the governor, the adjutant general or other officials
17 responding to an emergency from ordering the reasonable movement of stores
18 of ammunition out of the way of dangerous conditions.

19 2. Allow a state agency or a city, town or county to permanently
20 revoke any license held by a business or used to operate a business for
21 not complying with an order issued by the governor with respect to a state
22 of emergency proclaimed by the governor pursuant to section 36-787,
23 subsection A unless the state agency or the city, town or county can
24 demonstrate by clear and convincing evidence that the business caused the
25 transmission of the disease that is the subject of the order due to the
26 business's wilful misconduct or gross negligence.

27 ~~L.~~ O. Before a state agency, city, town or county suspends or
28 permanently revokes, pursuant to subsection ~~M~~ P of this section, a
29 license held by a business or used to operate a business, the state
30 agency, city, town or county shall provide the business with both of the
31 following:

32 1. A written notice of noncompliance delivered by personal service
33 or certified mail.

34 2. A written notice of intent to suspend or permanently revoke the
35 license at least thirty days after the date of the notice of noncompliance
36 provided pursuant to paragraph 1 of this subsection. The state agency,
37 city, town or county shall present any new evidence of grounds for
38 suspension or revocation in the written notice required by this
39 paragraph. A business that receives a notice pursuant to this paragraph
40 and disputes the claim shall respond to the state agency, city, town or
41 county within twenty days after receiving the notice.

42 ~~M.~~ P. Any dispute relating to the suspension or permanent
43 revocation of a license held by a business or used to operate a business
44 shall be resolved by a court of competent jurisdiction in this state. A
45 state agency, city, town or county may not suspend or permanently revoke a

1 license held by a business or used to operate a business until the
2 business has received both notices prescribed in subsection ~~0~~ of this
3 section and all appeals have been exhausted. The court may award
4 reasonable attorney fees and damages to a business in an action relating
5 to the suspension or permanent revocation of a license held by a business
6 or used to operate a business.

7 Sec. 3. Repeal

8 Section 35-192, Arizona Revised Statutes, as amended by Laws 2021,
9 chapter 405, section 9, is repealed.

10 Sec. 4. Section 35-192, Arizona Revised Statutes, as amended by
11 Laws 2016, chapter 128, section 51, is amended to read:

12 35-192. Authorization for declaration of disaster;
13 authorization for liabilities and expenses;
14 priorities and limitations; review and report of
15 expenditures

16 A. The governor may declare an emergency arising from major
17 disasters as provided in this section and incur liabilities therefor,
18 regardless of whether or not the legislature is in session.

19 B. When the governor, or the director of the division of emergency
20 management in the department of emergency and military affairs pursuant to
21 section 26-303, subsection ~~H~~ K, determines that a contingency or disaster
22 so justifies, and declares an emergency, specific liabilities and expenses
23 provided for in this section are authorized to be incurred against and to
24 be paid as claims against the state from unrestricted monies from the
25 general fund to mitigate and meet contingencies and emergencies arising
26 from:

- 27 1. Invasions, hostile attacks, riots or insurrections.
- 28 2. Epidemics of disease or plagues of insects.
- 29 3. Floods or floodwaters.
- 30 4. Acts of God or any major disaster.
- 31 5. Wildland fires, but only after all necessary authorizations
32 under section 37-1305 are exhausted.

33 C. When authorized by the governor, specific liabilities and
34 expenses provided for in this section may be incurred against and may be
35 paid as claims against the state from unrestricted monies from the general
36 fund to meet contingencies and emergencies arising from incidents relating
37 to hazardous materials as defined in section 26-301 and search or rescue
38 operations conducted pursuant to section 11-251.02, section 11-441,
39 subsection C or section 26-306 subject to the limitations provided in
40 section 35-192.01. Within ninety days after monies are awarded under this
41 section, the department of emergency and military affairs shall post in a
42 prominent location on the department's official website the amount of
43 monies awarded under this section, who received the monies and how the
44 monies were spent.

1 D. Liabilities and expenses authorized under subsection B of this
2 section may be incurred for any of the emergencies or contingencies
3 prescribed in subsection B of this section in the following order of
4 priority:

5 1. Reimbursement for expenses incurred to combat a menace to the
6 health, lives or property of any considerable number of persons of the
7 state, or to property of the state or its political subdivisions.

8 2. Reimbursement for expenses incurred to repair damage to any
9 property of the state.

10 3. Reimbursement for expenses incurred to repair damage to any
11 property of the political subdivisions of the state.

12 4. Reimbursement for expenses incurred in search or rescue
13 operations.

14 5. Reimbursement for expenses incurred in emergency or disaster
15 recovery activities or in matching federal disaster recovery programs.

16 6. Reimbursement for expenses for property loss mitigation measures
17 or to match federal property loss mitigation programs.

18 E. The auditor of the department of emergency and military affairs
19 shall review liabilities incurred and expenditures made under this section
20 and report to the state emergency council at ninety-day intervals during
21 the emergency and conduct a final review of each emergency within ninety
22 days after the termination of the emergency. The state emergency council
23 shall make a written report not later than September 1 of each year to the
24 legislature of the actions of the state emergency council during the
25 preceding fiscal year, including an itemized statement of expenditures for
26 each emergency during the year. The department of emergency and military
27 affairs shall post the report in a prominent location on the department's
28 official website.

29 F. All liabilities incurred under this section shall be subject to
30 the following limitations:

31 1. No liability shall be incurred against the monies authorized
32 without the approval of the governor, or the adjutant general pursuant to
33 section 26-303, subsection ~~H~~ K, for each contingency or emergency.

34 2. Incurring of liabilities in excess of ~~two hundred thousand~~
35 ~~dollars~~ \$200,000 in any single disaster or emergency shall not be made
36 without consent of a majority of the members of the state emergency
37 council.

38 3. The aggregate amount of all liabilities incurred under this
39 section shall not exceed ~~four million dollars~~ \$4,000,000 for any fiscal
40 year beginning July 1 through June 30. Monies authorized for disasters
41 and emergencies in prior fiscal years may be used in subsequent fiscal
42 years only for the disaster or emergency for which they were authorized.
43 Monies authorized for disasters and emergencies in prior fiscal years, and
44 expended in subsequent fiscal years for the disaster or emergency for
45 which they were authorized, apply toward the ~~four million dollar~~

1 \$4,000,000 liability limit for the fiscal year in which they were
2 authorized.

3 4. Notwithstanding the limitations in paragraph 3 of this
4 subsection, monies that were previously obligated but not used for a
5 declared emergency or disaster may be reallocated to an outstanding
6 obligation for another declared emergency or disaster and shall remain
7 available for expenditure for the outstanding obligation. The
8 reallocation of monies pursuant to this paragraph does not apply toward
9 the ~~four million dollar~~ \$4,000,000 liability limit of the fiscal year to
10 which the monies were reallocated or in which the monies are spent.

11 5. An obligation of monies under this section may be made only when
12 one or more of the following conditions exist:

13 (a) No appropriation or other authorization is available to meet
14 the contingency or emergency.

15 (b) An appropriation is insufficient to meet the contingency or
16 emergency.

17 (c) Federal monies available for such contingency or emergency
18 require the use of state or other public monies.

19 G. The director of the division of emergency management in the
20 department of emergency and military affairs shall develop rules for
21 administering the monies authorized for liabilities under this section,
22 subject to approval by the governor.