

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

NOTICE OF PROPOSED RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 15. BOARD OF MASSAGE THERAPY

Editor's Note: The following Notice of Proposed Rulemaking was reviewed per the Governor's Regulatory Review Plan memorandum, January 22, 2009 and the continuation issued April 30, 2009. (See a copy of the memoranda in this issue on pages 914 and 915.) The Governor's Office authorized the notice to proceed through the rulemaking process on April 1, 2009.

[R09-49]

PREAMBLE

- 1. Sections Affected**
R4-15-102
- Rulemaking Action**
Amend
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 32-4203(A)(7)
Implementing statute: A.R.S. §§ 32-4203(A)(3), 32-4225, 32-4227
- 3. A list of all previous notices appearing in the Register addressing the proposed rules:**
Notice of Rulemaking Docket Opening: 15 A.A.R. 796, May 15, 2009
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Dr. Craig Runbeck, Executive Director
Address: 1400 W. Washington St., Suite 230
Phoenix, AZ 85007
Telephone: (602) 542-8604
Fax: (602) 542-3093
E-mail: craig.runbeck@aznd.gov
- 5. An explanation of the rules, including the agency's reasons for initiating the rules:**
The Massage Therapy Board (Board) needs to increase fees that applicants or licensees pay to obtain or renew licenses. The Board is increasing its fees for an application for a license from \$165 to \$195. The Board is also increasing its fees for a renewal license from \$75 to \$95. The increases are necessitated by a fund sweep that the legislature put in the state's 2009 budget. The Board is currently housed within the Naturopathic Board and shares appropriation fund 2042 with the Naturopathic Board. At the beginning of FY 2009, the Board had a cash balance of \$349,300 and anticipated collecting enough in fees to maintain this level of fund balance, which would have been enough for the Board's operating costs. However, the legislature swept \$618,000 from appropriation fund 2042 in the budget fix of FY 2009. The Board's share is \$432,000. Because of the fund sweep, the Board will end FY 2009 with a deficit of approximately \$102,300. Without the fee increase proposed in this rulemaking, the Massage Therapy Board will continue the deficit through FY 2010 and will not be able to meet operating costs. The Board expects the fee increases to generate approximately \$135,000 annually. Ten percent of the fee increases go to the state's general fund.
- 6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**
The Board did not review or rely on any study.

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7. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision:

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

As used in this summary, minimal means less than \$1,000, moderate means between \$1,000 and \$10,000, and substantial means greater than \$10,000.

The rules affect the Board, an applicant for a massage therapy license, a licensee, a business that employs licensees, and a consumer seeking massage therapy services.

The increases in the application and renewal fees are necessitated by a fund sweep by the legislature. The Board is increasing its fees for an application for a license from \$165 to \$195. The Board is also increasing its fees for a renewal license from \$75 to \$95. At the beginning of FY 2009, the Board had a cash balance of \$328,400 and anticipated collecting enough in fees to maintain this level of fund balance, which would have been enough for the Board's operating costs. However, the legislature swept \$618,000 from appropriation fund 2042 in the budget fix of FY 2009. The Board's share is \$432,000. Because of the fund sweep, the Board will end FY 2009 with a deficit of approximately \$102,300. Without the fee increase proposed in this rulemaking, the Massage Therapy Board will continue the deficit through FY 2010 and will not be able to meet operating costs. The Board expects the fee increases to generate approximately \$135,000 annually.

An applicant for a license will be impacted minimally by the \$30 fee increase. The Board receives approximately 1500 applications each year.

A licensee will be minimally impacted from the \$20 fee increase for a renewal license. The Board currently licenses approximately 9000 massage therapists and expects to renew approximately 4500 licensees each year.

A business that employs licensees should be minimally impacted by the fee increases and only if it pays for renewal fees of its licensees.

A consumer benefits from the continued regulation of massage therapists by the Board because only massage therapists that meet the requirements contained in the rules and statutes will be allowed to practice in Arizona.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Dr. Craig Runbeck, Executive Director
Address: 1400 W. Washington St., Suite 230
Phoenix, AZ 85007
Telephone: (602) 542-8604
Fax: (602) 542-3093
E-mail: craig.runbeck@aznd.gov

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rules, or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:

An oral proceeding will be conducted by the Board at the following location in the state for the purpose of taking oral and written testimony and providing adequate discussion on the proposed rules from members of the public.

Date: June 29, 2009
Time: 1:00 p.m.
Location: 1400 W. Washington St., Room 300
Phoenix, AZ 85007

The public record on the proposed rulemaking will close at 5:00 p.m. on June 29, 2009.

A person with a disability may request a reasonable accommodation such as a sign language interpreter, by contacting Craig Runbeck at (602) 542-8604. Requests should be made as early as possible to allow time to arrange the accommodation.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rules:

None

13. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 15. BOARD OF MASSAGE THERAPY

ARTICLE 1. GENERAL PROVISIONS

Section
R4-15-102. Fees

ARTICLE 1. GENERAL PROVISIONS

R4-15-102. Fees

- A.** The Board shall charge the following fees that are nonrefundable, unless A.R.S. § 41-1077 applies:
1. Application for a license, ~~\$165~~ \$195
 2. Reinstatement of a license, \$125
 3. Duplicate license, \$25
 4. License renewal, ~~\$75~~ \$95
 5. Delinquent renewal of a license, \$40
- B.** No change
C. No change
D. No change