

REFERENCE TITLE: sober living; residential care; penalties

State of Arizona
Senate
Fifty-sixth Legislature
Second Regular Session
2024

SB 1604

Introduced by
Senator Hatathlie

AN ACT

AMENDING SECTIONS 36-414, 36-431.01 AND 36-431.02, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 4, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 36-431.03; AMENDING SECTION 36-2063, ARIZONA REVISED STATUTES; RELATING TO RESIDENTIAL CARE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 36-414, Arizona Revised Statutes, is amended to
3 read:

4 36-414. Health services licensing fund; exemption

5 A. The health services licensing fund is established consisting of
6 monies deposited pursuant to sections 30-654, 32-1308, 32-2805, 36-405,
7 36-431.01, 36-765.05, 36-766.06, 36-851.01, 36-882, 36-897.01, ~~and~~ 36-1903
8 AND 36-2063. The department of health services shall administer the fund.

9 B. Monies in the fund are subject to legislative appropriation.

10 C. Monies in the fund are exempt from the provisions of section
11 35-190 relating to lapsing of appropriations.

12 Sec. 2. Section 36-431.01, Arizona Revised Statutes, is amended to
13 read:

14 36-431.01. Civil penalties; violations; classification;
15 enforcement; use of monies

16 A. The director ~~may~~ SHALL assess a civil penalty against a person
17 who violates this chapter or a rule adopted pursuant to this chapter in an
18 amount of ~~not to exceed five hundred dollars~~ AT LEAST \$5,000 AND NOT MORE
19 THAN \$10,000 for each violation. Each day that a violation occurs
20 constitutes a separate violation.

21 B. The director ~~may~~ SHALL issue a notice of assessment that shall
22 include the ~~proposed~~ amount of the assessment. A person may appeal the
23 assessment by requesting a hearing pursuant to title 41, chapter 6,
24 article 10. When an assessment is appealed, the director shall take no
25 further action to enforce and collect the assessment until after the
26 hearing.

27 C. In determining the AMOUNT OF THE civil penalty pursuant to
28 subsection A of this section, the department shall consider the following:

- 29 1. Repeated violations of statutes or rules.
- 30 2. Patterns of noncompliance.
- 31 3. Types of violations.
- 32 4. THE severity of violations.
- 33 5. THE potential for and occurrences of actual harm.
- 34 6. Threats to health and safety.
- 35 7. THE number of persons affected by the violations.
- 36 8. THE number of violations.
- 37 9. THE size of the facility.
- 38 10. THE length of time that the violations have been occurring.
- 39 11. THE NUMBER OF INJURIES CAUSED.
- 40 12. THE SEVERITY OF THE INJURIES CAUSED.
- 41 13. THE NUMBER OF DEATHS CAUSED.
- 42 14. THE CAUSE OF DEATHS.

43 D. Pursuant to interagency agreement specified in section 36-409,
44 the director ~~may~~ SHALL assess a civil penalty, including interest, in
45 accordance with 42 United States Code section 1396r. A person may appeal

1 this assessment by requesting a hearing before the director in accordance
2 with subsection B of this section. Civil penalty amounts may be
3 established by rules adopted by the director that conform to guidelines or
4 regulations adopted by the secretary of the United States department of
5 health and human services pursuant to 42 United States Code section 1396r.

6 E. Actions to enforce the collection of penalties assessed pursuant
7 to subsections A and D of this section shall be brought by the attorney
8 general or the county attorney in the name of the state in the justice
9 court or the superior court in the county in which the violation occurred.

10 F. Penalties assessed under subsection D of this section are in
11 addition to and not in limitation of other penalties imposed pursuant to
12 this chapter. All civil penalties and interest assessed pursuant to
13 subsection D of this section shall be deposited, **PURSUANT TO SECTIONS**
14 **35-146 AND 35-147**, in the nursing care institution resident protection
15 revolving fund established by section 36-431.02. The director shall use
16 these monies for the purposes prescribed by 42 United States Code section
17 1396r, including payment for the costs of relocation of residents to other
18 facilities, maintenance of operation of a facility pending correction of
19 the deficiencies or closure and reimbursement of residents for personal
20 monies lost.

21 **G. A RESIDENTIAL CARE INSTITUTION THAT OPERATES IN THIS STATE**
22 **WITHOUT A LICENSE IN VIOLATION OF THIS CHAPTER IS GUILTY OF A CLASS 6**
23 **FELONY AND THE DIRECTOR SHALL ASSESS A CIVIL PENALTY OF AT LEAST \$5,000**
24 **AND NOT MORE THAN \$10,000 FOR EACH VIOLATION. EACH DAY THE RESIDENTIAL**
25 **CARE INSTITUTION OPERATES WITHOUT A LICENSE IS A SEPARATE VIOLATION.**

26 ~~G.~~ H. The department shall ~~transmit~~ **DEPOSIT** penalties assessed
27 under ~~subsection A of~~ this section ~~to~~ **IN** the ~~state general fund~~ **FOLLOWING**
28 **FUNDS AS FOLLOWS:**

29 1. **EIGHTY PERCENT IN THE INDIGENOUS PEOPLES PROTECTION REVOLVING**
30 **FUND ESTABLISHED BY SECTION 36-431.03.**

31 2. **FIVE PERCENT IN THE HEALTH SERVICES LICENSING FUND ESTABLISHED**
32 **BY SECTION 36-414. THE DEPARTMENT SHALL USE THE MONIES DEPOSITED IN THE**
33 **HEALTH SERVICES LICENSING FUND PURSUANT TO THIS PARAGRAPH FOR INSPECTIONS**
34 **AND ENFORCEMENT RELATING TO RESIDENTIAL CARE INSTITUTIONS.**

35 3. **FIFTEEN PERCENT IN THE NURSING CARE INSTITUTION RESIDENT**
36 **PROTECTION REVOLVING FUND ESTABLISHED BY SECTION 36-431.02.**

37 Sec. 3. Section 36-431.02, Arizona Revised Statutes, is amended to
38 read:

39 **36-431.02. Nursing care institution resident protection**
40 **revolving fund; use; nonreversion**

41 A. The nursing care institution resident protection revolving fund
42 is established. The fund consists of monies received from civil penalties
43 collected by the director pursuant to section 36-431.01, ~~subsection D~~.

1 B. The director shall use monies in the fund for the purposes
2 prescribed in section 36-431.01, subsection F, subject to legislative
3 appropriation.

4 C. Monies in the fund are exempt from the provisions of section
5 35-190 relating to the lapsing of appropriations.

6 Sec. 4. Title 36, chapter 4, article 2, Arizona Revised Statutes,
7 is amended by adding section 36-431.03, to read:

8 36-431.03. Indigenous peoples protection revolving fund

9 A. THE INDIGENOUS PEOPLES PROTECTION REVOLVING FUND IS ESTABLISHED
10 TO SUPPORT RESILIENCY AND HEALING OF INDIGENOUS PEOPLES IN THIS STATE.
11 THE FUND CONSISTS OF MONIES DEPOSITED PURSUANT TO SECTION 36-431.01.
12 MONIES IN THE FUND ARE CONTINUOUSLY APPROPRIATED AND ARE EXEMPT FROM THE
13 PROVISIONS OF SECTION 35-190 RELATING TO THE LAPSING OF APPROPRIATIONS.
14 THE DIRECTOR SHALL ADMINISTER THE FUND.

15 B. THE MONIES IN THE FUND SHALL BE USED ANNUALLY AS FOLLOWS:

16 1. FORTY PERCENT SHALL BE TRANSFERRED TO TRIBAL COLLEGES IN THIS
17 STATE FOR PROGRAMMING IN SOCIAL WORK AND BEHAVIORAL HEALTH.

18 2. TWENTY PERCENT SHALL PROVIDE RESTITUTION PAYMENTS FOR FAMILIES
19 OF DECEASED VICTIMS OF THIS STATE'S BEHAVIORAL HEALTH SYSTEM AND SOBER
20 LIVING HOMES. EACH FAMILY OF A DECEASED VICTIM SHALL RECEIVE A MINIMUM OF
21 \$3,000 AND THE REPATRIATION OF THE VICTIM'S HUMAN REMAINS AND EXPENSES.

22 3. FORTY PERCENT SHALL BE DISTRIBUTED TO TRIBAL COMMUNITIES FOR
23 BEHAVIORAL HEALTH TREATMENT SERVICES AND PROGRAMS OR RESIDENTIAL HOMES,
24 INCLUDING BEHAVIORAL HEALTH RESIDENTIAL FACILITIES, SOBER LIVING HOMES AND
25 TRANSITIONAL HOMES.

26 Sec. 5. Section 36-2063, Arizona Revised Statutes, is amended to
27 read:

28 36-2063. Fees; licensure; inspections; investigation;
29 violation; classification; civil penalty;
30 sanctions

31 A. The department shall establish fees for initial licensure and
32 license renewal and a fee for the late payment of licensing fees that
33 includes a grace period. The department shall deposit, pursuant to
34 sections 35-146 and 35-147, ninety percent of the fees collected pursuant
35 to this section in the health services licensing fund established by
36 section 36-414 and ten percent of the fees collected pursuant to this
37 section in the state general fund.

38 B. On a determination by the director that there is reasonable
39 cause to believe a sober living home is not adhering to the licensing
40 requirements of this article, the director and any duly designated
41 employee or agent of the director ~~may~~ SHALL enter on and into the premises
42 of any sober living home that is licensed or required to be licensed
43 pursuant to this article at any reasonable time for the purpose of
44 determining the state of compliance with this article, the rules adopted
45 pursuant to this article and local fire ordinances or rules. Any

1 application for licensure under this article constitutes permission for
2 and complete acquiescence in any entry or inspection of the premises
3 during the pendency of the application and, if licensed, during the term
4 of the license. If an inspection reveals that the sober living home is
5 not adhering to the licensing requirements established pursuant to this
6 article, the director ~~may~~ SHALL take action authorized by this article.

7 C. Any sober living home whose license has been suspended ~~or~~
8 ~~revoked~~ in accordance with this article is subject to inspection on
9 application for ~~relicensure or~~ reinstatement of THE license. IF A SOBER
10 LIVING HOME LICENSE IS REVOKED IN THIS STATE OR ANY OTHER STATE, THE
11 LICENSEE OF THE SOBER LIVING HOME WHOSE LICENSE WAS REVOKED MAY NOT
12 REAPPLY FOR ANY LICENSE ISSUED PURSUANT TO THIS TITLE FOR A PERIOD OF AT
13 LEAST FIVE YEARS.

14 D. A SOBER LIVING HOME THAT OPERATES IN THIS STATE WITHOUT A
15 LICENSE IN VIOLATION OF THIS ARTICLE IS GUILTY OF A CLASS 6 FELONY AND THE
16 DIRECTOR SHALL ASSESS A CIVIL PENALTY OF AT LEAST \$5,000 AND NOT MORE THAN
17 \$10,000 FOR EACH VIOLATION. EACH DAY THE SOBER LIVING HOME OPERATES
18 WITHOUT A LICENSE IS A SEPARATE VIOLATION.

19 ~~E.~~ E. The director ~~may~~ SHALL impose a civil penalty on a person
20 that violates this article or the rules adopted pursuant to this article
21 in an amount of AT LEAST \$5,000 AND not more than ~~five hundred dollars~~
22 \$10,000 for each violation. Each day that a violation occurs constitutes
23 a separate violation. The director ~~may~~ SHALL issue a notice that includes
24 the ~~proposed~~ amount of the civil penalty assessment. If a person requests
25 a hearing to appeal an assessment, the director may not take further
26 action to enforce and collect the assessment until the hearing process is
27 complete. The director shall impose a civil penalty only for those days
28 for which the violation has been documented by the department.

29 ~~F.~~ F. The department may impose sanctions and commence
30 disciplinary actions against a licensed sober living home, including
31 revoking the license. A license may not be suspended or revoked under
32 this article without affording the licensee notice and an opportunity for
33 a hearing as provided in title 41, chapter 6, article 10.

34 ~~F.~~ G. The department may contract with a third party to assist the
35 department with licensure and inspections.

36 Sec. 6. Rulemaking exemption

37 Notwithstanding any other law, for the purposes of this act, the
38 department of health services is exempt from the rulemaking requirements
39 of title 41, chapters 6 and 6.1, Arizona Revised Statutes, through June
40 30, 2025.