

REFERENCE TITLE: state of emergency; executive powers

State of Arizona
Senate
Fifty-fifth Legislature
Second Regular Session
2022

SB 1009

Introduced by
Senator Ugenti-Rita

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; 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4 chapter 405, section 8, is repealed.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 SUBSECTION G OF THIS SECTION, the powers
20 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 ~~G.~~ I. This chapter does not limit, modify or abridge the powers
8 vested in the governor under the constitution or statutes of this state.

9 ~~H.~~ J. If authorized by the governor, the adjutant general has the
10 powers prescribed in this subsection. If, in the judgment of the adjutant
11 general, circumstances described in section 26-301, paragraph 15 exist,
12 the adjutant general may:

13 1. Exercise those powers pursuant to statute and gubernatorial
14 authorization following the proclamation of a state of emergency under
15 subsection D of this section.

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

19 ~~I.~~ K. The powers exercised by the adjutant general pursuant to
20 subsection ~~H.~~ J of this section expire seventy-two hours after the
21 adjutant general makes a determination under subsection ~~H.~~ J of this
22 section.

23 ~~J.~~ L. Pursuant to the second amendment of the United States
24 Constitution and article II, section 26, Constitution of Arizona, and
25 notwithstanding any other law, the emergency powers of the governor, the
26 adjutant general or any other official or person do not allow the
27 imposition of additional restrictions on the lawful possession, transfer,
28 sale, transportation, carrying, storage, display or use of firearms or
29 ammunition or firearms or ammunition components. A store that sells
30 firearms or ammunition, or firearms or ammunition components, is an
31 essential business and is protected from a qualified civil liability
32 action pursuant to section 12-721.

33 ~~K.~~ M. This section does not:

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

37 2. Allow a state agency or a city, town or county to permanently
38 revoke any license held by a business or used to operate a business for
39 not complying with an order issued by the governor with respect to a state
40 of emergency proclaimed by the governor pursuant to section 36-787,
41 subsection A unless the state agency or the city, town or county can
42 demonstrate by clear and convincing evidence that the business caused the
43 transmission of the disease that is the subject of the order due to the
44 business's wilful misconduct or gross negligence.

1 ~~L~~ N. Before a state agency, city, town or county suspends or
2 permanently revokes, pursuant to subsection M of this section, a license
3 held by a business or used to operate a business, the state agency, city,
4 town or county shall provide the business with both of the following:
5 1. A written notice of noncompliance delivered by personal service
6 or certified mail.
7 2. A written notice of intent to suspend or permanently revoke the
8 license at least thirty days after the date of the notice of noncompliance
9 provided pursuant to paragraph 1 of this subsection. The state agency,
10 city, town or county shall present any new evidence of grounds for
11 suspension or PERMANENT revocation in the written notice required by this
12 paragraph. A business that receives a notice pursuant to this paragraph
13 and disputes the claim shall respond to the state agency, city, town or
14 county within twenty days after receiving the notice.
15 ~~M~~ O. Any dispute relating to the suspension or permanent
16 revocation of a license held by a business or used to operate a business
17 shall be resolved by a court of competent jurisdiction in this state. A
18 state agency, city, town or county may not suspend or permanently revoke a
19 license held by a business or used to operate a business until the
20 business has received both notices prescribed in subsection N of this
21 section and all appeals have been exhausted. The court may award
22 reasonable attorney fees and damages to a business in an action relating
23 to the suspension or permanent revocation of a license held by a business
24 or used to operate a business.