

REFERENCE TITLE: *in loco parentis; prohibition*

State of Arizona
Senate
Fifty-sixth Legislature
First Regular Session
2023

SB 1703

Introduced by
Senator Wadsack: Representatives Jones, McGarr

AN ACT

AMENDING SECTIONS 1-602, 15-101, 15-872, 23-235, 23-371, 36-673, 36-674
AND 36-725, ARIZONA REVISED STATUTES; REPEALING SECTION 44-133, ARIZONA
REVISED STATUTES; RELATING TO IN LOCO PARENTIS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 1-602, Arizona Revised Statutes, is amended to
3 read:

4 1-602. Parents' bill of rights; governmental interference
5 restricted; burden of proof; definition

6 A. All parental rights are exclusively reserved to a parent of a
7 minor child without obstruction or interference from this state, any
8 political subdivision of this state, any other governmental entity or any
9 other institution, including:

10 1. The right to direct the education of the minor child.

11 2. All rights of parents identified in title 15, including the
12 right to access and review all records relating to the minor child.

13 3. The right to direct the upbringing of the minor child.

14 4. The right to direct the moral or religious training of the minor
15 child.

16 5. The right to make all health care decisions for the minor child,
17 including rights pursuant to sections 15-873, 36-2271 and 36-2272, unless
18 otherwise prohibited by law.

19 6. The right to request, access and review all written and
20 electronic medical records of the minor child unless otherwise prohibited
21 by law or unless the parent is the subject of an investigation of a crime
22 committed against the minor child and a law enforcement official requests
23 that the information not be released.

24 7. The right to consent in writing before a biometric scan of the
25 minor child is made pursuant to section 15-109.

26 8. The right to consent in writing before any record of the minor
27 child's blood or deoxyribonucleic acid is created, stored or shared,
28 except as required by section 36-694, or before any genetic testing is
29 conducted on the minor child pursuant to section 12-2803 unless authorized
30 pursuant to section 13-610 or a court order.

31 9. The right to consent in writing before this state or any of its
32 political subdivisions makes a video or voice recording of the minor
33 child, unless the video or voice recording is made during or as a part of
34 a court proceeding, by law enforcement officers during or as part of a law
35 enforcement investigation, during or as part of an interview in a criminal
36 or child safety services investigation or to be used solely for any of the
37 following:

38 (a) Safety demonstrations, including the maintenance of order and
39 discipline in the common areas of a school or on pupil transportation
40 vehicles.

41 (b) A purpose related to a legitimate academic or extracurricular
42 activity.

43 (c) A purpose related to regular classroom instruction.

44 (d) Security or surveillance of buildings or grounds.

45 (e) A photo identification card.

1 10. The right to be notified promptly if an employee of this state,
2 any political subdivision of this state, any other governmental entity or
3 any other institution suspects that a criminal offense has been committed
4 against the minor child by someone other than a parent, unless the
5 incident has first been reported to law enforcement and notifying the
6 parent would impede a law enforcement or child safety services
7 investigation. This paragraph does not create any new obligation for
8 school districts and charter schools to report misconduct between students
9 at school, such as fighting or aggressive play, that is routinely
10 addressed as a student disciplinary matter by the school.

11 11. The right to obtain information about a child safety services
12 investigation involving the parent pursuant to section 8-807.

13 B. This section does not authorize or allow a parent to engage in
14 conduct that is unlawful or to abuse or neglect a child in violation of
15 the laws of this state. This section does not prohibit courts, law
16 enforcement officers or employees of a government agency responsible for
17 child welfare from acting in their official capacity within the scope of
18 their authority. This section does not prohibit a court from issuing an
19 order that is otherwise allowed by law.

20 C. Any attempt to encourage or coerce a minor child to withhold
21 information from the child's parent is grounds for discipline of an
22 employee of this state, any political subdivision of this state, any other
23 governmental entity or any other institution, except for law enforcement
24 personnel.

25 D. Unless those rights have been legally waived or legally
26 terminated, parents have inalienable rights that are more comprehensive
27 than those listed in this section. This chapter does not prescribe all
28 rights of parents or preempt or foreclose claims or remedies in support of
29 parental rights that are available under the constitution, statutes or
30 common law of this state. Unless otherwise required by law, the rights of
31 parents of minor children shall not be limited or denied. **UNLESS**
32 **OTHERWISE REQUIRED BY LAW, AN EMPLOYEE OF THIS STATE, OF ANY POLITICAL**
33 **SUBDIVISION OF THIS STATE, OF ANY OTHER GOVERNMENTAL ENTITY OR OF ANY**
34 **OTHER INSTITUTION MAY NOT STAND IN LOCO PARENTIS TO A PARENT'S CHILD**
35 **WITHOUT THE PARENT'S CONSENT.**

36 E. Except as prescribed in subsections F and G of this section,
37 this state, a political subdivision of this state or any other
38 governmental entity, or any official of this state, a political
39 subdivision of this state or any other governmental entity acting under
40 color of law, shall not interfere with or usurp the fundamental right of
41 parents to direct the upbringing, education, health care and mental health
42 of their children. A parent may bring suit against a governmental entity
43 or official described in this subsection based on any violation of the
44 statutory rights set forth in this chapter or any other action that
45 interferes with or usurps the fundamental right of parents to direct the

1 upbringing, education, health care and mental health of their children in
2 the superior court in the county in which the violation or other action
3 occurs or in federal court, if authorized by federal law, or before an
4 administrative tribunal of appropriate jurisdiction. A parent may raise a
5 violation of this chapter as a claim or a defense.

6 F. In any action under subsection E of this section, the
7 governmental entity or official described in subsection E of this section
8 has the burden of proof to demonstrate both of the following:

9 1. That the interference or usurpation is essential to accomplish a
10 compelling government interest of the highest order, as long recognized in
11 the history and traditions of this state in the operation of its
12 regulatory powers.

13 2. That the method of interference or usurpation used by the
14 government is narrowly tailored and is not otherwise served by a less
15 restrictive means.

16 G. A governmental entity or official described in subsection E of
17 this section may interfere with or usurp the fundamental right of parents
18 to direct the upbringing, education, health care and mental health of
19 their children only if the governmental entity or official successfully
20 demonstrates both elements described in subsection F of this section. If
21 the governmental entity or official is unsuccessful, the court shall grant
22 appropriate relief, such as declaratory or injunctive relief, compensatory
23 damages and attorney fees, based on the facts of the case and the law as
24 applied to the facts.

25 H. For the purposes of this section, "parent" means the natural or
26 adoptive parent or legal guardian of a minor child.

27 Sec. 2. Section 15-101, Arizona Revised Statutes, is amended to
28 read:

29 15-101. Definitions

30 In this title, unless the context otherwise requires:

31 1. "Accommodation school" means either:

32 (a) A school that is operated through the county board of
33 supervisors and the county school superintendent and that the county
34 school superintendent administers to serve a military reservation or
35 territory that is not included within the boundaries of a school district.

36 (b) A school that provides educational services to homeless
37 children or alternative education programs as provided in section 15-308,
38 subsection B.

39 (c) A school that is established to serve a military reservation,
40 the boundaries of which are coterminous with the boundaries of the
41 military reservation on which the school is located.

42 2. "Assessed valuation" means the valuation derived by applying the
43 applicable percentage as provided in title 42, chapter 15, article 1 to
44 the full cash value or limited property value, whichever is applicable, of
45 the property.

1 3. "Charter holder" means a person that enters into a charter with
2 the state board for charter schools. For the purposes of this paragraph,
3 "person" means an individual, partnership, corporation, association or
4 public or private organization of any kind.

5 4. "Charter school" means a public school established by contract
6 with the state board of education, the state board for charter schools, a
7 university under the jurisdiction of the Arizona board of regents, a
8 community college district or a group of community college districts
9 pursuant to article 8 of this chapter to provide learning that will
10 improve ~~pupit~~ STUDENT achievement.

11 5. "Child with a disability" means a child with a disability as
12 defined in section 15-761.

13 6. "Class A bonds" means general obligation bonds approved by a
14 vote of the qualified electors of a school district at an election held on
15 or before December 31, 1998.

16 7. "Class B bonds" means general obligation bonds approved by a
17 vote of the qualified electors of a school district at an election held
18 from and after December 31, 1998.

19 8. "Competency" means a demonstrated ability in a skill at a
20 specified performance level.

21 9. "Course" means organized subject matter in which instruction is
22 offered within a given period of time and for which credit toward
23 promotion, graduation or certification is usually given. A course
24 consists of knowledge selected from a subject for instructional purposes
25 in the schools.

26 10. "Course of study" means a list of required and optional
27 subjects to be taught in the schools.

28 11. "Dual enrollment course" means a college-level course that is
29 conducted on the campus of a high school or on the campus of a career
30 technical education district, that is applicable to an established
31 community college academic degree or certificate program and that is
32 transferable to a university under the jurisdiction of the Arizona board
33 of regents. A dual enrollment course that is applicable to a community
34 college occupational degree or certificate program may be transferable to
35 a university under the jurisdiction of the Arizona board of regents.

36 12. "Elementary grades" means kindergarten programs and grades one
37 through eight.

38 13. "Fiscal year" means the year beginning July 1 and ending
39 June 30.

40 14. "Governing board" means a body ~~government~~ THAT IS organized ~~for the~~
41 ~~management of~~ TO GOVERN and ~~management of~~ MANAGE the schools within a school
42 district or a county school superintendent in ~~the conduct of~~ CONDUCTING an
43 accommodation school.

44 15. "Lease" means an agreement for ~~conveyance~~ CONVEYING and
45 ~~possession of~~ POSSESSING real or personal property.

1 16. "Limited property value" means the value determined pursuant to
2 title 42, chapter 13, article 7. ~~Limited property value shall be~~ THAT IS
3 used as the basis for assessing, fixing, determining and levying primary
4 property taxes.

5 17. "Nontest" means not relating to knowledge or skills in reading,
6 writing, mathematics, social studies, science or any other course.

7 18. "Parent" means the natural or adoptive parent of a child or a
8 person who has custody of a child.

9 19. "Person who has custody" means a parent or legal guardian of a
10 child, ~~OR~~ OR a person to whom custody of the child has been given by order
11 of a court ~~or a person who stands in loco parentis to the child.~~

12 20. "Primary property taxes" means all ad valorem taxes except for
13 secondary property taxes.

14 21. "Private school" means a nonpublic institution where
15 instruction is imparted.

16 22. "School" or "public school" means any public institution
17 established for the purposes of offering instruction to ~~pupils~~ STUDENTS in
18 programs for preschool children with disabilities, kindergarten programs
19 or any combination of elementary grades or secondary grades one through
20 twelve.

21 23. "School district" means a political subdivision of this state
22 with geographic boundaries organized ~~for the purpose of the administration~~
23 TO ADMINISTER, support and ~~maintenance of~~ MAINTAIN the public schools or
24 an accommodation school.

25 24. "Secondary grades" means grades nine through twelve.

26 25. "Secondary property taxes" means ad valorem taxes used to pay
27 the principal of and the interest and redemption charges on any bonded
28 indebtedness or other lawful long-term obligation issued or incurred for a
29 specific purpose by a school district or a community college district and
30 amounts levied pursuant to an election to exceed a budget, expenditure or
31 tax limitation.

32 26. "Subject" means a division or field of organized knowledge,
33 such as English or mathematics, or a selection from an organized body of
34 knowledge for a course or teaching unit, such as the English novel or
35 elementary algebra.

36 Sec. 3. Section 15-872, Arizona Revised Statutes, is amended to
37 read:

38 15-872. Proof of immunization; noncompliance; notice to
39 parents; civil immunity

40 A. The director of the department of health services, in
41 consultation with the superintendent of public instruction, shall develop
42 by rule standards for documentary proof.

43 B. A ~~pupil~~ STUDENT shall not be allowed to attend school without
44 submitting documentary proof to the school administrator unless the ~~pupil~~
45 STUDENT is exempted from immunization pursuant to section 15-873.

1 C. Each public school shall make full disclosure of the
2 requirements and exemptions as prescribed in this section and section
3 15-873.

4 D. On enrollment, the school administrator shall suspend that ~~pupit~~
5 STUDENT if the administrator does not have documentary proof and the ~~pupit~~
6 STUDENT is not exempted from immunization pursuant to section 15-873.

7 E. Notwithstanding subsections B and D of this section, a ~~pupit~~
8 STUDENT may be admitted to or allowed to attend a school if the ~~pupit~~
9 STUDENT has received at least one dose of each of the required
10 immunizations prescribed pursuant to section 36-672 and has established a
11 schedule for ~~the completion of~~ COMPLETING required immunizations. The
12 parent, ~~OR~~ guardian ~~or person in loco parentis~~ of a ~~pupit~~ STUDENT shall
13 present to the school administrator documentary proof of the immunizations
14 received and a schedule prepared by the ~~pupit's~~ STUDENT'S physician or
15 registered nurse practitioner or a health agency for ~~completion of~~
16 COMPLETING additional required immunizations.

17 F. The school administrator shall review the school immunization
18 record for each ~~pupit~~ STUDENT admitted or allowed to continue attendance
19 pursuant to subsection E of this section at least twice each school year
20 until the ~~pupit~~ STUDENT receives all of the required immunizations and
21 shall suspend a ~~pupit~~ STUDENT as prescribed in subsection G of this
22 section who fails to comply with the immunization schedule. Immunizations
23 received by a ~~pupit~~ STUDENT shall be entered in the ~~pupit's~~ STUDENT'S
24 school immunization record.

25 G. Unless proof of an exemption from immunization pursuant to
26 section 15-873 is provided, a ~~pupit~~ STUDENT who is admitted or allowed to
27 continue to attend and who fails to comply with the immunization schedule
28 within the time intervals specified by the schedule shall be suspended
29 from school attendance until documentary proof of the administration of
30 another dose of each appropriate immunizing agent is provided to the
31 school administrator.

32 H. ~~The provisions of~~ Subsections B, D and E of this section do not
33 apply to homeless ~~pupit's~~ STUDENTS until the fifth calendar day after
34 enrollment.

35 I. A school and its employees are immune from civil liability for
36 decisions concerning the admission, readmission and suspension of a ~~pupit~~
37 STUDENT that are based on a good faith implementation of the requirements
38 of this article.

39 Sec. 4. Section 23-235, Arizona Revised Statutes, is amended to
40 read:

41 23-235. Exemptions

42 A. Sections 23-231, 23-232 and 23-233 do not apply to persons:

43 1. WHO ARE employed by a grandparent, brother, sister, aunt, uncle,
44 first cousin, stepparent or parent, including a relative of the same
45 degree through marriage or adoption, ~~or person in loco parentis~~ in

1 occupations in which the grandparent, brother, sister, aunt, uncle, first
2 cousin, stepparent or parent ~~or person in loco parentis~~ owns at least ten
3 percent of the employing organization and such owner is actively engaged
4 in the daily operation of the organization, if either:

5 (a) The person is under eighteen years of age and is not engaged in
6 manufacturing or mining occupations.

7 (b) The person is between sixteen and eighteen years of age and is
8 engaged in manufacturing or mining occupations.

9 2. WHO ARE employed as stars or performers in motion picture,
10 theatrical, radio or television productions if before the beginning of
11 production the production company provides the department of labor of the
12 industrial commission with the name and address of the person, the length,
13 location and hours of employment and any other information required by the
14 department.

15 3. WHO ARE involved in career education programs.

16 4. WHO ARE involved in vocational or technical training school
17 programs pursuant to title 15, chapter 7, article 5.

18 5. WHO ARE employed as apprentices and registered by the bureau of
19 apprenticeship and training of the United States department of labor in
20 accordance with the standards established by that bureau or registered by
21 the apprenticeship council or employed under a written apprenticeship
22 agreement and conditions that are found by the secretary of labor to
23 conform substantially with such federal or state standards.

24 6. WHO ARE trained under either the 4-H federal extension service
25 or the United States office of education vocational agriculture training
26 programs, if employed outside school hours on the equipment for which they
27 have been trained.

28 7. Who have completed vocational or career education programs
29 approved by the department of education if the programs are directly
30 related to the prohibited occupation or employment or if working in the
31 prohibited occupation is part of the vocational or career education
32 program.

33 8. Who are married.

34 9. Who have a high school diploma or its equivalent.

35 10. Who are minors and who have been emancipated pursuant to
36 title 12, chapter 15.

37 B. Sections 23-231 and 23-232 do not apply to:

38 1. The operation of power-driven equipment used in the care and
39 maintenance of lawns and shrubbery not connected to retail, food service
40 and gasoline service establishments.

41 2. Clerical employment in an office in which duties are performed
42 without exposure to the hazards described or defined in this article.

1 Sec. 5. Subject to the requirements of article IV, part 1,
2 section 1, Constitution of Arizona, section 23-371, Arizona Revised
3 Statutes, is amended to read:

4 23-371. Definitions

5 ~~For purposes of~~ IN this article, UNLESS THE CONTEXT OTHERWISE
6 REQUIRES:

7 ~~A.~~ 1. "Abuse" means an offense prescribed in section
8 13-3623, ~~Arizona Revised Statutes~~.

9 ~~B.~~ 2. "Commission" ~~is as defined~~ HAS THE SAME MEANING PRESCRIBED
10 in section 23-362, ~~Arizona Revised Statutes~~.

11 ~~C.~~ 3. "Domestic violence" ~~is as defined~~ HAS THE SAME MEANING
12 PRESCRIBED in section 13-3601, ~~Arizona Revised Statutes~~.

13 ~~D.~~ 4. "Earned paid sick time" means time that is compensated at
14 the same hourly rate and with the same benefits, including health care
15 benefits, as the employee normally earns during hours worked and THAT is
16 provided by an employer to an employee for the purposes described in
17 section 23-373 ~~of this article~~, but in no cases shall this hourly amount be
18 less than that provided under the Fair Labor Standards Act of 1938 (29
19 United States Code section 206(A)(1)) or section 23-363, ~~Arizona Revised~~
20 ~~Statutes~~.

21 ~~E.~~ 5. "Employ" ~~is as defined~~ HAS THE SAME MEANING PRESCRIBED in
22 section 23-362, ~~Arizona Revised Statutes~~.

23 ~~F.~~ 6. "Employee" ~~is as defined~~ HAS THE SAME MEANING PRESCRIBED in
24 section 23-362, ~~Arizona Revised Statutes~~. ~~Employee~~ AND includes
25 recipients of public benefits who are engaged in work activity as a
26 condition of receiving public assistance.

27 ~~G.~~ 7. "Employer" includes any corporation, proprietorship,
28 partnership, joint venture, limited liability company, trust, association,
29 political subdivision of ~~the~~ THIS state, individual or other entity acting
30 directly or indirectly in the interest of an employer in relation to an
31 employee, but does not include the State of Arizona or the United States.

32 ~~H.~~ 8. "Family member" means:

33 ~~I.~~ (a) Regardless of age, a biological, adopted or foster child,
34 stepchild, ~~or~~ legal ward, ~~a~~ OR child of a domestic partner. ~~, a child to~~
35 ~~whom the employee stands in loco parentis, or an individual to whom the~~
36 ~~employee stood in loco parentis when the individual was a minor;~~

37 ~~J.~~ (b) A biological, foster, stepparent or adoptive parent or
38 legal guardian of an employee or an employee's spouse or domestic partner.
39 ~~or a person who stood in loco parentis when the employee or employee's~~
40 ~~spouse or domestic partner was a minor child;~~

41 ~~K.~~ (c) A person to whom the employee is legally married under the
42 laws of any state, or a domestic partner of an employee as registered
43 under the laws of any state or political subdivision;

1 ~~4.~~ (d) A grandparent, grandchild or sibling, ~~(whether of a~~
2 biological, foster, adoptive or ~~step-relationship)~~ STEP-RELATIONSHIP, of
3 the employee or the employee's spouse or domestic partner. ~~;~~ ~~OR~~

4 ~~5.~~ (e) Any other individual related by blood or affinity whose
5 close association with the employee is the equivalent of a family
6 relationship.

7 ~~9.~~ "Retaliation" ~~is as defined~~ HAS THE SAME MEANING PRESCRIBED
8 in section 23-364, ~~Arizona Revised Statutes.~~

9 ~~10.~~ "Sexual violence" means an offense prescribed in:

10 (a) Title 13, chapter 14, ~~Arizona Revised Statutes,~~ except for
11 sections 13-1408 and 13-1422. ~~;~~ ~~OR~~

12 (b) ~~Sections 13-1304(A)(3),~~ SECTION 13-1304, SUBSECTION A, PARAGRAPH
13 3 OR SECTION 13-1307, 13-3019, 13-3206, 13-3212, 13-3552, 13-3553,
14 13-3554, ~~or 13-3560,~~ ~~Arizona Revised Statutes.~~

15 ~~11.~~ "Stalking" means an offense prescribed in section
16 13-2923, ~~Arizona Revised Statutes.~~

17 ~~12.~~ "Year" means a regular and consecutive ~~12-month~~
18 TWELVE-MONTH period as determined by the employer.

19 Sec. 6. Section 36-673, Arizona Revised Statutes, is amended to
20 read:

21 36-673. Duties of local health departments; immunization;
22 reimbursement; training; informed consent

23 A. A local health department in cooperation with each school within
24 the county shall provide for the required immunization of ~~pupils~~ STUDENTS
25 attending school.

26 B. A local health department shall provide immunizations required
27 for school attendance at no cost to the ~~pupil~~ STUDENT or ~~pupil's~~ STUDENT'S
28 parent, ~~OR~~ guardian ~~or person in loco parentis.~~ In order to receive
29 reimbursement for the cost of the immunization from the ~~pupil's~~ STUDENT'S
30 or parent's private health insurance coverage, the local health department
31 may enter into a contract governing the terms of reimbursement and claims
32 with the corresponding private health care insurer. The local health
33 department may enter into a contract with a private health care insurer on
34 its own, in conjunction with other local health departments or through a
35 qualified intermediary. If the local health department chooses not to
36 contract with a private health care insurer, or does not respond to the
37 request to contract from a private health care insurer within ninety days
38 ~~of~~ AFTER the request, the insurer is not required to reimburse the local
39 health department for the immunization. If a private health care insurer
40 declines or does not respond to a request to contract with a local health
41 department, with a coalition of other local health departments or through
42 a qualified intermediary within ninety days ~~of~~ AFTER the request to
43 contract, the private health care insurer must reimburse the local health
44 department at the rate paid to an in-network provider.

1 C. A local health department, on request by a school nurse and
2 approval by the school administrator, shall train and authorize the school
3 nurse to administer required immunizations.

4 D. A ~~pupit~~ STUDENT shall not be immunized without the informed
5 consent of the parent, ~~OR guardian or person in loco parentis~~ of the
6 ~~pupit~~ STUDENT. A ~~pupit~~ STUDENT who is at least eighteen years of age or
7 is emancipated may consent to immunization.

8 Sec. 7. Section 36-674, Arizona Revised Statutes, is amended to
9 read:

10 36-674. Providing proof of immunization

11 A physician, local health department or school nurse administering
12 an immunization shall furnish documentary proof of immunization to the
13 person immunized or, if that person is a child, to the child's parent or
14 guardian ~~or the person in loco parentis of the child.~~

15 Sec. 8. Section 36-725, Arizona Revised Statutes, is amended to
16 read:

17 36-725. Orders to cooperate; emergency custody

18 A. If the tuberculosis control officer or the local health officer
19 knows or has reasonable grounds to believe someone is an afflicted person
20 who endangers another person or the community and the afflicted person
21 fails or refuses to comply with voluntary examination, monitoring,
22 treatment, isolation or quarantine, the tuberculosis control officer or
23 the local health officer shall issue a written order to cooperate to the
24 afflicted person or, if **THE AFFLICTED PERSON IS** a minor or incapacitated
25 person, the afflicted person's parent or guardian that requires the
26 afflicted person to cooperate with all intervention efforts to prevent and
27 control the transmission of the disease. The order may require the
28 afflicted person to participate in education, counseling, examination,
29 medical treatment and supervision programs and to undergo medical tests
30 for monitoring and to verify the afflicted person's status.

31 B. In urgent circumstances an order to cooperate may be an oral
32 statement followed by the issuance of a written order by the end of the
33 next business day. For the purposes of this subsection, "urgent
34 circumstances" means those situations when the tuberculosis control
35 officer or the local health officer determines the issuance of a written
36 order to be reasonably impractical due to circumstances beyond the control
37 of the officer, including inaccessibility, dangerous conditions or the
38 threat of physical violence.

39 C. An order to cooperate shall be individual and specific and shall
40 not be issued to a class of persons. The order shall be served on the
41 afflicted person or, if **THE AFFLICTED PERSON IS** a minor or incapacitated
42 person, the afflicted person's parent or guardian by a person who is
43 employed by or under contract to the department, the tuberculosis control
44 officer or the local health officer or by any sheriff, peace officer or
45 person authorized to serve process. If personal service cannot be

1 performed despite the exercise of due diligence, the order may be served
2 by certified mail, return receipt requested. An affidavit of service that
3 details the procedures followed in serving the order shall be prepared and
4 maintained in the case file of the tuberculosis control officer or the
5 local health officer.

6 D. An order to cooperate issued pursuant to this section shall
7 include a statement that, unless the afflicted person complies with the
8 actions required in the order, the tuberculosis control officer or the
9 local health officer may order the afflicted person to be taken into
10 emergency custody and shall seek a court order for compulsory examination,
11 monitoring, treatment, isolation or quarantine. The order to cooperate
12 shall also state that if a court order is sought, the afflicted person to
13 whom the order is issued has the right to notice and a hearing and other
14 rights as provided by law.

15 E. If the afflicted person refuses to comply with an order issued
16 pursuant to this section or if the tuberculosis control officer or local
17 health officer knows that an afflicted person has previously failed or
18 refused to comply with an appropriate prescribed course of medication,
19 treatment or monitoring, and if the tuberculosis control officer or the
20 local health officer has reasonable grounds to believe that the afflicted
21 person poses a substantial danger to another person or the community and
22 that emergency custody is necessary to prevent a substantial danger to
23 another person or the community, the tuberculosis control officer or the
24 local health officer may issue an emergency custody order directing a
25 sheriff or law enforcement officer to take the afflicted person into
26 custody, to take precautions reasonable and necessary under the
27 circumstances to protect the health of law enforcement officers and to
28 oversee and ensure the transport of the afflicted person to an institution
29 or facility specified in the order. If the afflicted person's condition
30 or the institution's or facility's location or hours make transportation
31 impracticable, the afflicted person shall be transported to an institution
32 or facility designated by the department, the tuberculosis control officer
33 or the local health officer. The order may be an oral order followed by
34 the issuance of a written order by the end of the next business day. The
35 receiving institution or facility shall provide suitable housing and care
36 of the afflicted person. At the option of the tuberculosis control
37 officer or the local health officer, an afflicted person may be
38 transported by a health care provider, emergency medical services
39 personnel, a physician, ambulance personnel, an ambulance service, A
40 guardian, A conservator, A parent, A custodian, A relative or A friend to
41 a designated institution or facility. A sheriff or law enforcement agency
42 shall maintain custody of the afflicted person until the afflicted person
43 is delivered to the institution or facility specified in the order or to
44 an alternate institution or facility approved by the department, the
45 tuberculosis control officer or the local health officer.

1 F. The admitting officer of an institution or facility that
2 receives an afflicted person pursuant to subsection E of this section
3 shall admit the afflicted person as an emergency patient and shall perform
4 an examination to determine if the afflicted person must be isolated.

5 G. An afflicted person admitted pursuant to an emergency custody
6 order shall be released from custody if the medical director of the
7 receiving institution or facility, with the advice and consent of the
8 tuberculosis control officer or a local health officer, determines that
9 the afflicted person is any of the following:

10 1. Not afflicted with active tuberculosis.

11 2. Not a danger to another person or to the community and release
12 is appropriate.

13 3. Qualified for release as a voluntary patient.

14 H. If an afflicted person is admitted pursuant to an emergency
15 custody order, the tuberculosis control officer, the local health officer
16 or a designated legal representative shall file a petition for public
17 health protection within three business days after the detention unless
18 the afflicted person has been accepted as a voluntary patient. The
19 petition shall conform to the requirements of section 36-726.

20 I. At the time an afflicted person is taken into emergency custody
21 pursuant to this section, the tuberculosis control officer or local health
22 officer, within the limits of due diligence, shall promptly notify the
23 afflicted person's physician, parent or guardian or an adult member of the
24 afflicted person's family of the detention. The notification shall
25 include the location of the detention, the terms and conditions of custody
26 and the authority that ordered the afflicted person's detention. An
27 afflicted person detained under this section or, if **THE AFFLICTED PERSON**
28 **IS** a minor or incapacitated person, the afflicted person's parent or
29 guardian shall be informed by the tuberculosis control officer or the
30 local health officer of the afflicted person's rights under this article,
31 including the right to consult with an attorney and the right to have an
32 attorney appointed by the court if the afflicted person cannot afford to
33 employ an attorney. The afflicted person or, if **THE AFFLICTED PERSON IS** a
34 minor or incapacitated person, the afflicted person's parent or guardian
35 shall also be advised that if a petition for public health protection is
36 filed the court shall appoint an attorney to consult with and to represent
37 the afflicted person if the afflicted person cannot afford to employ an
38 attorney.

39 J. If the afflicted person is a minor or incapacitated person, the
40 tuberculosis control officer or local health officer shall use reasonable
41 efforts to locate, contact and confer with a parent or guardian ~~prior to~~
42 **BEFORE** initiating an intervention pursuant to this article.

43 K. ~~In the event~~ **IF** a parent or guardian of an afflicted person who
44 is a minor or an incapacitated person cannot be located or the parent or
45 guardian is unwilling to consent to a recommended intervention pursuant to

1 this article, the tuberculosis control officer or local health officer,
2 for the purpose of protecting the public health, may initiate any
3 intervention that does not prescribe medical treatment for the minor or
4 the incapacitated person unless medical treatment is otherwise authorized
5 by section 14-5209, 14-5312, ~~OR 44-132 or 44-133~~.

6 L. A petition for public health protection shall be filed with the
7 clerk of the superior court within three business days after the afflicted
8 person's emergency detention authorized pursuant to an order of the
9 tuberculosis control officer or the local health officer. A petition
10 filed pursuant to this subsection shall conform to the requirements of
11 section 36-726. If a petition for public health protection is not filed
12 within three business days after the detention, the afflicted person shall
13 be immediately released from custody. An afflicted person who is released
14 for this reason shall not be returned to emergency custody by a subsequent
15 order unless the tuberculosis control officer or the local health officer
16 first obtains an order from the superior court that ~~permits~~ **ALLOWS**
17 detention pursuant to this article.

18 M. This section does not allow a private or public facility or
19 agency to forcibly or involuntarily administer medications to an afflicted
20 person unless authorized by the written order of the superior court
21 pursuant to this article or as otherwise permitted by law.

22 Sec. 9. Repeal

23 Section ~~44-133~~, Arizona Revised Statutes, is repealed.

24 Sec. 10. Requirements for enactment; three-fourths vote

25 Pursuant to article IV, part 1, section 1, Constitution of Arizona,
26 section 23-371, Arizona Revised Statutes, as amended by this act, is
27 effective only on the affirmative vote of at least three-fourths of the
28 members of each house of the legislature.