

REFERENCE TITLE: board of barbers; repeal

State of Arizona
House of Representatives
Fifty-third Legislature
Second Regular Session
2018

HB 2405

Introduced by
Representative Mosley

AN ACT

AMENDING SECTION 11-811, ARIZONA REVISED STATUTES; REPEALING TITLE 32, CHAPTER 3, ARIZONA REVISED STATUTES; AMENDING SECTIONS 32-506, 32-3021 AND 41-1092, ARIZONA REVISED STATUTES; REPEALING SECTION 41-3022.23, ARIZONA REVISED STATUTES; APPROPRIATING MONIES; RELATING TO BARBERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 11-811, Arizona Revised Statutes, is amended to
3 read:
4 11-811. Zoning ordinance; zoning districts; definitions
5 A. Pursuant to this article, the board of supervisors may adopt a
6 zoning ordinance in order to conserve and promote the public health,
7 safety, convenience and general welfare. The zoning ordinance and all
8 rezonings and zoning regulations amendments adopted under this article
9 shall be consistent with and conform to the adopted comprehensive plan.
10 In addition to the other matters that are required or authorized under
11 this section and article 1 of this chapter, the zoning ordinance:
12 1. Shall show the zoning districts designated as appropriate for
13 various classes of residential, business and industrial uses and shall
14 provide for the establishment of setback lines and other plans providing
15 for adequate light, air and parking facilities and for expediting traffic
16 within the districts.
17 2. May establish the percentage of a lot or parcel that may be
18 covered by buildings and the size of yards, courts and other open spaces.
19 3. Shall consider access to incident solar energy.
20 4. May provide for retirement community zoning districts.
21 5. May provide for the regulation and use of business licenses,
22 ~~adult-oriented~~ ADULT-ORIENTED business manager permits and adult service
23 provider permits in conjunction with the establishment or operation of
24 ~~adult-oriented~~ ADULT-ORIENTED businesses and facilities, including adult
25 arcades, adult bookstores or video stores, cabarets, adult live
26 entertainment establishments, adult motion picture theaters, adult
27 theaters, massage establishments and nude model studios. With respect to
28 cabarets, the ordinance shall not conflict with specific statutory or
29 valid regulatory requirements applicable to persons WHO ARE licensed to
30 dispense alcoholic beverages, but the ordinance may include regulation of
31 the age and conduct of erotic entertainers in a manner at least as
32 restrictive as rules adopted under title 4. Notwithstanding section
33 11-812, a county, in regulating or licensing businesses and facilities
34 pursuant to this paragraph, may impose reasonable operating requirements
35 that affect the existing uses of businesses and facilities.
36 6. Shall designate and zone appropriate areas of reasonable size in
37 which there may be established with reasonable permanency canneries,
38 fertilizer plants, refineries, commercial feedlots, ~~meat-packing~~
39 MEATPACKING plants, tallow works and other like businesses. A dairy
40 operation, including areas designated for the raising of replacement
41 heifers or bulls owned by the same dairy operation, is not subject to this
42 paragraph, and is a general agricultural purpose under subsection D,
43 paragraph 2 of this section and section 11-812, subsection A, paragraph 2.
44 A replacement heifer or bull raising operation of a dairy that is not on

1 contiguous property of the dairy is subject to this paragraph unless the
2 operation begins within one-quarter mile of the dairy.

3 B. To carry out the purposes of this article, the board may adopt
4 overlay zoning districts and regulations applicable to particular
5 buildings, structures and land within individual zones. For the purposes
6 of this subsection, "overlay zoning district" means a special zoning
7 district that includes regulations that modify regulations in another
8 zoning district with which the overlay zoning district is combined.
9 Overlay zoning districts and regulations shall be adopted pursuant to
10 section 11-813. The provisions of overlay zoning shall apply
11 retroactively to authorize overlay zoning districts and regulations
12 adopted before April 20, 1993.

13 C. In accordance with article II, sections 1 and 2, Constitution of
14 Arizona, the board shall consider the individual property rights and
15 personal liberties of the residents of the county before adopting any
16 zoning ordinance.

17 D. This section does not authorize:

18 1. The imposition of dedications, exactions, fees or other
19 requirements that are not otherwise authorized by law.

20 2. The regulation or restriction of the use or occupation of land
21 or improvements for railroad, mining, metallurgical, grazing or general
22 agricultural purposes, if the tract concerned is five or more contiguous
23 commercial acres. For the purposes of this paragraph, general
24 agricultural purposes do not include the cultivation of cannabis as
25 defined in section 13-3401 or marijuana as defined in section 13-3401 or
26 36-2801.

27 E. For the purposes of this section:

28 1. "Adult arcade" means any place to which the public is permitted
29 or invited and in which coin-operated or slug-operated or electronically,
30 electrically or mechanically controlled still or motion picture machines,
31 projectors or other image producing devices are maintained to show images
32 involving specific sexual activities or specific anatomical areas to
33 persons in booths or viewing rooms.

34 2. "Adult bookstore or video store" means a commercial
35 establishment that offers for sale or rent any of the following as one of
36 its principal business purposes:

37 (a) Books, magazines, periodicals or other printed matter,
38 photographs, films, motion pictures, videocassettes or reproductions or
39 slides or other visual representations that depict or describe specific
40 sexual activities or specific anatomical areas.

41 (b) Instruments, devices or paraphernalia that are designed for use
42 in connection with specific sexual activities.

43 3. "Adult live entertainment establishment" means an establishment
44 that features either:

45 (a) Persons who appear in a state of nudity.

1 (b) Live performances that are characterized by the exposure of
2 specific anatomical areas or specific sexual activities.

3 4. "Adult motion picture theater" means a commercial establishment
4 in which for any form of consideration films, motion pictures,
5 videocassettes, slides or other similar photographic reproductions that
6 are characterized by the depiction or description of specific sexual
7 activities or specific anatomical areas are predominantly shown.

8 5. "~~Adult-oriented~~ ADULT-ORIENTED business" means adult arcades,
9 adult bookstores or video stores, cabarets, adult live entertainment
10 establishments, adult motion picture theaters, adult theaters, massage
11 establishments that offer adult service or nude model studios.

12 6. "~~Adult-oriented~~ ADULT-ORIENTED business manager" means a person
13 on the premises of an ~~adult-oriented~~ ADULT-ORIENTED business who is
14 authorized to exercise overall operational control of the business.

15 7. "Adult service" means dancing, serving food or beverages,
16 modeling, posing, wrestling, singing, reading, talking, listening or other
17 performances or activities conducted for any consideration in an ~~adultt~~
18 ~~oriented~~ ADULT-ORIENTED business by a person who is nude or seminude
19 during all or part of the time that the person is providing the service.

20 8. "Adult service provider" or "erotic entertainer" means any
21 natural person who provides an adult service.

22 9. "Adult theater" means a theater, concert hall, auditorium or
23 similar commercial establishment that predominantly features persons who
24 appear in a state of nudity or who engage in live performances that are
25 characterized by the exposure of specific anatomical areas or specific
26 sexual activities.

27 10. "Cabaret" means an ~~adult-oriented~~ ADULT-ORIENTED business THAT
28 IS licensed to provide alcoholic beverages pursuant to title 4, chapter 2,
29 article 1.

30 11. "Discernibly turgid state" means the state of being visibly
31 swollen, bloated, inflated or distended.

32 12. "Massage establishment" means an establishment in which a
33 person, firm, association or corporation engages in or permits massage
34 activities, including any method of pressure on, friction against,
35 stroking, kneading, rubbing, tapping, pounding, vibrating or stimulating
36 of external soft parts of the body with the hands or with the aid of any
37 mechanical apparatus or electrical apparatus or appliance. This paragraph
38 does not apply to:

39 (a) Persons who are licensed pursuant to title 32, chapter 7, 8,
40 13, 14 or 17.

41 (b) Registered nurses, licensed practical nurses or technicians who
42 are acting under the supervision of a physician who is licensed pursuant
43 to title 32, chapter 13 or 17.

44 (c) Registered nurse practitioners who are licensed pursuant to
45 title 32, chapter 15.

1 (d) Persons who are employed or acting as trainers for a bona fide
2 amateur, semiprofessional or professional athlete or athletic team.

3 (e) Persons who are licensed pursuant to title 32, chapter ~~3~~ or 5
4 if the activity is limited to the head, face or neck.

5 13. "Nude model studio" means a place in which a person who appears
6 in a state of nudity or who displays specific anatomical areas is
7 observed, sketched, drawn, painted, sculptured, photographed or otherwise
8 depicted by other persons who pay money or other consideration. Nude
9 model studio does not include a proprietary school that is licensed by
10 this state, a college, community college or university that is supported
11 entirely or in part by taxation, a private college or university that
12 maintains and operates educational programs in which credits are
13 transferable to a college, community college or university that is
14 supported entirely or in part by taxation or a structure to which the
15 following apply:

16 (a) A sign is not visible from the exterior of the structure and no
17 other advertising appears indicating that a nude person is available for
18 viewing.

19 (b) A student must enroll at least three days in advance of a class
20 in order to participate.

21 (c) No more than one nude or seminude model is on the premises at
22 any time.

23 14. "Nude", "nudity" or "state of nudity" means any of the
24 following:

25 (a) The appearance of a human anus, genitals or a female breast
26 below a point immediately above the top of the areola.

27 (b) A state of dress that fails to opaquely cover a human anus,
28 genitals or a female breast below a point immediately above the top of the
29 areola.

30 15. "Principal business purposes" means that a commercial
31 establishment derives fifty percent or more of its gross income from the
32 sale or rental of items listed in paragraph 2 of this subsection.

33 16. "Seminude" means a state of dress in which clothing covers no
34 more than the genitals, pubic region and female breast below a point
35 immediately above the top of the areola, as well as portions of the body
36 that are covered by supporting straps or devices.

37 17. "Specific anatomical areas" means any of the following:

38 (a) A human anus, genitals, the pubic region or a female breast
39 below a point immediately above the top of the areola that is less than
40 completely and opaquely covered.

41 (b) Male genitals in a discernibly turgid state even if completely
42 and opaquely covered.

43 18. "Specific sexual activities" means any of the following:

44 (a) Human genitals in a state of sexual stimulation or arousal.

1 (b) Sex acts, normal or perverted, actual or simulated, including
2 acts of human masturbation, sexual intercourse, oral copulation or sodomy.

3 (c) Fondling or other erotic touching of the human genitals, pubic
4 region, buttocks, anus or female breast.

5 (d) Excretory functions as part of or in connection with any of the
6 activities under subdivision (a), (b) or (c) of this paragraph.

7 Sec. 2. Repeal

8 Title 32, chapter 3, Arizona Revised Statutes, is repealed.

9 Sec. 3. Section 32-506, Arizona Revised Statutes, is amended to
10 read:

11 32-506. Nonapplicability of chapter

12 This chapter does not apply to the following persons while in the
13 proper discharge of their professional duties:

14 1. Practices for the treatment of physical or mental ailments or
15 disease by medical practitioners licensed pursuant to this title.

16 2. Commissioned physicians and surgeons who are serving in the
17 armed forces of the United States or other federal agencies.

18 3. Persons who are licensed pursuant to chapter ~~3~~ 12 of this
19 title.

20 4. Students who are attending schools licensed pursuant to this
21 chapter while they are on school premises during school hours.

22 5. Persons employed by theatrical groups who apply makeup, oils and
23 cosmetics.

24 6. Persons who sell makeup, oils and cosmetics and who apply such
25 products during the process of selling such products.

26 7. Shampoo assistants who shampoo hair under the direction of a
27 cosmetologist or hairstylist licensed pursuant to this chapter.

28 8. Services performed by and for persons in the custody of the
29 state department of corrections.

30 9. Persons who apply makeup, oils and cosmetics to patients in a
31 hospital, nursing home or residential care institution with the consent of
32 the patient and the hospital, nursing home or residential care
33 institution.

34 10. Persons who provide a service that results in tension on hair
35 strands or roots by twisting, wrapping, weaving, extending, locking or
36 braiding, if the service does not include the application of dyes,
37 reactive chemicals or other preparations to alter the color of the hair or
38 to straighten, curl or alter the structure of the hair.

39 11. Persons who provide threading.

40 12. Persons who provide tanning services by means of airbrushing,
41 tanning beds or spray tanning.

42 13. Persons who apply makeup, including eyelash enhancements. This
43 paragraph does not apply if a person is engaging in the practice of
44 aesthetics or cosmetology. A person who is exempt pursuant to this
45 paragraph shall post a sign in a conspicuous location in the person's

1 place of business notifying the public that the person's services are not
2 regulated by the board.

3 Sec. 4. Section 32-3021, Arizona Revised Statutes, is amended to
4 read:

5 32-3021. Private vocational program license; qualifications;
6 provision of information; exemptions

7 A. A person shall not operate a private vocational program unless
8 the person holds a private vocational program license issued pursuant to
9 this chapter. Each program offered by a private vocational program
10 licensee shall be authorized on a private vocational program license. The
11 board shall prescribe the manner in which the programs shall be identified
12 on the license.

13 B. An applicant for a private vocational program license shall meet
14 all of the following requirements:

15 1. Furnish a letter of credit, surety bond or cash deposit as
16 provided in section 32-3023.

17 2. Make specific information concerning educational programs,
18 including statements of purpose, objectives, course of study, policies,
19 fees and other pertinent information, available to prospective students
20 and the general public.

21 3. Be financially responsible and have management capability.

22 4. Maintain a qualified faculty.

23 5. Maintain facilities, equipment and materials that are
24 appropriate for the stated program. All facilities shall meet applicable
25 state and local health and safety laws.

26 6. Maintain appropriate records as the board prescribes that are
27 properly safeguarded and preserved.

28 7. Use only advertisements that are consistent with the information
29 made available as provided in paragraph 2 of this subsection.

30 8. Provide courses of instruction that meet stated objectives.

31 9. Provide a grievance procedure for students.

32 10. Comply with all federal and state laws relating to the
33 operation of a private postsecondary educational institution.

34 11. Other requirements the board deems necessary.

35 C. An applicant for a private vocational program license shall
36 submit evidence of meeting the requirements prescribed in subsection B of
37 this section to the board. The board shall verify the evidence submitted.
38 Verification shall include on-site verification.

39 D. The filing of an application grants the board the authority to
40 obtain information from any of the following:

41 1. A licensing board or agency in any state, district, territory or
42 county of the United States or any foreign country.

43 2. The Arizona criminal justice information system as defined in
44 section 41-1750.

45 3. The federal bureau of investigation.

1 E. The board, on application, may issue a private vocational
2 program license to a new educational institution as provided in this
3 section, except that the board shall establish separate minimum standards
4 for licensure requirements of new educational institutions. These minimum
5 standards may include the modification of licensure requirements as
6 provided in subsection B, paragraphs 3, 5, 6, 7 and 8 of this section to
7 meet the circumstances of new educational institutions. The board, on
8 application, may issue a private vocational program license to an
9 educational institution that is otherwise exempt under subsection F of
10 this section. The board shall monitor the new educational institution to
11 ensure compliance with the licensure requirements. The board shall issue
12 a private vocational program license as provided in this subsection one
13 time only to new educational institutions.

14 F. This section does not apply to any of the following:

15 1. A school licensed pursuant to chapter ~~3-07~~ 5 of this title.

16 2. An instructional program or course sponsored by a bona fide
17 trade association solely for its members.

18 3. Privately owned academic schools engaged in the process of
19 general education that is designed to produce a level of development
20 equivalent to that necessary to meet the requirements for entrance into a
21 public community college or public university in this state and that may
22 incidentally offer technical and vocational courses as part of the
23 curriculum.

24 4. Schools or private instruction conducted by any person engaged
25 in training, tutoring or teaching individuals or groups, if the
26 instruction is related to hobbies, avocations, academic improvement or
27 recreation and may only incidentally lead to gainful employment.

28 5. Schools conducted by any person solely for training the person's
29 own employees.

30 6. An instructional program or course offered solely for employees
31 and for the purpose of improving the employees in their employment if both
32 of the following apply:

33 (a) The employee is not charged a fee.

34 (b) The employer provides or funds the program or course pursuant
35 to a valid written contract between the employer and a program or course
36 provider.

37 7. Training conducted pursuant to 14 Code of Federal Regulations
38 part 141.

39 8. A school that solely provides an instructional program for
40 certified nursing assistants and licensed nursing assistants and is
41 licensed by the nursing board pursuant to section 32-1606, subsection B,
42 paragraph 11.

43 9. A professional driving training school licensed by the
44 department of transportation pursuant to chapter 23, articles 1, 2 and 3
45 of this title.

1 10. A training program approved by the board of examiners of
2 nursing care institution administrators and assisted living facility
3 managers that solely provides training for managers and caregivers of
4 assisted living facilities.

5 11. A yoga teacher training course or program or a yoga
6 instructional course or program.

7 12. A private instructional program or course that is less than
8 forty contact hours in length and that charges a fee of less than one
9 thousand dollars. For the purposes of this paragraph, "contact hour"
10 means a fifty-minute session of scheduled in-class or online instruction.

11 Sec. 5. Section 41-1092, Arizona Revised Statutes, is amended to
12 read:

13 41-1092. Definitions

14 In this article, unless the context otherwise requires:

15 1. "Administrative law judge" means an individual or an agency
16 head, board or commission that sits as an administrative law judge, that
17 conducts administrative hearings in a contested case or an appealable
18 agency action and that makes decisions regarding the contested case or
19 appealable agency action.

20 2. "Administrative law judge decision" means the findings of fact,
21 conclusions of law and recommendations or decisions issued by an
22 administrative law judge.

23 3. "Appealable agency action" means an action that determines the
24 legal rights, duties or privileges of a party and that is not a contested
25 case. Appealable agency actions do not include interim orders by
26 self-supporting regulatory boards, rules, orders, standards or statements
27 of policy of general application issued by an administrative agency to
28 implement, interpret or make specific the legislation enforced or
29 administered by it or clarifications of interpretation, nor does it mean
30 or include rules concerning the internal management of the agency that do
31 not affect private rights or interests. For the purposes of this
32 paragraph, administrative hearing does not include a public hearing held
33 for the purpose of receiving public comment on a proposed agency action.

34 4. "Director" means the director of the office of administrative
35 hearings.

36 5. "Final administrative decision" means a decision by an agency
37 that is subject to judicial review pursuant to title 12, chapter 7,
38 article 6.

39 6. "Office" means the office of administrative hearings.

40 7. "Self-supporting regulatory board" means any one of the
41 following:

42 (a) The Arizona state board of accountancy.

43 ~~(b) The board of barbers.~~

44 ~~(c)~~ (b) The board of behavioral health examiners.

- 1 ~~(d)~~ (c) The Arizona state boxing and mixed martial arts
- 2 commission.
- 3 ~~(e)~~ (d) The state board of chiropractic examiners.
- 4 ~~(f)~~ (e) The board of cosmetology.
- 5 ~~(g)~~ (f) The state board of dental examiners.
- 6 ~~(h)~~ (g) The state board of funeral directors and embalmers.
- 7 ~~(i)~~ (h) The Arizona game and fish commission.
- 8 ~~(j)~~ (i) The board of homeopathic and integrated medicine
- 9 examiners.
- 10 ~~(k)~~ (j) The Arizona medical board.
- 11 ~~(l)~~ (k) The naturopathic physicians medical board.
- 12 ~~(m)~~ (l) The state board of nursing.
- 13 ~~(n)~~ (m) The board of examiners of nursing care institution
- 14 administrators and adult care home managers.
- 15 ~~(o)~~ (n) The board of occupational therapy examiners.
- 16 ~~(p)~~ (o) The state board of dispensing opticians.
- 17 ~~(q)~~ (p) The state board of optometry.
- 18 ~~(r)~~ (q) The Arizona board of osteopathic examiners in medicine and
- 19 surgery.
- 20 ~~(s)~~ (r) The Arizona peace officer standards and training board.
- 21 ~~(t)~~ (s) The Arizona state board of pharmacy.
- 22 ~~(u)~~ (t) The board of physical therapy.
- 23 ~~(v)~~ (u) The state board of podiatry examiners.
- 24 ~~(w)~~ (v) The state board for private postsecondary education.
- 25 ~~(x)~~ (w) The state board of psychologist examiners.
- 26 ~~(y)~~ (x) The board of respiratory care examiners.
- 27 ~~(z)~~ (y) The state board of technical registration.
- 28 ~~(aa)~~ (z) The Arizona state veterinary medical examining board.
- 29 ~~(bb)~~ (aa) The acupuncture board of examiners.
- 30 ~~(cc)~~ (bb) The Arizona regulatory board of physician assistants.
- 31 ~~(dd)~~ (cc) The board of athletic training.
- 32 ~~(ee)~~ (dd) The board of massage therapy.

33 Sec. 6. Repeal

34 Section 41-3022.23, Arizona Revised Statutes, is repealed.

35 Sec. 7. Repeal; transfer of monies

36 All unexpended and unencumbered monies remaining in the board of
37 barbers fund established by section 32-305, Arizona Revised Statutes, as
38 repealed by section 2 of this act, are transferred to the state general
39 fund.