

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 15. BOARD OF MASSAGE THERAPY

Editor's Note: The following Notice of Final Rulemaking was reviewed per the Governor's Regulatory Review Plan memorandum, January 22, 2009 and the continuations issued April 30 and June 29, 2009. (See a copy of the memoranda in this issue on pages 1574 through 1576.) The Governor's Office authorized the notice to proceed through the rulemaking process on April 1, 2009.

[R09-85]

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| 1. <u>Sections Affected</u> | <u>Rulemaking Action</u> |
| R4-15-102 | Amend |
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rule is 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. The effective date of the rule:**
September 1, 2009
- The Board is requesting an immediate effective date under A.R.S. § 41-1032(A)(1) to preserve the public peace, health, or safety. The Board was established by the legislature in 2003 to license and regulate the practice of massage therapy in Arizona. Each year since 2003 the legislature has appropriated funds for the continuing operations of the Board. However, the legislature swept \$432,600 from its cash reserve in the budget fix of FY2009. The Board only had \$330,300 cash on hand, causing the Board to end FY2009 with a deficit of approximately \$102,300. The Naturopathic Board transferred \$110,000 to the massage board. As of July 29, 2009, the Massage Board has only \$7,867 cash on hand. The Board may need to borrow more funds from the Naturopathic Board to continue to operate and will need to pay back the funds that have already been transferred. In addition, it will need to build up its own cash reserves again. The longer the Massage Board waits to implement the fee increase the more tenuous the financial situation for both boards. If one or both boards become insolvent the State of Arizona will lose the ability to regulate the affected professions. Licensing would stop. Public health and safety would be further impacted because no complaints would be adjudicated. Examples of complaints recently adjudicated by the Massage Board include allegations of sexual assault by massage therapists and several different cases of alleged prostitution. Without the Massage Board functioning, there would be no enforcement of rules or statutes for those professions. Therefore, it is requested that this fee increase take effect immediately.
- 4. A list of all previous notices appearing in the Register addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 15 A.A.R. 796, May 15, 2009
Notice of Proposed Rulemaking: 15 A.A.R. 860, May 29, 2009
- 5. 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 |

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6. An explanation of the rule, including the agency's reasons for initiating the rule:

The Massage Therapy Board (Board) needs to increase fees that applicants and licensees pay to obtain and 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 by the legislature as part of 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 FY2009, 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 FY2009. The Board's share is \$432,000. Because of the fund sweep, the Board will end FY2009 with a deficit of approximately \$102,300. Without the fee increase proposed in this rulemaking, the Massage Therapy Board will continue the deficit through FY2010 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.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not 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 relevant to this rule.

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision:

Not applicable

9. The 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 FY2009, 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 FY2009. The Board's share is \$432,000. Because of the fund sweep, the Board will end FY2009 with a deficit of approximately \$102,300. Without the fee increase proposed in this rulemaking, the Massage Therapy Board will continue the deficit through FY2010 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 1,500 applications each year.

A licensee will be minimally impacted by the \$20 fee increase for a renewal license. The Board currently licenses approximately 9,000 massage therapists and expects to renew approximately 4,500 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 who meet the requirements contained in the rules and statutes will be allowed to practice in Arizona.

10. A description of the changes between the proposed rule, including supplemental notices, and final rule (if applicable):

No changes were made to the proposed rule.

11. A summary of the comments made regarding the rule and agency response to them:

The Board did not receive comments to the rule.

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

None

13. Incorporations by reference and their location in the rule:

None

14. Was this rule previously made as an emergency rule?

No

13. The full text of the rule 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; and
 - 5. Delinquent renewal of a license, \$40.
- B. No change
- C. No change
- D. No change

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

Editor's note: The following Notice of Final Rulemaking was reviewed per the Governor's Regulatory Review Plan memorandum, January 22, 2009 and its continuations on April 30 and June 29, 2009. (See a copy of the memoranda in this issue on pages 1574 through 1576.) The Governor's Office authorized the notice to proceed through the rulemaking process on April 1, 2009.

[R09-84]

PREAMBLE

- 1. Sections Affected**
R20-5-602
- Rulemaking Action**
Amend
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 23-405(4)
Implementing statute: A.R.S. § 23-410
- 3. The effective date of the rules:**
August 31, 2009

The effective date of this final rule package will be the date it is filed with the Secretary of State according to § 41-1032. The new changes to the rule directly effects the health and safety of those employees working in the State of Arizona who work with electrical components and electrical systems that are covered by these new changes to the electrical standard. This new rule will further help to reduce the numbers of deaths and injuries associated with electrical hazards by providing additional protection while working with an electric power tool when performing construction-like work in general industry.
- 4. A list of all previous notices appearing in the Register addressing the final rule:**
Notice of Rulemaking Docket Opening: 14 A.A.R. 4422, November 28, 2008
Notice of Proposed Rulemaking: 15 A.A.R. 170, January 16, 2009
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: William M. Wright
Address: Division of Occupational Safety and Health
Industrial Commission of Arizona
800 W. Washington St., Suite 203

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Phoenix, AZ 85007

Telephone: (602) 542-1695

Fax: (602) 542-1614

E-mail: wright.william.m@dol.gov

6. An explanation of the rule, including the agency's reason for initiating the rule:

In order to conform to the Federal Occupational Safety and Health Standards as required by Section 18(c) of the Federal Occupational Safety and Health Act of 1970 requiring State administered occupational safety and health programs that are at least as effective as those adopted by the U.S. Department of Labor, the Industrial Commission is amending R20-5-602 by adopting amendments to Subpart S, Electrical Standards § 1910, as published in 73 FR 64202 - 64205, October 29, 2008. This adoption revises 1910.304(b)(3)(ii) of the Electrical standard to ensure that the rule is clear and understandable as to the intent of the rule. The words "construction-like" was added to the text of this rule to ensure the rule would be correctly interpreted.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not 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:

None

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

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

The Federal Occupational Safety and Health Administration have determined that these amendments will have minimal financial impact on the general industry sector and has determined the amendments to be economically feasible for all industries including small business. Cost and benefit analysis of these amendments is available for inspection, review, and copying at the Industrial Commission of Arizona, Division of Occupational Safety and Health, 800 W. Washington St., Phoenix, AZ 85007.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

None

11. A summary of the comments made regarding the rule and the agency response to them:

The Arizona Division of Occupational Safety and Health did not receive any written or oral comments concerning this rule.

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

None

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

29 CFR 1910 Federal Occupational Safety and Health Standards for General Industry with amendments as of October 29, 2008. This incorporation by reference will appear in A.A.C. R20-5-602.

14. Was this rule previously made as an emergency rule?

No

15. The full text of the rules follows:

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Section

R20-5-602. The Federal Occupational Safety and Health Standards for General Industry, 29 CFR 1910

ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH STANDARDS

R20-5-602. The Federal Occupational Safety and Health Standards for General Industry, 29 CFR 1910

Each employer shall comply with the standards in Subparts B through Z inclusive of the Federal Occupational Safety and Health Standards for General Industry, as published in 29 CFR 1910, with amendments as of ~~November 15, 2007~~, October 29,

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2008, incorporated by reference. Copies of these reference materials are available for review at the Industrial Commission of Arizona and may be obtained from the United States Government Printing Office, Superintendent of Documents, Washington, D.C. 20402. These standards shall apply to all conditions and practices related to general industry activity by all employers, both public and private, in the state of Arizona; provided that this rule shall not apply to those conditions and practices which are the subject of ~~rule~~ R20-5-601. This incorporation by reference does not include amendments or editions to 29 CFR 1910 published after ~~November 15, 2007~~ October 29, 2008.