

**FILED**

State of Arizona  
Senate  
Forty-second Legislature  
Second Regular Session  
1996

**Jane Dee Hull  
Secretary of State**

CHAPTER 102

**SENATE BILL 1056**

AN ACT

AMENDING SECTIONS 3-204, 3-205, 3-205.02, 3-214.01, 3-215.01, 3-234, 3-276, 3-306, 3-913, 3-933, 3-934, 3-1377, 3-1721, 3-2612, 3-2912, 12-910, 20-668, 23-705, 23-907, 23-926, 23-930, 23-1065, 28-451, 32-305, 32-505, 32-705, 32-1212, 32-1307, 32-1611, 35-141, 36-431.01, 36-882, 36-891, 36-897.01, 36-897.06, 36-3009, 41-1021, 41-1024, 41-1031, 41-1052, 41-1092, 41-1092.01, 41-1092.02, 45-316, 45-635, 45-876.01, 45-877.01, 45-878.01, 45-882.01, 45-1004, 45-1063, 49-113, 49-262, 49-263, 49-284, 49-287, 49-288, 49-304, 49-354, 49-355, 49-455, 49-463, 49-464, 49-923, 49-924, 49-927 AND 49-932, ARIZONA REVISED STATUTES; AMENDING SECTION 49-282, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1995, CHAPTER 202, SECTION 8; REPEALING SECTIONS 36-431.02 AND 45-637, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 6, ARTICLE 10, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 41-1092.03 THROUGH 41-1092.11; AMENDING TITLE 41, CHAPTER 6, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 7.1; AMENDING TITLE 41, CHAPTER 6, ARTICLE 7.1, ARIZONA REVISED STATUTES, AS ADDED BY THIS ACT, BY ADDING SECTION 41-1077; RELATING TO STATE AGENCIES.

1 Be it enacted by the Legislature of the State of Arizona:  
2 Section 1. Section 3-204, Arizona Revised Statutes, is amended to  
3 read:

4 3-204. Summary abatement of imminently dangerous nuisance;  
5 procedure; expense; lien; public sale; reimbursement  
6 costs and penalties to state for certain abatements

7 A. If, in the opinion of the director, the danger to the agricultural  
8 and horticultural industry of the state is imminent if the nuisance caused  
9 by a plant or thing is not speedily abated or suppressed, and if he finds it

1 is practical to summarily abate the nuisance, either by the destruction of  
2 the plant or thing or by the treatment thereof so as to destroy or eradicate  
3 the crop pest or disease without actually destroying the plant or thing, the  
4 director shall in writing direct the owner or person in charge of the  
5 nuisance, if he is found in the county, forthwith and at his expense to abate  
6 and suppress the nuisance in the manner provided in the written direction.  
7 If the owner or person in charge fails or neglects to comply with the  
8 direction for a period of five days after the date on which the direction was  
9 delivered to or served upon him, then the director shall summarily abate the  
10 nuisance in the manner specified in the written direction.

11 B. If the owner or person in charge or control of the nuisance is a  
12 nonresident of the state or cannot, after reasonable diligence by the  
13 director, be found within the county where the nuisance exists, the director  
14 shall publish the notice and the direction one time in a newspaper published  
15 in the county, and shall post a copy at, on or in the immediate vicinity of  
16 the nuisance, and after seven days from the first publication and posting,  
17 the director shall abate the nuisance in the manner specified in the  
18 direction.

19 C. If the nuisance is abated by the director the expense shall be  
20 borne by the state, but, when the abatement does not involve the destruction  
21 of the plant or thing and it has some value after the crop pest or disease  
22 has been eradicated, then the state shall have a first claim and lien thereon  
23 for the payment of expenses incurred in the abatement of the nuisance.

24 D. The director shall notify the owner or person in charge or control  
25 of the nuisance of the amount of the expenses, and that unless the amount is  
26 paid within ten days after the date of service of the notice upon the owner  
27 or person in charge, the plant or thing will be sold at public sale, and the  
28 proceeds, or so much thereof as may be necessary, applied to the payment of  
29 the expenses. The notice shall be personally served or posted as required  
30 in this section for notices to abate.

31 E. If the owner or person in charge of the plant or thing fails to pay  
32 the expenses within the time specified in the notice, the director shall give  
33 public notice of the time and place of sale with a description of the plant  
34 or thing to be sold, and the amount of expenses against it, which shall  
35 include costs of publication, posting and service of notice. The notice of  
36 sale shall be published and posted as provided in this section for the  
37 publication and posting of direction to suppress the nuisance.

38 F. The owner or person in charge of a plant or thing constituting the  
39 nuisance may waive in writing the service of all directions and notices in  
40 connection with the abatement or sale thereof.

41 G. If the director is required to abate the nuisance of cotton or  
42 cotton stubble which is not destroyed before a date established by the  
43 director or is required to abate the nuisance of cotton planted before a date  
44 established by the director, unless the director waives such dates due to

1 variations in weather conditions, following the refusal by the owner or  
2 person in charge or control of the nuisance to do so, the owner or person in  
3 charge or control of the nuisance shall reimburse the department for ~~one~~  
4 ~~hundred fifty per cent~~ of the costs of the state's abatement of the nuisance.  
5 IN ADDITION, A PENALTY OF FIFTY PER CENT OF THE COSTS OF THE STATE'S  
6 ABATEMENT OF THE NUISANCE SHALL BE IMPOSED. ALL PENALTIES SHALL BE DEPOSITED  
7 IN THE COTTON RESEARCH AND PROTECTION COUNCIL ABATEMENT REVOLVING FUND  
8 ESTABLISHED BY SECTION 3-1085. An injunction shall not be granted to stay  
9 this state from abating the nuisance. If the owner or person in charge fails  
10 to pay the amount required to be reimbursed to the director under this  
11 subsection within ten days after the owner or person in charge receives  
12 notice of the amount of the costs, the director shall prepare and file or  
13 record in the office of the county recorder of the county where the land is  
14 situated a notice of lien, setting forth the amount of the unpaid costs and  
15 the name of the owner or person in charge, and upon such recording, the  
16 amount required to be reimbursed becomes a lien on the land subordinate only  
17 to any lien for state and local taxes.

18 Sec. 2. Section 3-205, Arizona Revised Statutes, is amended to read:

19 3-205. Abatement of nuisance not imminently dangerous;  
20 procedure; lien; foreclosure; release of lien;  
21 reimbursement costs and penalties to state for certain  
22 abatements

23 A. If the director believes the danger to the agricultural and  
24 horticultural industry is not imminent, or if impractical for any reason to  
25 summarily abate the nuisance, as described in sections 3-203, 3-204, 3-206  
26 and 3-207, the direction shall not require summary destruction or  
27 eradication, but shall set forth the measures required to be taken by the  
28 owner or person in charge to control, suppress or eradicate the danger, and  
29 shall require the person, at his expense, to take and comply with the  
30 measures specified in the direction and subsequent directions.

31 B. The directions shall be made, given and served as prescribed for  
32 summary abatement, and if they are not complied with, the director may  
33 proceed as provided by the directions, and the expense shall be charged  
34 against the state.

35 C. If the plant or thing constituting the nuisance consists only of  
36 personalty, and is not attached to land or contained in a building,  
37 enclosure, vehicle or place belonging to the person, the state shall have the  
38 same lien and it is enforceable in the same manner as provided for summary  
39 abatement of the nuisance under section 3-204.

40 D. If the plant or thing is attached to land, or contained in a  
41 building, enclosure or vehicle which is the property of the person, then the  
42 lien shall also attach to the land, building, enclosure or vehicle, and the  
43 director shall prepare and file in the office of the county recorder where  
44 the property is situated a notice of the lien, setting forth the amount and

1 the name of the owner or person in charge, and stating that the amount of the  
2 lien shall be paid within thirty days from filing the notice, or otherwise  
3 the property will be subjected to payment thereof.

4 E. The lien shall be prior to all other liens against the property  
5 except liens for state and county taxes. If the amount of the lien is not  
6 paid within the thirty days, the county attorney shall, on written request  
7 of the director, foreclose the lien against the property impressed therewith  
8 as other liens are foreclosed.

9 F. Upon satisfaction of the lien, the director shall issue a release  
10 of the lien to the person against whom the lien was claimed. Such release  
11 shall be a document in a form as specified in section 11-480.

12 G. If the director is required to abate the nuisance of cotton or  
13 cotton stubble which is not destroyed before a date established by the  
14 director or is required to abate the nuisance of cotton planted before a date  
15 established by the director, unless the director waives such dates due to  
16 variations in weather conditions, following the refusal by the owner or  
17 person in charge or control of the nuisance to do so, the owner or person in  
18 charge or control of the nuisance shall reimburse the department for ~~one~~  
19 ~~hundred fifty per cent~~ of the costs of the state's abatement of the nuisance.  
20 IN ADDITION, A PENALTY OF FIFTY PER CENT OF THE COSTS OF THE STATE'S  
21 ABATEMENT OF THE NUISANCE SHALL BE IMPOSED. ALL PENALTIES SHALL BE DEPOSITED  
22 IN THE COTTON RESEARCH AND PROTECTION COUNCIL ABATEMENT REVOLVING FUND  
23 ESTABLISHED BY SECTION 3-1085. An injunction shall not be granted to stay  
24 this state from abating the nuisance. If the owner or person in charge fails  
25 to pay the amount required to be reimbursed to the department under this  
26 subsection within ten days after the owner or person in charge receives  
27 notice of the amount of the costs, the department shall prepare and file or  
28 record in the office of the county recorder of the county where the land is  
29 situated a notice of lien, setting forth the amount of the unpaid costs and  
30 the name of the owner or person in charge, and upon such recording, the  
31 amount required to be reimbursed becomes a lien on the land subordinate only  
32 to any lien for state and local taxes.

33 Sec. 3. Section 3-205.02, Arizona Revised Statutes, is amended to  
34 read:

35 3-205.02. Regulating production of colored cotton: civil  
36 penalties

37 A. The director may adopt rules to regulate the production of colored  
38 cotton. The rules shall include registering producers, production  
39 requirements, field separation, cotton appliances used to produce, transport  
40 and handle colored cotton and ginning and seed requirements.

41 B. The director may impose the following sanctions for violating  
42 colored cotton rules:

1           1. A civil penalty assessed against a grower of not more than seven  
2 hundred fifty dollars per acre for each planted acre of colored cotton unless  
3 the grower voluntarily abates the colored cotton crop before the first bloom.

4           2. A civil penalty assessed against the owner or operator of a cotton  
5 gin of not more than one hundred dollars per bale of colored cotton for  
6 violating ginning rules.

7           3. Suspension or revocation of a grower's colored cotton registration.

8           C. ALL CIVIL PENALTIES ASSESSED PURSUANT TO THIS SECTION SHALL BE  
9 TRANSMITTED TO THE STATE TREASURER FOR DEPOSIT IN THE STATE GENERAL FUND.

10          Sec. 4. Section 3-214.01, Arizona Revised Statutes, is amended to  
11 read:

12           3-214.01. Dangerous plants, pests and diseases fund

13           A. A dangerous plants, pests and diseases fund is established. All  
14 monies collected under the provisions of this article EXCEPT CIVIL PENALTIES  
15 ASSESSED PURSUANT TO SECTION 3-204, 3-205, 3-205.02 OR 3-215.01 shall be  
16 ~~deposited with~~ TRANSMITTED TO the state treasurer who shall ~~place~~ DEPOSIT  
17 them in the dangerous plants, pests and diseases fund.

18           B. All monies in the dangerous plants, pests and diseases fund are  
19 ~~appropriated~~ SUBJECT TO LEGISLATIVE APPROPRIATION to the department to carry  
20 out the provisions of this article, including but not limited to salaries,  
21 fees and office, administrative, bonding and travel expenses incurred.

22           C. The unexpended and unencumbered balance of funds, if any, remaining  
23 in the dangerous plants, pests and diseases fund at the end of each fiscal  
24 year shall not revert to the general fund.

25          Sec. 5. Section 3-215.01, Arizona Revised Statutes, is amended to  
26 read:

27           3-215.01. Violation; civil penalty

28           A. A person who knowingly transports or causes the transportation of  
29 a crop pest or crop disease into this state is subject to a civil penalty as  
30 prescribed by subsection B of this section. A person who receives a  
31 certificate of release under section 3-209 is exempt from this section.

32           B. The director may bring an action under this section in superior  
33 court in the county in which a violation is alleged to have occurred. On  
34 finding a knowing violation, the court may assess the civil penalty in an  
35 amount it considers appropriate, but not exceeding five thousand dollars for  
36 each violation. In determining the amount of the penalty, the court shall  
37 consider at least the following items:

38           1. Any prior violations of the same nature within the preceding  
39 twenty-four months.

40           2. The actual consequences and danger of the crop pest or crop disease  
41 to the state or to the agricultural or horticultural industry in this state.

42           3. The commodity or other thing that carries the crop pest or crop  
43 disease into this state.

44           4. The class of crop pest or crop disease introduced.

1           5. Whether the defendant possesses a certificate of release.

2           6. Any abatement action taken by the defendant.

3           7. The extent of the infestation.

4           C. ALL CIVIL PENALTIES ASSESSED PURSUANT TO THIS SECTION SHALL BE  
5 TRANSMITTED TO THE STATE TREASURER FOR DEPOSIT IN THE STATE GENERAL FUND.

6           Sec. 6. Section 3-234, Arizona Revised Statutes, is amended to read:

7           3-234. Seed law fund

8           A. All monies collected pursuant to this article shall be paid to the  
9 state treasurer, through the director of the department of administration,  
10 for deposit in the seed law fund.

11           B. All monies in the seed law fund are ~~appropriated~~ SUBJECT TO  
12 LEGISLATIVE APPROPRIATION to the department to be expended under the  
13 direction of the director for carrying out the provisions of this article.

14           Sec. 7. Section 3-276, Arizona Revised Statutes, is amended to read:

15           3-276. Deficiencies in guaranteed analysis; penalties payable  
16 to consumer

17           A. If the analysis of any fertilizer material shows a deficiency in  
18 any constituent other than a primary plant nutrient of not more than five per  
19 cent of the guaranteed total percentage of such constituent, the statement  
20 of the licensee, distributor or other person, as required by this article,  
21 is not false within the meaning of this article. When the deficiency exceeds  
22 five per cent the purchaser shall be entitled to a refund based on the  
23 percentage of the deficiency.

24           B. If the analysis of any commercial fertilizer shows a deficiency in  
25 the guaranteed analysis in any one primary plant nutrient, a penalty shall  
26 be assessed in accordance with the following provisions:

27           1. Total nitrogen: A penalty of three times the value of the  
28 deficiency, if such deficiency exceeds the investigational allowances.

29           2. Available phosphorus or phosphoric acid: A penalty of three times  
30 the value of the deficiency, if such deficiency exceeds the investigational  
31 allowances.

32           3. Soluble potassium or potash: A penalty of three times the value  
33 of the deficiency, if such deficiency exceeds the investigational allowances.

34           C. The director shall establish by rule investigational allowances for  
35 primary plant nutrients.

36           D. Nothing contained in this article shall prohibit any person from  
37 appealing according to law.

38           E. All penalties assessed under this section shall be paid to the  
39 consumer of the lot of fertilizer material represented by the sample analyzed  
40 within three months after the date of notice from the department to the  
41 licensee or other responsible person and receipts taken therefor and promptly  
42 forwarded to the department. If such consumer cannot be found, the amount  
43 of the penalty shall be paid to the department. The director shall transmit

1 the penalty receipts to the state treasurer for credit to the ~~fertilizer~~  
2 ~~materials~~ STATE GENERAL fund.

3 Sec. 8. Section 3-306, Arizona Revised Statutes, is amended to read:

4 3-306. Organic food certification fund

5 If the director establishes an Arizona organic food certification  
6 program, the director shall establish an organic food certification fund in  
7 the state treasury consisting of all monies collected under this article.  
8 All monies shall be transmitted to the state treasurer to be deposited in the  
9 fund. SUBJECT TO LEGISLATIVE APPROPRIATION, the fund shall be used solely  
10 for the purpose of administering the provisions of this article. Monies in  
11 the fund may be invested pursuant to section 35-313 and all interest earned  
12 on these monies shall be credited to the fund. Monies in the fund are exempt  
13 from the provisions of section 35-190 relating to lapsing of appropriations.

14 Sec. 9. Section 3-913, Arizona Revised Statutes, is amended to read:

15 3-913. Fiscal provisions; fees; Arizona protected native plant  
16 fund

17 A. The department shall collect nonrefundable fees for issuing  
18 permits, tags, seals and receipts under this article, except for scientific  
19 purposes, from landowners moving protected plants from one of their  
20 properties to another, or from the independent owner of residential property  
21 of ten acres or less if no such plants are to be offered for sale.

22 B. The director shall establish the amount of the fee by rule to  
23 reasonably reflect the cost to the department for administering this chapter  
24 or to reflect the value of the service, permit, tag, seal or receipt,  
25 including at least the following amounts:

26 1. For cereus giganteus (saguaro), at least three dollars for each  
27 plant.

28 2. For native plants which the director determines to be useful for  
29 revegetation and which cannot be salvaged economically at a higher fee, at  
30 least twenty-five cents per plant.

31 3. For all other native plants, at least two dollars for each plant.

32 4. For all receipts for live harvest restricted native plants cut or  
33 removed for wood, at least one dollar per cord.

34 5. For a permit for the by-products or fiber of harvest restricted  
35 native plants, at least one dollar per ton.

36 C. The Arizona protected native plant fund is established. All fees,  
37 ~~civil penalties~~ and other monies collected under this chapter EXCEPT CIVIL  
38 PENALTIES ASSESSED PURSUANT TO SECTION 3-933 OR 3-934 shall be transferred  
39 to the state treasurer for credit to the fund. Ninety per cent of the monies  
40 deposited with the state treasurer constitute a separate and permanent fund  
41 for use of the director, SUBJECT TO LEGISLATIVE APPROPRIATION, to administer  
42 and enforce this chapter, and ten per cent shall be credited to the state  
43 general fund.

44 Sec. 10. Section 3-933, Arizona Revised Statutes, is amended to read:



1 together with an itemized statement of the expense of the seizure and sale,  
2 which shall be paid as other claims.

3 C. The amount received by the department shall be remitted to the  
4 state treasurer, and deposited in a special fund designated the "seizure  
5 fund". At the end of each fiscal year monies in the fund in excess of five  
6 thousand dollars revert to the state general fund.

7 D. SUBJECT TO LEGISLATIVE APPROPRIATION, the seizure fund may be used  
8 by the department for the enforcement of any of the provisions of this title.

9 Sec. 13. Section 3-1721, Arizona Revised Statutes, is amended to read:

10 3-1721. Petition of seizure; notice of seizure; lien for  
11 expenses; forced sale; disposition of proceeds;  
12 nonliability of state; neglect or cruel treatment of  
13 equine; civil penalty; legal representation; equine  
14 maintenance fund

15 A. Any person or peace officer who believes that an equine is in poor  
16 physical condition because of neglect or cruel treatment may petition upon  
17 affidavit a justice of the peace of the precinct or a city magistrate of the  
18 city in which the equine is found for an order authorizing the department to  
19 take possession of and provide care for such equine for a fifteen-day period.  
20 Such order shall not be issued unless the affidavit provides that the equine  
21 maintenance fund has a balance which permits the department to provide such  
22 care or that the department can demonstrate that such expenses have been  
23 contracted for pursuant to subsection F of this section. The clerk of the  
24 court or justice of the peace, as the case may be, after filing and docketing  
25 the petition, shall enter a brief statement of the petition on the docket and  
26 set a time for a hearing which is not less than five and not more than  
27 fifteen days after the petition is filed. The order shall state the time and  
28 place of the hearing.

29 B. On receiving the order the department shall take possession of the  
30 equine. The department shall serve the order on the owner of the equine, if  
31 known, at least twenty-four hours before the hearing, either by personal  
32 service on the owner or by leaving a copy of the order with a person of  
33 suitable discretion at the owner's residence or place of business. If the  
34 owner is not known, the department shall give notice by posting a copy of the  
35 order on the day of the seizure in a conspicuous place at the location where  
36 the equine was seized and in at least two public places in the county where  
37 the equine was seized. The order shall be served by a livestock officer,  
38 constable or sheriff of the county.

39 C. If, at the hearing, it is determined that the equine at the time  
40 of taking possession was not in poor physical condition because of neglect  
41 or cruel treatment, the owner may immediately reclaim the equine and shall  
42 not be liable for payment of any expense incurred in the handling, feeding  
43 and care of the equine. Unless malice is proved, no action taken by an

1 employee of the department or by a peace officer pursuant to this article  
2 shall be subject to civil or criminal liability.

3 D. If, at the hearing held pursuant to subsection A of this section,  
4 the owner is not awarded immediate expense-free custody of the equine, the  
5 owner may reclaim the equine within five days after the hearing by paying to  
6 the department all of the expenses incurred in handling, feeding and caring  
7 for the equine. The department shall remit the monies collected to the state  
8 treasurer to be deposited in the equine maintenance fund.

9 E. Upon failure of the owner to be awarded immediate, expense-free  
10 possession of the equine pursuant to subsection C of this section, or upon  
11 failure of the owner to reclaim the equine pursuant to subsection D of this  
12 section, the department shall either sell such equine at public auction or,  
13 if the equine's condition makes its sale impractical, dispose of the equine  
14 in the most humane manner possible. The department shall remit the proceeds  
15 of such sale to the state treasurer for deposit in the equine maintenance  
16 fund for distribution in the following priority:

17 1. The department shall be reimbursed for auction, handling, feeding  
18 and caring expenses.

19 2. Any monies derived from such sale in excess of the expenses to be  
20 paid pursuant to paragraph 1 shall be paid to the owner of the equine. After  
21 thirty days if the owner has not claimed the money, this money shall revert  
22 to the equine maintenance fund.

23 F. The director may contract with any person or group to handle, feed  
24 and care for any equine taken into custody pursuant to this section. The  
25 state shall not be liable for injury or death of any person or equine or  
26 damage to property caused by the performance of such contract.

27 G. Notwithstanding any provision of this article to the contrary, the  
28 county attorney of the county in which the equine was seized may, at any  
29 time prior to the expiration of fifteen days after the seizure of the equine,  
30 take charge of and keep the equine at the expense of the county when he  
31 deems it to be of evidentiary value in any criminal prosecution relating to  
32 the condition of the equine.

33 H. In addition to violating section 13-2910, a person who subjects an  
34 equine to neglect or cruel treatment is subject to a civil penalty of not  
35 more than seven hundred fifty dollars for each violation. ALL CIVIL  
36 PENALTIES ASSESSED PURSUANT TO THIS SUBSECTION SHALL BE TRANSMITTED TO THE  
37 STATE TREASURER FOR DEPOSIT IN THE STATE GENERAL FUND.

38 I. The county attorney of the county, or the city attorney of the  
39 city, in which the livestock is seized may represent the livestock officer  
40 and the interests of this state in proceedings under this section.

41 J. The state treasurer shall maintain an equine maintenance fund  
42 administered by the department. Upon receipt the department shall transmit  
43 to the state treasurer all monies, EXCEPT CIVIL PENALTIES, collected pursuant  
44 to this section or received as a money donation from any public or private

1 group, society, association or individual for deposit in the equine  
2 maintenance fund. On notice from the department, the state treasurer shall  
3 invest and divest monies in the fund as provided by section 35-313, and  
4 monies earned from investment shall be credited to the fund. The fund is  
5 exempt from the provisions of section 35-190 relating to lapsing of  
6 appropriations. SUBJECT TO LEGISLATIVE APPROPRIATION, the monies in the fund  
7 shall be used to reimburse the department for expenses incurred in the  
8 handling, feeding, care and auctioning of equines seized pursuant to this  
9 section.

10 Sec. 14. Section 3-2612, Arizona Revised Statutes, is amended to read:  
11 3-2612. Adulteration; penalties payable to consumer; appeal;  
12 definitions

13 A. With respect to the level of aflatoxin present, if the examination  
14 of labeling or the analysis of an official sample of any whole cottonseed,  
15 commercial feed or customer-formula feed shows mislabeling pursuant to  
16 section 3-2610 as determined by the director or adulteration pursuant to  
17 section 3-2611 as determined by the director, the following provisions shall  
18 apply:

19 1. The consumer is entitled to a refund from the seller of the  
20 purchase price of the lot upon return of any delivered and unused portion of  
21 that lot. The consumer may cancel the order for undelivered whole  
22 cottonseed, commercial feed or customer-formula feed without penalty or  
23 damages.

24 2. A penalty in an amount equal to twice the selling price of the  
25 whole cottonseed, commercial feed or customer-formula feed shall be assessed,  
26 whether or not payment for that lot has actually been made.

27 B. All penalties assessed under this section shall be paid by the  
28 seller to the consumer of the whole cottonseed, commercial feed or  
29 customer-formula feed within thirty days of the date of notice from the  
30 director to the seller by certified return receipt mail. The seller or his  
31 representative shall obtain a receipt from the consumer and promptly forward  
32 a copy to the director. If the consumer cannot be found, the amount of the  
33 penalty shall be paid to the department who shall transmit it to the state  
34 treasurer for deposit in the ~~commercial-feed~~ STATE GENERAL fund.

35 C. The director shall designate as an official sample a sample taken  
36 by a consumer or his representative if the director is satisfied that the  
37 sample has been taken in accordance with the method of sampling established  
38 pursuant to section 3-2605, subsection B.

39 D. A decision of the director under this section is a final decision  
40 and may be appealed by any person adversely affected pursuant to title 12,  
41 chapter 7, article 6.

42 E. For purposes of this section:

43 1. "Analysis" means analysis performed in accordance with the methods  
44 of testing established pursuant to section 3-2605, subsection B.

1           2. "Consumer" means the ultimate purchaser, whether or not payment has  
2 actually been made if some or all of the whole cottonseed, commercial feed  
3 or customer-formula feed has been delivered to the purchaser or his  
4 representative.

5           Sec. 15. Section 3-2912, Arizona Revised Statutes, is amended to read:  
6           3-2912. Civil penalties

7           A. The director may assess a civil penalty in an amount not exceeding  
8 one hundred dollars per day of violation against any person who is determined  
9 pursuant to section 3-2911 to be in violation of this article, the rules  
10 adopted pursuant to this article or the terms and conditions of a license  
11 issued under this article.

12           B. The director shall bring any action to recover the penalties under  
13 this section in the superior court in the county in which the violation  
14 occurred.

15           C. In determining the amount of the penalty, the court shall consider  
16 whether the violation was knowing or wilful, the past conduct of the  
17 defendant, whether the defendant should have been on notice of the violation,  
18 whether the defendant has taken steps to cease, remove or mitigate the  
19 violation and any other relevant information.

20           D. All monies collected as civil penalties under this section shall  
21 be transmitted to the state treasurer for deposit in the ~~aquaculture~~ STATE  
22 GENERAL fund.

23           Sec. 16. Section 12-910, Arizona Revised Statutes, is amended to read:  
24           12-910. Scope of review

25           A. An action to review a final administrative decision shall be heard  
26 and determined with convenient speed. ~~The hearing and determination shall~~  
27 ~~extend to all questions of law and fact presented by the entire record before~~  
28 ~~the court. No new or additional evidence in support of or in opposition to~~  
29 ~~a finding, order, determination or decision of the administrative agency~~  
30 ~~shall be heard by the court, except in the event of a trial de novo or in~~  
31 ~~cases where in the discretion of the court justice demands the admission of~~  
32 ~~such evidence.~~ IF REQUESTED BY A PARTY TO AN ACTION WITHIN THIRTY DAYS AFTER  
33 FILING A COMPLAINT, THE COURT SHALL HOLD AN EVIDENTIARY HEARING, INCLUDING  
34 TESTIMONY AND ARGUMENT, TO THE EXTENT NECESSARY TO MAKE THE DETERMINATION  
35 REQUIRED BY SUBSECTION E OF THIS SECTION. THE COURT MAY HEAR TESTIMONY FROM  
36 WITNESSES WHO TESTIFIED AT THE ADMINISTRATIVE HEARING AND WITNESSES WHO WERE  
37 NOT CALLED TO TESTIFY AT THE ADMINISTRATIVE HEARING.

38           B. RELEVANT AND ADMISSIBLE EXHIBITS AND TESTIMONY THAT WERE NOT  
39 OFFERED DURING THE ADMINISTRATIVE HEARING SHALL BE ADMITTED, AND OBJECTIONS  
40 THAT A PARTY FAILED TO MAKE TO EVIDENCE OFFERED AT THE ADMINISTRATIVE HEARING  
41 SHALL BE CONSIDERED, UNLESS EITHER OF THE FOLLOWING IS TRUE:

42           1. THE EXHIBIT, TESTIMONY OR OBJECTION WAS WITHHELD FOR PURPOSES OF  
43 DELAY, HARASSMENT OR OTHER IMPROPER PURPOSE.

1           2. ALLOWING ADMISSION OF THE EXHIBIT OR TESTIMONY OR CONSIDERATION OF  
2 THE OBJECTION WOULD CAUSE SUBSTANTIAL PREJUDICE TO ANOTHER PARTY.

3           ~~B~~ C. FOR REVIEW OF FINAL ADMINISTRATIVE DECISIONS OF AGENCIES THAT  
4 ARE EXEMPT FROM SECTIONS 41-1092.03 THROUGH 41-1092.11, PURSUANT TO SECTION  
5 41-1092.02, the trial shall be de novo if trial de novo is demanded in the  
6 complaint or answer of a defendant other than the agency and if no hearing  
7 was held by the agency or the proceedings before the agency were not  
8 stenographically reported or mechanically recorded so that a transcript might  
9 be made. When a trial de novo is available under the provisions of this  
10 section, it may be had with a jury upon demand of any party.

11           D. THE RECORD IN THE SUPERIOR COURT SHALL CONSIST OF THE RECORD OF THE  
12 ADMINISTRATIVE PROCEEDING, AND THE RECORD OF ANY EVIDENTIARY HEARING, OR THE  
13 RECORD OF THE TRIAL DE NOVO.

14           E. THE COURT MAY AFFIRM, REVERSE, MODIFY OR VACATE AND REMAND THE  
15 AGENCY ACTION. THE COURT SHALL AFFIRM THE AGENCY ACTION UNLESS AFTER  
16 REVIEWING THE ADMINISTRATIVE RECORD AND SUPPLEMENTING EVIDENCE PRESENTED AT  
17 THE EVIDENTIARY HEARING THE COURT CONCLUDES THAT THE ACTION IS NOT SUPPORTED  
18 BY SUBSTANTIAL EVIDENCE, IS CONTRARY TO LAW, IS ARBITRARY AND CAPRICIOUS OR  
19 IS AN ABUSE OF DISCRETION.

20           Sec. 17. Section 20-668, Arizona Revised Statutes, is amended to read:

21           20-668. Powers and duties of the director

22           A. The director shall:

23           1. Report to the board when the director has reasonable cause to  
24 believe that any member insurer examined or being examined at the request of  
25 the board may be insolvent or in a financial condition hazardous to the  
26 policyholders or to the public.

27           2. Notify the board of the existence of an insolvent insurer not later  
28 than three working days after the director receives notice of such  
29 insolvency.

30           3. Upon request of the board, provide the fund with a statement of the  
31 net direct written premiums of each member insurer.

32           4. Immediately make available to the fund for the purpose of making  
33 payment upon all covered claims such assets of the insolvent insurer which  
34 are not required for payment of any claim accorded a higher priority pursuant  
35 to section 20-629.

36           B. The director may:

37           1. Require that the fund notify the insureds of the insolvent insurer  
38 and any other interested parties of the determination of insolvency and of  
39 their rights pursuant to this article. Such notification shall be by mail  
40 at their last known address, where available. If sufficient information for  
41 notification by mail is not available, notice shall be by publication in a  
42 newspaper of general circulation.

43           2. Suspend or revoke, after notice and hearing, the certificate of  
44 authority to transact insurance in this state of any member insurer which

1 fails to pay an assessment when due or fails to comply with the plan of  
2 operation. As an alternative, the director may ~~levy~~ ASSESS a ~~fine~~ CIVIL  
3 PENALTY on any member insurer which fails to pay an assessment when due.  
4 ~~Such fine~~ THE PENALTY shall not exceed five per cent of the unpaid assessment  
5 per month. No ~~fine~~ PENALTY shall be less than one hundred dollars per month,  
6 which amount shall be ~~paid~~ TRANSMITTED to THE STATE TREASURER FOR DEPOSIT IN  
7 the STATE GENERAL fund.

8 3. Revoke the designation of any servicing facility if the director  
9 finds claims are being handled unsatisfactorily.

10 C. Any final action or order of the director pursuant to this article  
11 shall be subject to review pursuant to chapter 1, article 2 of this title.

12 Sec. 18. Section 23-705, Arizona Revised Statutes, is amended to read:  
13 23-705. Special administration fund

14 A. There shall be a special fund in the state treasury known as the  
15 special administration fund.

16 B. No expenditure or transfer may be made from the special  
17 administration fund unless such expenditure or transfer is approved by the  
18 director of the department of administration.

19 C. Interest and penalties collected under the provisions of this  
20 chapter shall be paid into the special administration fund. Such monies  
21 shall not be expended or available for expenditure in any manner which would  
22 permit their substitution for, or a corresponding reduction in, federal funds  
23 which would in the absence of the monies be available to finance expenditures  
24 for the administration of this chapter, but nothing in this section shall  
25 prevent the monies from being used ~~as a revolving fund~~ to cover expenditures  
26 necessary and proper under the law for which federal funds have been duly  
27 requested but not yet received, subject to charging the expenditures against  
28 such funds when received.

29 D. The monies in the special administration fund shall be used by the  
30 commission for payment of costs of administration found not to have been  
31 properly and validly chargeable against federal grants or other funds  
32 received for or in the employment security administration fund created by  
33 section 23-707. The monies shall be available either for satisfying the  
34 obligations incurred by the commission directly or by requesting the state  
35 treasurer to transfer the required amount from the special administration  
36 fund to the employment security administration fund. No expenditure of this  
37 fund or transfer shall be made unless and until the commission finds that no  
38 other funds are available or can properly be used to finance the  
39 expenditures, ~~except that authorized expenditures from the fund may be made~~  
40 ~~for the purpose of acquiring lands and buildings or for the erection of~~  
41 ~~buildings on lands so acquired which are deemed necessary by the commission~~  
42 ~~for the proper administration of this chapter.~~

43 E. The monies in this fund ~~shall be continuously available~~ ARE SUBJECT  
44 TO LEGISLATIVE APPROPRIATION to the commission for expenditure in accordance

1 with the provisions of this section and section 23-706 and shall not lapse  
2 ~~at any time or~~ be transferred to any other fund ~~except as provided in this~~  
3 ~~chapter.~~

4 Sec. 19. Section 23-907, Arizona Revised Statutes, is amended to read:

5 23-907. Liability of employer failing to secure compensation;  
6 defenses; presumption; right of employee to  
7 compensation under chapter; information exchange;  
8 civil penalty; settlement of disputed claim

9 A. Employers who are subject to and who fail to comply with the  
10 provisions of section 23-961 or 23-962 shall not be entitled to the benefits  
11 of this chapter during the period of noncompliance, but shall be liable in  
12 an action under any other applicable law of the state. In such action the  
13 defendant shall not avail himself of the defenses of assumption of risk or  
14 contributory negligence. In all such actions proof of the injury shall  
15 constitute prima facie evidence of negligence on the part of the employer and  
16 the burden shall be upon the employer to show freedom from negligence  
17 resulting in the injury.

18 B. An employee of such an employer, or the employee's dependents in  
19 case death ensued, may, in lieu of proceeding against the employer by civil  
20 action in court, file his application with the commission for compensation  
21 in accordance with the provisions of this chapter, and the commission shall  
22 hear and determine the application for compensation in the manner other  
23 claims are heard and determined before the commission. The compensation so  
24 determined shall be paid from the special fund established by section 23-1065  
25 to the person entitled thereto after a finding and award for benefits has  
26 been issued and becomes final.

27 C. The employer shall be notified of his liability to the special fund  
28 periodically and this notice shall include a ten per cent penalty of the  
29 amount expended by the special fund or a penalty of five hundred dollars,  
30 whichever is greater, plus interest on the amount expended and the penalty  
31 pursuant to section 44-1201. The payments made from the special fund pursuant  
32 to the award plus the penalty shall act as a judgment against the employer.  
33 The commission shall file the award in the office of the clerk of the  
34 superior court in any county in the state and such award shall be entered in  
35 the civil order book and judgment docket and when so filed and entered shall  
36 be a lien for eight years from the date of the award upon the property of the  
37 employer located in the county. Execution may issue thereon within eight  
38 years in the same manner and with like effect as if the award were a judgment  
39 of the superior court. The commission may recover reasonable attorney fees  
40 incurred pursuant to this section. Any ~~recovery~~ CIVIL PENALTIES AND INTEREST  
41 ASSESSED pursuant to this section shall be ~~deposited~~ TRANSMITTED TO THE STATE  
42 TREASURER FOR DEPOSIT in the STATE GENERAL FUND AND ANY PAYMENTS AND ATTORNEY  
43 FEES SHALL BE DEPOSITED IN THE special fund account.

1           D. An employer with one or more employees who is required to comply  
2 with the provisions of this chapter but who fails to obtain coverage through  
3 an insurance carrier or as a self-insurer shall be subject to an action by  
4 the commission to apply to the court for an injunction which shall cause the  
5 employer to cease the operation of his business until such employer complies  
6 with the provisions of law pertaining thereto.

7           E. The commission and other state and local governmental agencies may  
8 exchange information concerning employers who fail to comply with section  
9 23-961 or 23-962 with other federal, state or local governmental agencies.  
10 This exchange of information shall be made only for the purpose of the valid  
11 administrative needs of the programs administered by the commission or other  
12 agencies and shall not be made for the purpose of criminal prosecution of an  
13 employer.

14           F. The commission may assess a civil penalty of five hundred dollars  
15 on an uninsured employer if the commission makes an award for a  
16 noncompensable claim for a claim against the employer and finds that:

17           1. At the time of the accident for which the claim was made the  
18 employer was subject to this chapter.

19           2. The employer was not insured pursuant to this chapter.

20           G. The commission may issue an order assessing a civil penalty of not  
21 to exceed five hundred dollars on an employer who is subject to this chapter  
22 and who is not insured pursuant to this chapter. The order is final against  
23 the employer unless the employer requests a hearing before the commission  
24 within fifteen working days after a copy of the order is mailed to the  
25 employer. Following the hearing the commission may affirm, reverse or modify  
26 its order and shall serve a copy of its decision by regular mail on the  
27 employer. An employer aggrieved by this decision may seek judicial review  
28 pursuant to title 12, chapter 7, article 6.

29           H. Civil penalties assessed pursuant to subsections F and G of this  
30 section are payable to the ~~special~~ STATE GENERAL fund and shall act as a  
31 judgment in the same manner as prescribed in subsection C of this section.  
32 Recovery of attorney fees and accrual of interest are the same as prescribed  
33 in subsection C of this section.

34           I. The commission may compromise or otherwise settle a disputed claim  
35 with an employee of an employer who is subject to and who fails to comply  
36 with the provisions of section 23-961 or 23-962 by filing a notice of  
37 compromise and settlement or notice of stipulation with the presiding  
38 administrative law judge. The notice shall be served on the employer at the  
39 last known mailing address as shown on the records of the commission. The  
40 employer shall keep the commission informed of its current mailing address  
41 once the employer has been notified by the commission of the filing of a  
42 claim against the employer. If the employer does not request a hearing  
43 protesting the terms of the agreement or stipulation within ten working days  
44 of the service of the notice, the commission and the employee may execute the

1 agreement or stipulation without the consent of the employer, subject to the  
2 approval of the presiding administrative law judge. Any payments made to the  
3 employee pursuant to this subsection shall be paid from the special fund and  
4 are subject to reimbursement and collection from the employer in the same  
5 manner as other payments made pursuant to this chapter.

6 Sec. 20. Section 23-926, Arizona Revised Statutes, is amended to read:  
7 23-926. Inspection of employer records; noncompliance by  
8 employer; penalty

9 A. All books, records and payrolls of the employer, including  
10 nonconfidential employer records on file with other state or local  
11 governmental agencies, showing or reflecting in any way the wage expenditure  
12 of the employer shall always be open for inspection by the commission or its  
13 assistants to ascertain information necessary for its administration of the  
14 law.

15 B. An employer who refuses to submit his books, records and payrolls  
16 for inspection as provided by this section is liable for a penalty of five  
17 hundred dollars for each offense which shall be collected by a civil action  
18 in the name of the state, and the recovery shall be paid to the STATE GENERAL  
19 fund ~~established by the provisions of section 23-1065~~. The commission may  
20 recover reasonable attorney fees incurred pursuant to this section.

21 Sec. 21. Section 23-930, Arizona Revised Statutes, is amended to read:  
22 23-930. Unfair claim processing practices; bad faith; civil  
23 penalties

24 A. The commission has exclusive jurisdiction as prescribed in this  
25 section over complaints involving alleged unfair claim processing practices  
26 or bad faith by an employer, self-insured employer, insurance carrier or  
27 claims processing representative relating to any aspect of this chapter. The  
28 commission shall investigate allegations of unfair claim processing or bad  
29 faith either on receiving a complaint or on its own motion.

30 B. If the commission finds that unfair claim processing or bad faith  
31 has occurred in the handling of a particular claim, it shall award the  
32 claimant, in addition to any benefits it finds are due and owing, a benefit  
33 penalty of twenty-five per cent of the benefit amount ordered to be paid or  
34 five hundred dollars, whichever is more.

35 C. If the commission finds that an employer, self-insured employer,  
36 insurance carrier or claim processing representative has a history or pattern  
37 of repeated unfair claim processing practices or bad faith, it may impose a  
38 civil penalty of up to one thousand dollars for each violation found. The  
39 civil penalty shall be ~~deposited~~ TRANSMITTED TO THE STATE TREASURER FOR  
40 DEPOSIT in the ~~special~~ STATE GENERAL fund.

41 D. Any party aggrieved by an order of the commission under this  
42 section may request a hearing pursuant to section 23-947. The hearing and  
43 decision shall be conducted pursuant to the provisions of section 23-941.

1 E. The commission shall adopt by rule a definition of unfair claim  
2 processing practices and bad faith. In adopting a rule under this  
3 subsection, the commission shall consider, among other factors, recognized  
4 and approved claim processing practices within the insurance industry, the  
5 commission's own experience in processing workers' compensation claims and  
6 the workers' compensation and insurance laws of this state.

7 F. This section shall not be construed as limiting or interfering with  
8 the authority of the department of insurance as provided by law to regulate  
9 any insurance carriers, including the jurisdiction of the department of  
10 insurance over unfair claim settlement practices as provided in section  
11 20-461.

12 Sec. 22. Section 23-1065, Arizona Revised Statutes, is amended to  
13 read:

14 23-1065. Special fund; purposes; investment committee

15 A. The industrial commission may direct the payment into the state  
16 treasury of not to exceed one and one-half per cent of all premiums received  
17 by the state compensation fund and private insurance carriers during the  
18 immediately preceding calendar year. The same percentage shall be assessed  
19 against self-insurers based on the total cost to the self-insured employer  
20 as provided in section 23-961, subsection G. Such assessments shall be  
21 computed on the same premium basis as provided for in section 23-961,  
22 subsections G, H, I and J and shall be no more than is necessary to keep the  
23 special fund actuarially sound. Such payments shall be placed in a special  
24 fund within the administrative fund to provide, at the discretion of the  
25 commission, such additional awards as may be necessary to enable injured  
26 employees to accept the benefits of any law of the state or of the United  
27 States, or both jointly, for promotion of vocational rehabilitation of  
28 persons disabled in industry.

29 B. In claims involving an employee who has a preexisting  
30 industrially-related permanent physical impairment of the type specified in  
31 section 23-1044, subsection B and who thereafter suffers an additional  
32 permanent physical impairment of the type specified in such subsection, the  
33 claim involving the subsequent impairment is eligible for reimbursement, as  
34 provided by subsection D of this section, according to the following:

35 1. The employer in whose employ the subsequent impairment occurred or  
36 its insurance carrier is solely responsible for all temporary disability  
37 compensation to which the employee is entitled and for an amount equal to the  
38 permanent disability compensation provided by section 23-1044, subsection B  
39 for the subsequent impairment. If the employee is determined to have  
40 sustained no loss of earning capacity after the medically stationary date,  
41 the employer or carrier shall pay him as a vocational rehabilitation bonus  
42 the amount calculated under this paragraph as a lump sum, which shall be a  
43 credit against any permanent compensation benefits awarded in any subsequent  
44 proceeding. The amount of the vocational rehabilitation bonus for which the

1 employer or carrier is responsible under this paragraph shall be calculated  
2 solely on physical, medically rated permanent impairment and not on  
3 occupational or other factors.

4 2. If the commission determines that the employee is entitled to  
5 compensation for loss of earning capacity under the provisions of section  
6 23-1044, subsection C or permanent total disability under section 23-1045,  
7 subsection B, the total amount of permanent benefits for which the employer  
8 or carrier is solely responsible under paragraph 1 of this subsection shall  
9 be expended first, with monthly payments made according to the loss of  
10 earning capacity or permanent total disability award. The employer or  
11 carrier and the special fund are equally responsible for the remaining amount  
12 of compensation for loss of earning capacity under section 23-1044,  
13 subsection C or permanent total disability under section 23-1045, subsection  
14 B. This paragraph shall not be construed as requiring payment of any  
15 benefits under section 23-1044, subsection B in any case in which an employee  
16 is entitled to benefits for loss of earning capacity under section 23-1044,  
17 subsection C or permanent total disability benefits under section 23-1045,  
18 subsection B.

19 C. In claims involving an employee who has a preexisting physical  
20 impairment which is not industrially-related and, whether congenital or due  
21 to injury or disease, is of such seriousness as to constitute a hindrance or  
22 obstacle to employment or to obtaining reemployment if the employee becomes  
23 unemployed, and the impairment equals or exceeds a ten per cent permanent  
24 impairment evaluated in accordance with the American medical association  
25 guides to the evaluation of permanent impairment, and the employee thereafter  
26 suffers an additional permanent impairment not of the type specified in  
27 section 23-1044, subsection B, the claim involving the subsequent impairment  
28 is eligible for reimbursement, as provided by subsection D of this section,  
29 under the following conditions:

30 1. The employer in whose employ the subsequent impairment occurred or  
31 its carrier is solely responsible for all temporary disability compensation  
32 to which the employee is entitled.

33 2. The employer establishes by written records that the employer had  
34 knowledge of the permanent impairment at the time the employee was hired, or  
35 that the employee continued in employment after the employer acquired such  
36 knowledge.

37 3. The employee's preexisting impairment is due to one or more of the  
38 following:

- 39 (a) Epilepsy.
- 40 (b) Diabetes.
- 41 (c) Cardiac disease.
- 42 (d) Arthritis.
- 43 (e) Amputated foot, leg, arm or hand.

- 1 (f) Loss of sight of one or both eyes or a partial loss of uncorrected
- 2 vision of more than seventy-five per cent bilaterally.
- 3 (g) Residual disability from poliomyelitis.
- 4 (h) Cerebral palsy.
- 5 (i) Multiple sclerosis.
- 6 (j) Parkinson's disease.
- 7 (k) Cerebral vascular accident.
- 8 (l) Tuberculosis.
- 9 (m) Silicosis.
- 10 (n) Psychoneurotic disability following treatment in a recognized
- 11 medical or mental institution.
- 12 (o) Hemophilia.
- 13 (p) Chronic osteomyelitis.
- 14 (q) Hyperinsulinism.
- 15 (r) Muscular dystrophies.
- 16 (s) Arteriosclerosis.
- 17 (t) Thrombophlebitis.
- 18 (u) Varicose veins.
- 19 (v) Heavy metal poisoning.
- 20 (w) Ionizing radiation injury.
- 21 (x) Compressed air sequelae.
- 22 (y) Ruptured intervertebral disk.

23 4. The employer or carrier and the special fund are equally  
24 responsible for the amount of compensation for loss of earning capacity under  
25 section 23-1044, subsection C or permanent total disability under section  
26 23-1045, subsection B.

27 D. The employer or insurance carrier shall notify the commission of  
28 its intent to claim reimbursement for an eligible claim under subsection B  
29 or C of this section not later than the time the employer or insurance  
30 carrier notifies the commission pursuant to section 23-1047, subsection A.  
31 Upon receiving notice the commission may expend funds from the special fund  
32 created by this section for travel and discovery procedures and for the  
33 employment of such independent legal, medical, rehabilitation, claims or  
34 labor market consultants or experts as may be deemed necessary by the  
35 commission to assist in the determination of the liability of the special  
36 fund, if any, under subsection B or C of this section. In the event there  
37 is any dispute regarding liability to the special fund pursuant to subsection  
38 B or C of this section, the commission shall not delay the issuance of a  
39 permanent award pursuant to section 23-1047, subsection B.

40 E. If the special fund created by this section is determined to be  
41 liable under either subsection B or C of this section, the employer or  
42 insurance carrier which is primarily liable shall pay the entire amount of  
43 the award to the injured employee and the commission shall by rule provide  
44 for the reimbursement of the employer or insurance carrier on an annual

1 basis. In any case arising out of subsection B or C of this section, the  
2 written approval of the special fund is required for the compromise of any  
3 claim made pursuant to section 23-1023. In any such case, written approval  
4 shall not be unreasonably withheld by the special fund, carrier, self-insured  
5 employer or other person responsible for the payment of compensation.  
6 Failure to obtain the written approval of the special fund shall not cause  
7 the injured worker to lose any benefits but ends the special fund's liability  
8 for reimbursement and makes the employer or carrier solely responsible for  
9 the payment of the remaining benefits.

10 F. The employer or insurance carrier shall make its claim for  
11 reimbursement to the commission no later than November 1 each year, for  
12 payments made pursuant to subsection B or C of this section during the twelve  
13 months prior to October 1 each year. Claims shall be paid before December  
14 31 each year. If the total annual reserved liabilities of the special fund  
15 obligated under subsections B and C of this section exceed six million  
16 dollars, as determined by the annual actuarial study performed pursuant to  
17 subsection H of this section, the commission may, after notice and a hearing,  
18 levy an additional assessment under subsection A of this section of up to  
19 one-half per cent to meet such liabilities. Any insurance carrier or  
20 employer who may be adversely affected by the additional assessment may at  
21 any time prior to the sixtieth day after such additional assessment is  
22 ordered file a complaint challenging the validity of the additional  
23 assessment in the superior court in Maricopa county for a judicial review of  
24 the additional assessment. On judicial review the determination of the  
25 commission shall be upheld if supported by substantial evidence in the record  
26 considered as a whole.

27 G. In the event the injured employee is awarded additional  
28 compensation, under the provisions of subsection A of this section, the  
29 commission retains jurisdiction to amend, alter or change the award upon a  
30 change in the physical condition of the injured employee resulting from the  
31 injury.

32 H. The commission shall cause an annual actuarial study of the special  
33 award fund to be made by a qualified actuary who is a member of the society  
34 of actuaries. The actuary shall make specific recommendations for maintaining  
35 the fund on a sound actuarial basis. The actuarial study shall be completed  
36 on or before September 1.

37 I. The special fund of the commission consists of all monies from  
38 premiums, ~~AND assessments and penalties~~ EXCEPT PENALTIES ASSESSED PURSUANT  
39 TO THIS CHAPTER received and paid into the fund, property and securities  
40 acquired by the use of monies in the fund, interest earned on monies in the  
41 fund and other monies derived from the sale, use or lease of properties  
42 belonging to the fund. The special fund created by this section shall be  
43 administered by the director of the industrial commission, subject to the  
44 authority of the industrial commission. The director of the commission with

1 approval of the investment committee may, in the administration of the  
2 special fund, provide loans, subject to repayment, budgetary review and  
3 legislative appropriation, to the administrative fund for the purposes and  
4 subject to the provisions of section 23-1081, acquire real property and  
5 acquire or construct a building or other improvements on the real property  
6 as may be necessary to house, contain, furnish, equip and maintain offices  
7 and space for departmental and operational facilities of the commission. The  
8 commission when using space constructed pursuant to this section shall make  
9 equal payments of rent on a semiannual basis which shall be deposited in the  
10 special fund. The investment committee shall determine the amount of the rent  
11 which must be at least equal to or greater than that determined by the joint  
12 committee on capital review for buildings of similar design and construction  
13 as provided by section 41-792.01.

14 J. There is established an investment committee consisting of the  
15 director and the chairman of the commission and three persons knowledgeable  
16 in investments and economics appointed by the governor. Of the members  
17 appointed by the governor, one shall be a professional in the investment  
18 business, one shall represent workers' compensation insurers, and one shall  
19 represent self-insurers. The term of members appointed by the governor is  
20 three years which shall begin on July 1 and end on June 30 three years later.  
21 The committee shall prescribe by rule investment policies and supervise the  
22 investment activities of the special fund.

23 K. Each member of the investment committee, other than the director  
24 of the commission, is eligible to receive from the special fund:

25 1. Compensation of fifty dollars for each day while in actual  
26 attendance at meetings of the investment committee.

27 2. Reimbursement for expenses pursuant to title 38, chapter 4,  
28 article 2.

29 L. The investment committee shall meet at least once every month.

30 M. The investment committee shall periodically review and assess the  
31 investment strategy.

32 N. The investment committee may, by resolution, invest and reinvest  
33 the surplus or reserves in the funds established under this chapter in any  
34 legal investments authorized under section 38-719.

35 O. In addition to the investments authorized under section 38-719,  
36 the investment committee may approve the investment in real property and  
37 improvements on real property to house and maintain offices of the  
38 commission, including spaces for its departmental and operational facilities.  
39 Title to the real estate and improvements on the real estate vests in the  
40 special fund of the commission, and the assets become part of the fund as  
41 provided by this section.

42 P. The investment committee may appoint a custodian for the  
43 safekeeping of all or any portion of the investments owned by the special  
44 fund of the commission and may register stocks, bonds and other investments

1 in the name of a nominee. Except for investments held by a custodian or in  
2 the name of a nominee, all securities purchased pursuant to subsection N of  
3 this section shall promptly be deposited with the state treasurer as  
4 custodian thereof, who shall collect the dividends, interest and principal  
5 thereof, and pay, when collected, into the special fund. The state treasurer  
6 shall pay all vouchers drawn for the purchase of securities. The director  
7 may sell any of the securities as the director deems appropriate, if  
8 authorized by resolution of the investment committee, and the proceeds  
9 therefrom shall be payable to the state treasurer for the account of the  
10 special fund upon delivery of the securities to the purchaser or the  
11 purchaser's agent.

12 Sec. 23. Section 28-451, Arizona Revised Statutes, is amended to read:  
13 28-451. Right of appeal to court

14 A person denied a license, or whose license has been cancelled,  
15 suspended or revoked by the department except where the cancellation or  
16 revocation is mandatory under the provisions of this chapter, shall have the  
17 right to seek judicial review of such action pursuant to title 12, chapter  
18 7, article 6, EXCEPT THAT SECTION 12-910, SUBSECTIONS A, B, D AND E SHALL NOT  
19 APPLY. The court shall expedite the disposition of appeals pursuant to this  
20 section. THE COURT HEARING AND DETERMINATION SHALL EXTEND TO ALL QUESTIONS  
21 OF LAW AND FACT PRESENTED BY THE ENTIRE RECORD BEFORE THE COURT. NO NEW OR  
22 ADDITIONAL EVIDENCE IN SUPPORT OF OR IN OPPOSITION TO A FINDING, ORDER,  
23 DETERMINATION OR DECISION OF THE DEPARTMENT SHALL BE HEARD BY THE COURT  
24 EXCEPT IN CASES WHERE IN THE DISCRETION OF THE COURT JUSTICE DEMANDS THE  
25 ADMISSION OF NEW OR ADDITIONAL EVIDENCE.

26 Sec. 24. Section 32-305, Arizona Revised Statutes, is amended to read:  
27 32-305. Board of barbers fund

28 A. A board of barbers fund is established. EXCEPT AS PROVIDED IN  
29 SUBSECTION C OF THIS SECTION, before the end of each calendar month, all  
30 monies from whatever source which come into the possession of the board shall  
31 be transmitted to the state treasurer who shall deposit ten per cent of such  
32 monies in the state general fund and transfer the remaining ninety per cent  
33 to the board of barbers fund.

34 B. Monies deposited in the board of barbers fund are subject to  
35 section 35-143.01.

36 C. MONIES FROM CIVIL PENALTIES RECEIVED PURSUANT TO SECTION 32-352  
37 SHALL BE TRANSMITTED TO THE STATE TREASURER FOR DEPOSIT IN THE STATE GENERAL  
38 FUND.

39 Sec. 25. Section 32-505, Arizona Revised Statutes, is amended to read:  
40 32-505. Board of cosmetology fund

41 A. The board of cosmetology fund is established. EXCEPT AS PROVIDED  
42 IN SUBSECTION C OF THIS SECTION, before the end of each calendar month, all  
43 monies from whatever source which come into the possession of the board shall  
44 be transmitted to the state treasurer who shall deposit ten per cent of such

1 monies in the state general fund and transfer the remaining ninety per cent  
2 to the board of cosmetology fund.

3 B. Monies deposited in the board of cosmetology fund are subject to  
4 section 35-143.01.

5 C. MONIES FROM CIVIL PENALTIES RECEIVED PURSUANT TO SECTION 32-571  
6 SHALL BE TRANSMITTED TO THE STATE TREASURER FOR DEPOSIT IN THE STATE GENERAL  
7 FUND.

8 Sec. 26. Section 32-705, Arizona Revised Statutes, is amended to read:  
9 32-705. Disposition of fees

10 A. All monies received by the board under the provisions of this  
11 chapter shall be paid to the state treasurer monthly. EXCEPT AS PROVIDED IN  
12 SUBSECTION C OF THIS SECTION, the state treasurer shall deposit ten per cent  
13 of such monies in the general fund and ninety per cent in the board of  
14 accountancy fund.

15 B. Monies deposited in the board of accountancy fund shall be subject  
16 to the provisions of section 35-143.01.

17 C. MONIES FROM ADMINISTRATIVE PENALTIES RECEIVED PURSUANT TO SECTION  
18 32-741 SHALL BE TRANSMITTED TO THE STATE TREASURER FOR DEPOSIT IN THE STATE  
19 GENERAL FUND.

20 Sec. 27. Section 32-1212, Arizona Revised Statutes, is amended to  
21 read:

22 32-1212. Dental board fund

23 A. The executive director of the board shall each month transmit to  
24 the state treasurer all fees, fines and other revenue received by the board,  
25 accompanied by a statement showing the source of such monies. EXCEPT AS  
26 PROVIDED IN SUBSECTION C OF THIS SECTION, the state treasurer shall place ten  
27 per cent of all such receipts to the credit of the general fund of the state,  
28 and the balance of the receipts to the credit of the dental board fund.

29 B. Monies deposited in the dental board fund shall be subject to the  
30 provisions of section 35-143.01.

31 C. MONIES FROM ADMINISTRATIVE PENALTIES RECEIVED PURSUANT TO SECTION  
32 32-1263.01 SHALL BE TRANSMITTED TO THE STATE TREASURER FOR DEPOSIT IN THE  
33 STATE GENERAL FUND.

34 Sec. 28. Section 32-1307, Arizona Revised Statutes, is amended to  
35 read:

36 32-1307. Board of funeral directors' and embalmers' fund

37 A. All fees and other revenue accruing to the board shall be paid to  
38 the treasurer and deposited by him with the state treasurer, through the  
39 department of administration. EXCEPT AS PROVIDED IN SUBSECTION C OF THIS  
40 SECTION, ninety per cent of the fees shall be placed in the board of funeral  
41 directors' and embalmers' fund and ten per cent in the general fund.

42 B. Monies deposited in the board of funeral directors' and embalmers'  
43 fund, at the board's request, may be invested and divested by the state  
44 treasurer as provided by section 35-313. The monies earned from these

1 investments shall be credited to the fund. Except as provided in section  
2 32-1364.01, all monies deposited in the fund shall be subject to the  
3 provisions of section 35-143.01.

4 C. MONIES FROM CIVIL PENALTIES RECEIVED PURSUANT TO SECTION 32-1364  
5 SHALL BE TRANSMITTED TO THE STATE TREASURER FOR DEPOSIT IN THE STATE GENERAL  
6 FUND.

7 Sec. 29. Section 32-1611, Arizona Revised Statutes, is amended to  
8 read:

9 32-1611. Board of nursing fund

10 A. EXCEPT AS PROVIDED IN SUBSECTION C OF THIS SECTION, all monies  
11 received by the board from whatever source shall be paid to the executive  
12 director who before the end of each calendar month shall deposit monies  
13 received during such month with the state treasurer, who shall transfer  
14 ninety per cent of such monies to the board of nursing fund, and deposit the  
15 remaining ten per cent in the general fund.

16 B. Monies deposited in the board of nursing fund shall be subject to  
17 the provisions of section 35-143.01.

18 C. MONIES FROM CIVIL PENALTIES RECEIVED PURSUANT TO SECTION 32-1606  
19 SHALL BE TRANSMITTED TO THE STATE TREASURER FOR DEPOSIT IN THE STATE GENERAL  
20 FUND.

21 Sec. 30. Section 35-141, Arizona Revised Statutes, is amended to read:

22 35-141. General fund defined; payment of salaries and expenses

23 The general fund consists of all money received into the state treasury  
24 except money designated by law for other statutory funds ~~or other~~  
25 ~~specifically designated purposes~~. Salaries of state officers, salaries of  
26 deputies, assistants, clerks and employees, and expenses incident to the  
27 offices thereof, shall be paid from the general fund or the respective fund  
28 indicated when and as authorized in the general appropriation act or any  
29 other appropriation enacted by the legislature.

30 Sec. 31. Section 36-431.01, Arizona Revised Statutes, is amended to  
31 read:

32 36-431.01. Violations; civil penalties

33 A. Any person who violates any provision of this chapter or any rule  
34 adopted under authority of this chapter may be assessed a civil penalty by  
35 the director in an amount of not to exceed three hundred dollars for each  
36 violation. Each day that a violation continues shall constitute a separate  
37 violation. The director may issue a notice of assessment that shall include  
38 the proposed amount of the assessment. A person may appeal the assessment  
39 by requesting, within fifteen days of receipt of the formal notice of  
40 assessment, a hearing before the director. The hearing shall be conducted  
41 pursuant to title 41, chapter 6. When an assessment is appealed, the  
42 director shall take no further action to enforce and collect the assessment  
43 until after the hearing.

1           B. Pursuant to interagency agreement specified in section 36-409, the  
2 director may assess a civil penalty, including interest, in accordance with  
3 42 United States Code, section 1396r. A person may appeal this assessment  
4 by requesting a hearing before the director in accordance with subsection A  
5 of this section. Civil penalty amounts may be established by rules adopted  
6 by the director that conform to guidelines or regulations adopted by the  
7 secretary of the United States department of health and human services  
8 pursuant to 42 United States Code, section 1396r. ~~Civil penalties collected  
9 shall be deposited in the nursing care institution resident protection  
10 revolving fund established in section 36-431.02. The director shall use  
11 these monies for the purposes prescribed by 42 United States Code, section  
12 1396r, including payment for the costs of relocation of residents to other  
13 facilities, maintenance of operation of a facility pending correction of the  
14 deficiencies or closure and reimbursement of residents for personal monies  
15 lost.~~

16           C. Actions to enforce the collection of penalties assessed pursuant  
17 to subsections A and B OF THIS SECTION shall be brought by the attorney  
18 general or the county attorney in the name of the state in the justice court  
19 or the superior court in the county in which the violation occurred.

20           D. Penalties assessed under this section are in addition to and not  
21 in limitation of other penalties imposed pursuant to this chapter. ALL CIVIL  
22 PENALTIES AND INTEREST ASSESSED PURSUANT TO THIS SECTION SHALL BE TRANSMITTED  
23 TO THE STATE TREASURER FOR DEPOSIT IN THE STATE GENERAL FUND.

24           Sec. 32. Repeal

25           Section 36-431.02, Arizona Revised Statutes, is repealed.

26           Sec. 33. Section 36-882, Arizona Revised Statutes, is amended to read:

27           36-882. License; posting; transfer prohibited; fee

28           A. A day care center shall not receive any child for care, supervision  
29 or training unless the agency is licensed by the department of health  
30 services.

31           B. An application for a license shall be made on a form prescribed by  
32 the department and shall include all information required by the department  
33 and the names and addresses of the owners and lessees of any agricultural  
34 land within one-fourth mile of the day care center.

35           C. Upon application for a license by a day care center the department  
36 shall investigate the physical space, activities and standards of care of the  
37 day care center, and if satisfied that it conforms with the standards of care  
38 prescribed by the department, and that its equipment, its services and the  
39 good character of the applicant are conducive to the welfare of children, a  
40 provisional license shall be issued. A provisional license for a period of  
41 six months shall be issued to a day care center upon initial licensure. Upon  
42 a change of center director, the department may require the regular license  
43 to revert to a provisional license for a period not to exceed six months.  
44 Upon satisfactory completion of the provisional period, a regular license for

1 the remainder of the licensure period shall be issued. A provisional license  
2 for deficiencies may be issued for a period of not to exceed six months to  
3 any day care center which is temporarily unable to conform to the established  
4 standards of public health and does not threaten the health or safety of  
5 children. Such licenses shall state the reason for provisional status.

6 D. When the department issues an original regular license or an  
7 original provisional license to a day care center, it shall notify the owners  
8 and lessees of any agricultural land within one-fourth mile of the day care  
9 center.

10 E. An applicant for a day care center license shall be fingerprinted  
11 and submit the notarized form required pursuant to section 36-883.02 with his  
12 application.

13 F. The fee for an initial application for licensure is one hundred  
14 fifty dollars and is not refundable. The application fee is both for the  
15 initial provisional and the first full licensure period. The application fee  
16 for renewal of a license is one hundred fifty dollars and is not refundable.  
17 An applicant for renewal who fails to submit the application forty-five days  
18 before the expiration of the license is subject to a fifty dollar late filing  
19 fee. Late filing fees shall be transmitted to the state treasurer for  
20 deposit ~~as provided in section 36-891, subsection G~~ IN THE STATE GENERAL  
21 FUND.

22 G. A license is valid for three years from the date of issuance and  
23 shall specify the following:

- 24 1. The name of the applicant.
- 25 2. The name of the center director.
- 26 3. The exact address where the day care center will be maintained.
- 27 4. The maximum number and age limitations of children that may be  
28 cared for at any one time.
- 29 5. The classification of services that the day care center is licensed  
30 to provide.

31 H. The licensee shall notify the department in writing within ten days  
32 of any change in center director designation.

33 I. The license is not transferable from person to person and is valid  
34 only for the quarters occupied at the time of issuance.

35 J. The license shall be conspicuously posted in the day care center.

36 K. The licensee shall conspicuously post a schedule of fees charged  
37 for services and the established policy for a refund of fees for services not  
38 rendered.

39 L. Current department inspection reports shall be kept at the day care  
40 center and shall be made available to parents on request.

41 Sec. 34. Section 36-891, Arizona Revised Statutes, is amended to read:  
42 36-891. Civil penalty; inspection of centers; training program

43 A. After a hearing conducted pursuant to title 41, chapter 6, the  
44 director may impose a civil penalty on a person who violates this article or

1 rules adopted pursuant to this article in an amount of not to exceed one  
2 hundred dollars for each day the violation occurs. A civil penalty shall be  
3 imposed only for those days on which the violation has been documented by the  
4 department.

5 B. If a civil penalty imposed pursuant to subsection A ~~of this section~~  
6 is not paid, the attorney general or a county attorney shall file an action  
7 to collect the civil penalty in a justice court or the superior court in the  
8 county in which the violation occurred.

9 C. Unless a day care center license is revoked or suspended, the  
10 director shall place the license of a day care center subject to a civil  
11 penalty pursuant to subsection A ~~of this section~~ on provisional license  
12 status for a period of time not to exceed six months in addition to other  
13 penalties imposed pursuant to this article.

14 D. Civil penalties collected pursuant to this article SECTION shall  
15 be transmitted to the state treasurer for deposit ~~as provided in subsection~~  
16 ~~G of this section~~ IN THE STATE GENERAL FUND.

17 E. The department shall develop an instrument that documents  
18 compliance and noncompliance of day care centers according to the criteria  
19 prescribed in its rules governing day care center licensure. Blank copies  
20 of the instrument, which shall be in standardized form, shall be made  
21 available to the public.

22 F. The director shall establish a day care center training program to  
23 provide training for day care centers and users of day care services,  
24 technical assistance materials for day care centers and information to  
25 enhance consumer awareness.

26 ~~G. The day care training fund is established in the state treasury.  
27 The department shall administer the fund. The department shall transmit late  
28 filing fees collected pursuant to section 36-882, subsection F and section  
29 36-897.01, subsection D and civil penalties collected pursuant to this  
30 section and section 36-897.06 to the state treasurer who shall deposit the  
31 first twenty thousand dollars collected in the day care training fund and all  
32 monies collected above twenty thousand dollars in the state general fund.  
33 On notice from the department the state treasurer shall invest and divest  
34 monies in the fund as provided by section 35-313 and monies earned from  
35 investment shall be credited to the fund.~~

36 Sec. 35. Section 36-897.01, Arizona Revised Statutes, is amended to  
37 read:

38 36-897.01. Certification; application; fees; rules;  
39 fingerprinting

40 A. A day care group home shall be certified by the department.

41 B. An application for certification shall be made on a form prescribed  
42 by the department and shall contain all information required by the  
43 department.

1 C. An application shall be accompanied by a nonrefundable application  
2 fee of thirty dollars.

3 D. A certificate is valid for three years and may be renewed for  
4 successive three-year periods by submitting an application for  
5 recertification as prescribed by the department and submitting a  
6 nonrefundable renewal fee of thirty dollars. An applicant for certification  
7 renewal who fails to submit the application forty-five days before the  
8 expiration of the certificate is subject to a twenty-five dollar late filing  
9 fee. Late filing fees collected pursuant to this subsection shall be  
10 transmitted to the state treasurer for deposit ~~as provided in section 36-891,~~  
11 ~~subsection G~~ IN THE STATE GENERAL FUND.

12 E. In order to ensure that the equipment and services of a day care  
13 group home and the good character of an applicant are conducive to the  
14 welfare of children, the department by rule shall establish the criteria for  
15 granting, denying, suspending and revoking a certificate.

16 F. The director shall adopt rules and prescribe forms as may be  
17 necessary for the proper administration and enforcement of this article.

18 G. The certificate shall be conspicuously posted in the day care group  
19 home for viewing by parents and the public.

20 H. Current department inspection reports shall be kept at the day care  
21 group home and shall be made available to parents on request.

22 I. A certificate is not transferable and is valid only for the  
23 location occupied at the time it is issued.

24 J. An applicant for a day care group home certificate shall be  
25 fingerprinted and shall submit the notarized form required pursuant to  
26 section 36-897.03, subsection E with his application. Certification of the  
27 home and registration of the applicant are conditioned on the results of the  
28 fingerprint check and receipt of the notarized form.

29 Sec. 36. Section 36-897.06, Arizona Revised Statutes, is amended to  
30 read:

31 36-897.06. Civil penalty: collection

32 A. After a hearing conducted pursuant to title 41, chapter 6, the  
33 director may impose a civil penalty on a person who violates this article or  
34 rules adopted pursuant to this article in an amount not to exceed fifty  
35 dollars for each day the violation occurs. A civil penalty shall be imposed  
36 only for those days on which the day care group home is in violation of this  
37 article or department rules.

38 B. If a civil penalty imposed pursuant to subsection A ~~of this section~~  
39 is not paid, the attorney general or a county attorney shall file an action  
40 to collect the civil penalty in a justice court or the superior court in the  
41 county in which the violation occurred.

42 C. Civil penalties collected pursuant to subsection A ~~of this section~~  
43 shall be transmitted to the state treasurer for deposit ~~as provided in~~  
44 ~~section 36-891, subsection G~~ IN THE STATE GENERAL FUND.

1 D. The department shall develop an instrument that documents  
2 compliance and noncompliance of day care group homes according to the  
3 criteria prescribed in its rules governing day care group home certification.  
4 Blank copies of the instrument, which shall be in standardized form, shall  
5 be made available to the public.

6 Sec. 37. Section 36-3009, Arizona Revised Statutes, is amended to  
7 read:

8 36-3009. Disclosing location of shelters; prohibition; civil  
9 penalty

10 A. Information that may disclose the location or address of a shelter  
11 for victims of domestic violence is confidential and is not subject to public  
12 disclosure by a person or by a public or private agency in a manner that  
13 identifies the location or address as a shelter and threatens the safety of  
14 the inhabitants.

15 B. The program administrator shall impose a civil penalty of not more  
16 than one thousand dollars against a person or agency that knowingly and  
17 maliciously releases information in violation of this section.

18 C. The program administrator shall transmit penalties collected  
19 pursuant to this section to the state treasurer for deposit in the ~~domestic~~  
20 ~~violence shelter fund established pursuant to section 36-3002~~ STATE GENERAL  
21 FUND.

22 Sec. 38. Section 41-1021, Arizona Revised Statutes, is amended to  
23 read:

24 41-1021. Public rule making docket; notice

25 A. Each agency shall establish and maintain a current, public rule  
26 making docket for each pending rule making proceeding. A rule making  
27 proceeding is pending from the time the agency begins to consider proposing  
28 the rule for adoption under section 41-1022 to the time the rule making  
29 proceeding is terminated by the agency indicating in the rule making docket  
30 that the agency is no longer actively considering proposing the rule for  
31 adoption, or if the agency has filed a notice of the proposed rule adoption  
32 with the secretary of state pursuant to section 41-1022 by publication of a  
33 notice of termination or the rule becoming effective.

34 B. For each rule making proceeding, the docket shall indicate all of  
35 the following:

- 36 1. The subject matter of the proposed rule.
- 37 2. A citation to all published notices relating to the proceeding.
- 38 3. The name and address of agency personnel with whom persons may  
39 communicate regarding the rule.
- 40 4. Where written submissions on the proposed rule may be inspected.
- 41 5. The time during which written submissions may be made and the time  
42 and place where oral comments may be made.

1           6. Where a copy of the economic, SMALL BUSINESS AND CONSUMER impact  
2 statement, ~~the statement of the effect of the rule on small business~~ and the  
3 minutes of the pertinent council meeting may be inspected.

4           7. The current status of the proposed rule.

5           8. Any known timetable for agency decisions or other action in the  
6 proceeding.

7           9. The date of the rule's adoption.

8           10. The date of the rule's filing and publication.

9           11. The date the rule was approved by the council.

10          12. When the rule will become effective.

11          C. The agency shall provide public notice of the establishment of a  
12 rule making docket by causing a notice of docket opening to be published in  
13 the register, including the information set forth in subsection B, paragraphs  
14 1, 2, 3, 5 and 8 of this section.

15          D. An agency may appoint formal advisory committees to comment, before  
16 publication of a notice of proposed rule adoption under section 41-1022, on  
17 the subject matter of a possible rule making under active consideration  
18 within the agency. The membership of these committees shall be published at  
19 the time of formation and annually thereafter in the register. Members of  
20 these committees are not eligible to receive compensation except as otherwise  
21 provided by law.

22          Sec. 39. Section 41-1024, Arizona Revised Statutes, is amended to  
23 read:

24           41-1024. Time and manner of rule adoption

25           A. An agency may not adopt a rule until the rule making record is  
26 closed.

27           B. Within one hundred twenty days after the close of the record on the  
28 proposed rule adoption, an agency shall take one of the following actions:

29           1. Adopt a rule pursuant to the rule making proceeding AND SUBMIT THE  
30 RULE TO THE COUNCIL, OR, IF THE RULE IS EXEMPT PURSUANT TO SECTION 41-1057,  
31 TO THE ATTORNEY GENERAL.

32           2. Terminate the proceeding by publication of a notice to that effect  
33 in the register.

34           C. Before the adoption of a rule, an agency shall consider the written  
35 submissions, the oral submissions or any memorandum summarizing oral  
36 submissions, the economic, SMALL BUSINESS AND CONSUMER impact statement, ~~the~~  
37 ~~statement of the effect of the rule on small business and the consumer impact~~  
38 ~~statement.~~

39           D. Within the scope of its delegated authority, an agency may use its  
40 own experience, technical competence, specialized knowledge and judgment in  
41 the adoption of a rule.

42           E. Unless exempted by section 41-1005 or 41-1057 OR UNLESS THE RULE  
43 IS AN EMERGENCY RULE ADOPTED PURSUANT TO SECTION 41-1026, if the agency

1 chooses to adopt the rule, the agency shall submit a rule package to the  
2 council and to the committee. The rule package shall include:

3 1. The preamble.

4 2. The exact words of the rule, including existing language and any  
5 deletions.

6 3. The concise explanatory statement.

7 4. The economic, small business and consumer impact statement.

8 F. If the adopted rule is exempt pursuant to section 41-1005, the  
9 agency shall file it as a final rule with the secretary of state.

10 G. If the adopted rule is exempt from council approval, pursuant to  
11 section 41-1057, the agency shall submit the rule package set forth in  
12 subsection E of this section to the attorney general for approval pursuant  
13 to section 41-1044.

14 H. An agency shall not file a final rule with the secretary of state  
15 without prior approval from the council, unless the final rule is exempted  
16 pursuant to section 41-1005 or 41-1057 or the rule is an emergency rule  
17 adopted pursuant to section 41-1026 or a summary proposed rule pursuant to  
18 section 41-1027.

19 Sec. 40. Section 41-1031, Arizona Revised Statutes, is amended to  
20 read:

21 41-1031. Filing rules, preamble, concise explanatory statement  
22 and economic, small business and consumer impact  
23 statement with secretary of state; effective date;  
24 permanent record

25 A. Following the filing of a rule adopted pursuant to an exemption to  
26 this chapter or following approval and filing of a rule, a preamble, ~~and~~ a  
27 concise explanatory statement AND AN ECONOMIC, SMALL BUSINESS AND CONSUMER  
28 IMPACT STATEMENT by the council as provided in article 5 of this chapter, the  
29 secretary of state shall affix to each rule document, preamble, concise  
30 explanatory statement and economic, small business and consumer impact  
31 statement the time and date of filing. A rule is not effective until the  
32 secretary of state affixes the time and date of filing to the rule document  
33 as provided in this section.

34 B. The secretary of state shall keep a permanent record of rules,  
35 preambles, concise explanatory statements and economic, small business and  
36 consumer impact statements filed with the office.

37 Sec. 41. Section 41-1052, Arizona Revised Statutes, is amended to  
38 read:

39 41-1052. Council review and approval

40 A. Before filing a final rule with the secretary of state, an agency  
41 shall prepare, transmit to the council and the committee and obtain the  
42 council's approval of the adopted rule, preamble, concise explanatory  
43 statement and economic, small business and consumer impact statement which  
44 meets the requirements of section 41-1055.

1           B. Within ninety days of receipt of the adopted rule, preamble,  
2 concise explanatory statement and economic, small business and consumer  
3 impact statement, the council shall review and approve or return, in whole  
4 or in part, the adopted rule, PREAMBLE, CONCISE EXPLANATORY STATEMENT or  
5 economic, small business and consumer impact statement. An agency may  
6 resubmit a rule, preamble, concise explanatory statement or economic, small  
7 business and consumer impact statement if the council returns the rule or  
8 economic, small business and consumer impact statement, in whole or in part,  
9 to the agency.

10           C. The council shall not approve the adopted rule unless:

11           1. The economic, small business and consumer impact statement contains  
12 the information, data and analysis prescribed by this article.

13           2. The economic, small business and consumer impact statement is  
14 generally accurate.

15           3. The probable benefits of the rule outweigh the probable costs of  
16 the rule.

17           4. The rule is clear, concise and understandable.

18           5. The rule is not illegal, inconsistent with legislative intent or  
19 beyond the agency's statutory authority.

20           6. The agency adequately addressed the comments on the proposed rule  
21 and any supplemental proposals.

22           7. The adopted rule is not a substantial change, considered as a  
23 whole, from the proposed rule and any supplemental notices.

24           D. The council may require a representative of an agency whose adopted  
25 rule is under examination to attend a council meeting and answer questions.  
26 The council may also communicate to the agency its comments on any adopted  
27 rule, preamble, concise explanatory statement or economic, small business and  
28 consumer impact statement and require the agency to respond to its comments  
29 in writing.

30           E. A person may submit written comments to the council that are within  
31 the scope of subsection C of this section. The council may permit oral  
32 comments at a council meeting within the scope of subsection C of this  
33 section.

34           F. If the agency makes a good faith effort to comply with the  
35 requirements prescribed in this article and has explained in writing the  
36 methodology used to produce the economic, small business and consumer impact  
37 statement, the rule may not be invalidated subsequent to its adoption on the  
38 ground that the contents of the economic, small business and consumer impact  
39 statement are insufficient or inaccurate or on the ground that the council  
40 erroneously approved the rule, except as provided for by section 41-1056.01.

41           G. The absence of comments pursuant to subsection C of this section  
42 or article 4.1 of this chapter does not prevent the council from acting  
43 pursuant to this section.

1           Sec. 42. Title 41, chapter 6, Arizona Revised Statutes, is amended by  
2 adding article 7.1, to read:

3                   ARTICLE 7.1. LICENSING TIME FRAMES

4           41-1072. Definitions

5           IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

6           1. "ADMINISTRATIVE COMPLETENESS REVIEW TIME FRAME" MEANS THE NUMBER  
7 OF DAYS FROM AGENCY RECEIPT OF AN APPLICATION FOR A LICENSE UNTIL AN AGENCY  
8 DETERMINES THAT THE APPLICATION CONTAINS ALL COMPONENTS REQUIRED BY STATUTE  
9 OR RULE, INCLUDING ALL INFORMATION REQUIRED TO BE SUBMITTED BY OTHER  
10 GOVERNMENT AGENCIES. THE ADMINISTRATIVE COMPLETENESS REVIEW TIME FRAME DOES  
11 NOT INCLUDE THE PERIOD OF TIME DURING WHICH AN AGENCY PROVIDES PUBLIC NOTICE  
12 OF THE LICENSE APPLICATION OR PERFORMS A SUBSTANTIVE REVIEW OF THE  
13 APPLICATION.

14           2. "OVERALL TIME FRAME" MEANS THE NUMBER OF DAYS AFTER RECEIPT OF AN  
15 APPLICATION FOR A LICENSE DURING WHICH AN AGENCY DETERMINES WHETHER TO GRANT  
16 OR DENY A LICENSE. THE OVERALL TIME FRAME CONSISTS OF BOTH THE  
17 ADMINISTRATIVE COMPLETENESS REVIEW TIME FRAME AND THE SUBSTANTIVE REVIEW TIME  
18 FRAME.

19           3. "SUBSTANTIVE REVIEW TIME FRAME" MEANS THE NUMBER OF DAYS AFTER THE  
20 COMPLETION OF THE ADMINISTRATIVE COMPLETENESS REVIEW TIME FRAME DURING WHICH  
21 AN AGENCY DETERMINES WHETHER AN APPLICATION OR APPLICANT FOR A LICENSE MEETS  
22 ALL SUBSTANTIVE CRITERIA REQUIRED BY STATUTE OR RULE. ANY PUBLIC NOTICE AND  
23 HEARINGS REQUIRED BY LAW SHALL FALL WITHIN THE SUBSTANTIVE REVIEW TIME FRAME.

24           41-1073. Adoption of time frames; exemption

25           A. NO LATER THAN DECEMBER 31, 1998, AN AGENCY THAT ISSUES LICENSES  
26 SHALL HAVE IN PLACE FINAL RULES ESTABLISHING AN OVERALL TIME FRAME DURING  
27 WHICH THE AGENCY WILL EITHER GRANT OR DENY EACH TYPE OF LICENSE THAT IT  
28 ISSUES. AGENCIES SHALL SUBMIT THEIR OVERALL TIME FRAME RULES TO THE  
29 GOVERNOR'S REGULATORY REVIEW COUNCIL PURSUANT TO THE SCHEDULE DEVELOPED BY  
30 THE COUNCIL. THE COUNCIL SHALL SCHEDULE EACH AGENCY'S RULES SO THAT FINAL  
31 OVERALL TIME FRAME RULES ARE IN PLACE NO LATER THAN DECEMBER 31, 1998. THE  
32 RULE REGARDING THE OVERALL TIME FRAME FOR EACH TYPE OF LICENSE SHALL STATE  
33 SEPARATELY THE ADMINISTRATIVE COMPLETENESS REVIEW TIME FRAME AND THE  
34 SUBSTANTIVE REVIEW TIME FRAME.

35           B. IF A STATUTORY LICENSING TIME FRAME ALREADY EXISTS FOR AN AGENCY  
36 BUT THE STATUTORY TIME FRAME DOES NOT SPECIFY SEPARATE TIME FRAMES FOR THE  
37 ADMINISTRATIVE COMPLETENESS REVIEW AND THE SUBSTANTIVE REVIEW, THE AGENCY  
38 SHALL ADOPT BY RULE SEPARATE TIME FRAMES FOR THE ADMINISTRATIVE COMPLETENESS  
39 REVIEW AND THE SUBSTANTIVE REVIEW, WHICH TOGETHER SHALL NOT EXCEED THE  
40 STATUTORY OVERALL TIME FRAME. AN AGENCY MAY ADOPT DIFFERENT TIME FRAMES FOR  
41 INITIAL LICENSES, RENEWAL LICENSES AND REVISIONS TO EXISTING LICENSES.

42           C. IN ADOPTING TIME FRAMES, AGENCIES SHALL CONSIDER ALL OF THE  
43 FOLLOWING:

- 1           1. THE COMPLEXITY OF THE LICENSING SUBJECT MATTER.  
2           2. THE RESOURCES OF THE AGENCY GRANTING OR DENYING THE LICENSE.  
3           3. THE ECONOMIC IMPACT OF DELAY ON THE REGULATED COMMUNITY.  
4           4. THE IMPACT OF THE LICENSING DECISION ON PUBLIC HEALTH AND SAFETY.  
5           5. THE POSSIBLE USE OF VOLUNTEERS WITH EXPERTISE IN THE SUBJECT MATTER  
6 AREA.  
7           6. THE POSSIBLE INCREASED USE OF GENERAL LICENSES FOR SIMILAR TYPES  
8 OF LICENSED BUSINESSES OR FACILITIES.  
9           7. THE POSSIBLE INCREASED COOPERATION BETWEEN THE AGENCY AND THE  
10 REGULATED COMMUNITY.  
11           8. INCREASED AGENCY FLEXIBILITY IN STRUCTURING THE LICENSING PROCESS  
12 AND PERSONNEL.  
13           D. THIS ARTICLE DOES NOT APPLY TO LICENSES ISSUED PURSUANT TO  
14 TRIBAL-STATE COMPACTS.  
15           41-1074. Compliance with administrative completeness review  
16                           time frame  
17           A. AN AGENCY SHALL ISSUE A WRITTEN NOTICE OF ADMINISTRATIVE  
18 COMPLETENESS OR DEFICIENCIES TO AN APPLICANT FOR A LICENSE WITHIN THE  
19 ADMINISTRATIVE COMPLETENESS REVIEW TIME FRAME.  
20           B. IF AN AGENCY DETERMINES THAT AN APPLICATION FOR A LICENSE IS NOT  
21 ADMINISTRATIVELY COMPLETE, THE AGENCY SHALL INCLUDE A COMPREHENSIVE LIST OF  
22 THE SPECIFIC DEFICIENCIES IN THE WRITTEN NOTICE PROVIDED PURSUANT TO  
23 SUBSECTION A. IF THE AGENCY ISSUES A WRITTEN NOTICE OF DEFICIENCIES WITHIN  
24 THE ADMINISTRATIVE COMPLETENESS TIME FRAME, THE ADMINISTRATIVE COMPLETENESS  
25 REVIEW TIME FRAME AND THE OVERALL TIME FRAME ARE SUSPENDED FROM THE DATE THE  
26 NOTICE IS ISSUED UNTIL THE DATE THAT THE AGENCY RECEIVES THE MISSING  
27 INFORMATION FROM THE APPLICANT.  
28           C. IF AN AGENCY DOES NOT ISSUE A WRITTEN NOTICE OF ADMINISTRATIVE  
29 COMPLETENESS OR DEFICIENCIES WITHIN THE ADMINISTRATIVE COMPLETENESS REVIEW  
30 TIME FRAME, THE APPLICATION IS DEEMED ADMINISTRATIVELY COMPLETE. IF AN  
31 AGENCY ISSUES A TIMELY WRITTEN NOTICE OF DEFICIENCIES, AN APPLICATION SHALL  
32 NOT BE COMPLETE UNTIL ALL REQUESTED INFORMATION HAS BEEN RECEIVED BY THE  
33 AGENCY.  
34           41-1075. Compliance with substantive review time frame  
35           A. DURING THE SUBSTANTIVE REVIEW TIME FRAME, AN AGENCY MAY MAKE ONE  
36 COMPREHENSIVE WRITTEN REQUEST FOR ADDITIONAL INFORMATION. THE AGENCY AND  
37 APPLICANT MAY MUTUALLY AGREE IN WRITING TO ALLOW THE AGENCY TO SUBMIT  
38 SUPPLEMENTAL REQUESTS FOR ADDITIONAL INFORMATION. IF AN AGENCY ISSUES A  
39 COMPREHENSIVE WRITTEN REQUEST OR A SUPPLEMENTAL REQUEST BY MUTUAL WRITTEN  
40 AGREEMENT FOR ADDITIONAL INFORMATION, THE SUBSTANTIVE REVIEW TIME FRAME AND  
41 THE OVERALL TIME FRAME ARE SUSPENDED FROM THE DATE THE REQUEST IS ISSUED  
42 UNTIL THE DATE THAT THE AGENCY RECEIVES THE ADDITIONAL INFORMATION FROM THE  
43 APPLICANT.

1           B. BY MUTUAL WRITTEN AGREEMENT, AN AGENCY AND AN APPLICANT FOR A  
2 LICENSE MAY EXTEND THE SUBSTANTIVE REVIEW TIME FRAME AND THE OVERALL TIME  
3 FRAME. AN EXTENSION OF THE SUBSTANTIVE REVIEW TIME FRAME AND THE OVERALL  
4 TIME FRAME MAY NOT EXCEED TWENTY-FIVE PER CENT OF THE OVERALL TIME FRAME.

5           41-1076. Compliance with overall time frame

6           UNLESS AN AGENCY AND AN APPLICANT FOR A LICENSE MUTUALLY AGREE TO  
7 EXTEND THE SUBSTANTIVE REVIEW TIME FRAME AND THE OVERALL TIME FRAME PURSUANT  
8 TO SECTION 41-1075, AN AGENCY SHALL ISSUE A WRITTEN NOTICE GRANTING OR  
9 DENYING A LICENSE WITHIN THE OVERALL TIME FRAME TO AN APPLICANT. IF AN  
10 AGENCY DENIES AN APPLICATION FOR A LICENSE, THE AGENCY SHALL INCLUDE IN THE  
11 WRITTEN NOTICE AT LEAST THE FOLLOWING INFORMATION:

12           1. JUSTIFICATION FOR THE DENIAL WITH REFERENCES TO THE STATUTES OR  
13 RULES ON WHICH THE DENIAL IS BASED.

14           2. AN EXPLANATION OF THE APPLICANT'S RIGHT TO APPEAL THE DENIAL. THE  
15 EXPLANATION SHALL INCLUDE THE NUMBER OF DAYS IN WHICH THE APPLICANT MUST FILE  
16 A PROTEST CHALLENGING THE DENIAL AND THE NAME AND TELEPHONE NUMBER OF AN  
17 AGENCY CONTACT PERSON WHO CAN ANSWER QUESTIONS REGARDING THE APPEALS PROCESS.

18           41-1078. Reporting; compliance with time frames

19           A. BEGINNING ON SEPTEMBER 1, 1998 FOR AGENCIES THAT HAVE ADOPTED TIME  
20 FRAMES BEFORE JULY 1, 1998 AND BY SEPTEMBER 1 OF EACH YEAR THEREAFTER FOR ALL  
21 AGENCIES THAT ISSUE LICENSES, EACH AGENCY SHALL REPORT TO THE GOVERNOR'S  
22 REGULATORY REVIEW COUNCIL ON SUMMARY FORMS DEVELOPED BY THE COUNCIL THE  
23 AGENCY'S COMPLIANCE LEVEL WITH ITS OVERALL TIME FRAMES FOR THE PRIOR FISCAL  
24 YEAR. THE AGENCY REPORTS SHALL INCLUDE THE NUMBER OF LICENSES ISSUED OR  
25 DENIED BY THE AGENCY WITHIN THE APPLICABLE TIME FRAMES AND THE DOLLAR AMOUNT  
26 OF ALL FEES RETURNED TO APPLICANTS AND ALL PENALTIES PAID TO THE STATE  
27 GENERAL FUND DUE TO THE AGENCY'S FAILURE TO COMPLY WITH THE APPLICABLE TIME  
28 FRAMES.

29           B. BY DECEMBER 1 OF EACH YEAR, THE GOVERNOR'S REGULATORY REVIEW  
30 COUNCIL SHALL COMPILE THE SUMMARY FORMS SUBMITTED BY THE AGENCIES PURSUANT  
31 TO SUBSECTION A AND PRESENT THEM TO THE GOVERNOR, THE PRESIDENT OF THE  
32 SENATE, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE COCHAIRMAN OF THE  
33 ADMINISTRATIVE RULES OVERSIGHT COMMITTEE.

34           Sec. 43. Title 41, chapter 6, article 7.1, Arizona Revised Statutes,  
35 as added by this act, is amended by adding section 41-1077, to read:

36           41-1077. Consequence for agency failure to comply with overall  
37 time frame; refund; penalty

38           A. IF AN AGENCY DOES NOT ISSUE TO AN APPLICANT THE WRITTEN NOTICE  
39 GRANTING OR DENYING A LICENSE WITHIN THE OVERALL TIME FRAME OR WITHIN THE  
40 TIME FRAME EXTENSION PURSUANT TO SECTION 41-1075, THE AGENCY SHALL REFUND TO  
41 THE APPLICANT ALL FEES CHARGED FOR REVIEWING AND ACTING ON THE APPLICATION  
42 FOR THE LICENSE AND SHALL EXCUSE PAYMENT OF ANY SUCH FEES THAT HAVE NOT YET  
43 BEEN PAID. THE REFUND SHALL BE MADE WITHIN THIRTY DAYS AFTER THE EXPIRATION  
44 OF THE OVERALL TIME FRAME OR THE TIME FRAME EXTENSION. THE AGENCY SHALL

1 CONTINUE TO PROCESS THE APPLICATION SUBJECT TO SUBSECTION B OF THIS SECTION.  
2 NOTWITHSTANDING ANY OTHER STATUTE, THE AGENCY SHALL MAKE THE REFUND FROM THE  
3 FUND IN WHICH THE APPLICATION FEES WERE ORIGINALLY DEPOSITED. THIS SECTION  
4 APPLIES ONLY TO LICENSE APPLICATIONS THAT WERE SUBJECT TO SUBSTANTIVE  
5 REVIEW.

6 B. EXCEPT FOR LICENSE APPLICATIONS THAT WERE NOT SUBJECT TO  
7 SUBSTANTIVE REVIEW, THE AGENCY SHALL PAY A PENALTY TO THE STATE GENERAL FUND  
8 FOR EACH MONTH AFTER THE EXPIRATION OF THE OVERALL TIME FRAME OR THE TIME  
9 FRAME EXTENSION UNTIL THE AGENCY ISSUES WRITTEN NOTICE TO THE APPLICANT  
10 GRANTING OR DENYING THE LICENSE. THE AGENCY SHALL PAY THE PENALTY FROM THE  
11 AGENCY FUND IN WHICH THE APPLICATION FEES WERE ORIGINALLY DEPOSITED. THE  
12 PENALTY SHALL BE ONE PER CENT OF THE TOTAL FEES RECEIVED BY THE AGENCY FOR  
13 REVIEWING AND ACTING ON THE APPLICATION FOR EACH LICENSE THAT THE AGENCY HAS  
14 NOT GRANTED OR DENIED ON THE LAST DAY OF EACH MONTH AFTER THE EXPIRATION OF  
15 THE OVERALL TIME FRAME OR TIME FRAME EXTENSION FOR THAT LICENSE.

16 Sec. 44. Section 41-1092, Arizona Revised Statutes, is amended to  
17 read:

18 41-1092. Definitions

19 In this article, unless the context otherwise requires:

20 1. "ADMINISTRATIVE LAW JUDGE" MEANS AN INDIVIDUAL WHO HAS GRADUATED  
21 FROM AN ACCREDITED COLLEGE OF LAW OR WHO HAS AT LEAST TWO YEARS OF  
22 ADMINISTRATIVE OR MANAGERIAL EXPERIENCE IN THE SUBJECT MATTER OR AGENCY  
23 SECTION ASSIGNED TO WITHIN THE OFFICE, OR AN AGENCY HEAD, BOARD OR COMMISSION  
24 THAT SITS AS AN ADMINISTRATIVE LAW JUDGE, THAT CONDUCTS ADMINISTRATIVE  
25 HEARINGS IN A CONTESTED CASE OR AN APPEALABLE AGENCY ACTION AND THAT MAKES  
26 DECISIONS REGARDING THE CONTESTED CASE OR APPEALABLE AGENCY ACTION.

27 2. "ADMINISTRATIVE LAW JUDGE DECISION" MEANS THE FINDINGS OF FACT,  
28 CONCLUSIONS OF LAW AND RECOMMENDATION OR DECISION ISSUED BY AN ADMINISTRATIVE  
29 LAW JUDGE.

30 3. "APPEALABLE AGENCY ACTION" MEANS AN ACTION THAT DETERMINES THE  
31 LEGAL RIGHTS, DUTIES OR PRIVILEGES OF A PARTY AND THAT IS NOT PRECEDED BY AN  
32 OPPORTUNITY FOR AN ADMINISTRATIVE HEARING. APPEALABLE AGENCY ACTIONS DO NOT  
33 INCLUDE RULES, REGULATIONS, ORDERS, STANDARDS OR STATEMENTS OF POLICY OF  
34 GENERAL APPLICATION ISSUED BY AN ADMINISTRATIVE AGENCY TO IMPLEMENT,  
35 INTERPRET OR MAKE SPECIFIC THE LEGISLATION ENFORCED OR ADMINISTERED BY IT,  
36 NOR DOES IT MEAN OR INCLUDE REGULATIONS CONCERNING THE INTERNAL MANAGEMENT  
37 OF THE AGENCY THAT DO NOT AFFECT PRIVATE RIGHTS OR INTERESTS. FOR THE  
38 PURPOSES OF THIS PARAGRAPH "ADMINISTRATIVE HEARING" DOES NOT INCLUDE A PUBLIC  
39 HEARING HELD FOR THE PURPOSE OF RECEIVING PUBLIC COMMENT ON A PROPOSED AGENCY  
40 ACTION.

41 ~~1-~~ 4. "Director" means the director of the office of administrative  
42 hearings.



1           9. ANNUALLY REPORT TO THE GOVERNOR, THE PRESIDENT OF THE SENATE AND  
2 THE SPEAKER OF THE HOUSE OF REPRESENTATIVES BY DECEMBER 1 THE NUMBER OF  
3 ADMINISTRATIVE LAW JUDGE DECISIONS REJECTED OR MODIFIED BY AGENCY HEADS  
4 DURING THE PRIOR FISCAL YEAR.

5           10. SCHEDULE HEARINGS PURSUANT TO SECTION 41-1092.05 UPON THE REQUEST  
6 OF AN AGENCY OR THE FILING OF A NOTICE OF APPEAL PURSUANT TO SECTION  
7 41-1092.03.

8           D. The director shall not require legal representation to appear  
9 before an administrative law judge.

10           E. EXCEPT AS PROVIDED IN SUBSECTION F OF THIS SECTION, all state  
11 agencies SUPPORTED BY STATE GENERAL FUND SOURCES, unless exempted by this  
12 article, AND THE REGISTRAR OF CONTRACTORS shall use the services and  
13 personnel of the office to conduct administrative hearings. All OTHER  
14 agencies ~~supported by other than general fund sources~~ shall contract for  
15 ~~administrative hearing services from the office~~ SERVICES AND PERSONNEL OF THE  
16 OFFICE TO CONDUCT ADMINISTRATIVE HEARINGS.

17           F. AN AGENCY HEAD, BOARD OR COMMISSION THAT DIRECTLY CONDUCTS AN  
18 ADMINISTRATIVE HEARING, AND DOES NOT USE THE SERVICES OF AN ADMINISTRATIVE  
19 LAW JUDGE, IS NOT REQUIRED TO USE THE SERVICES AND PERSONNEL OF THE OFFICE  
20 FOR THAT HEARING.

21           ~~F.~~ G. Each state agency, and each political subdivision contracting  
22 for office services pursuant to subsection I of this section, shall make its  
23 facilities available, as necessary, for use by the office in conducting  
24 proceedings pursuant to this article.

25           ~~G.~~ H. The office shall employ full-time administrative law judges to  
26 conduct hearings required by this article or other laws as follows:

27           1. The director shall assign administrative law judges from the office  
28 to an agency, on either a temporary or a permanent basis, at supervisory or  
29 other levels, to preside over contested cases in accordance with the special  
30 expertise of the administrative law judge in the subject matter of the  
31 agency.

32           2. The director shall establish the subject matter and agency sections  
33 within the office that are necessary to carry out this article.

34           ~~H.~~ I. If the office cannot furnish an office administrative law judge  
35 promptly in response to an agency request, the director may contract with  
36 qualified individuals to serve as temporary administrative law judges. These  
37 temporary administrative law judges are not employees of this state.

38           ~~I.~~ J. The office may provide administrative law judges on a contract  
39 basis to any governmental entity to conduct any hearing not covered by this  
40 article. The director may enter into contracts with political subdivisions  
41 of this state, and these political subdivisions may contract with the  
42 director for the purpose of providing administrative law judges and reporters  
43 for administrative proceedings or informal dispute resolution. The contract  
44 may define the scope of the administrative law judge's duties, which may

1 include the preparation of findings, conclusions, decisions or recommended  
2 decisions or a recommendation for action by the political subdivision. For  
3 these services, the director shall request payment for services directly from  
4 the political subdivision for which the services are performed, and the  
5 director may accept payment on either an advance or reimbursable basis.

6 K. THE OFFICE SHALL APPLY MONIES RECEIVED PURSUANT TO SUBSECTIONS E  
7 AND J OF THIS SECTION TO OFFSET ITS ACTUAL COSTS FOR PROVIDING PERSONNEL AND  
8 SERVICES.

9 Sec. 46. Section 41-1092.02, Arizona Revised Statutes, is amended to  
10 read:

11 41-1092.02. Appealable agency actions: application of  
12 procedural rules; exemption from article

13 A. This article applies to all contested cases as defined in section  
14 41-1001 AND ALL APPEALABLE AGENCY ACTIONS, except contested cases with OR  
15 APPEALABLE AGENCY ACTIONS OF:

- 16 1. The state department of corrections.
- 17 2. The board of executive clemency.
- 18 3. The industrial commission of Arizona.
- 19 4. The Arizona corporation commission.
- 20 5. The Arizona board of regents and institutions under its  
21 jurisdiction.
- 22 6. The state personnel board.
- 23 7. The department of ~~youth treatment and rehabilitation~~ JUVENILE  
24 CORRECTIONS.
- 25 8. The department of transportation.
- 26 9. The Arizona health care cost containment system.
- 27 10. The department of economic security.
- 28 11. The department of revenue regarding income tax, withholding tax or  
29 estate tax or any tax issue related to information associated with the  
30 reporting of income tax, withholding tax or estate tax.
- 31 12. The board of tax appeals.
- 32 13. The state board of equalization.

33 B. Unless waived by all parties, an administrative law judge assigned  
34 by the office shall conduct all hearings under this article, and the  
35 procedural rules set forth in article 6 of this chapter and rules adopted by  
36 the director apply.

37 C. Except as provided in subsection A of this section:

38 1. A contested case heard by the office of administrative hearings  
39 regarding taxes administered under title 42 shall be subject to the  
40 provisions under section 42-122.

41 ~~D. 2. Except as provided in subsection A of this section, A final~~  
42 decision of the office of administrative hearings regarding taxes  
43 administered under title 42 may be appealed by either party to the director

1 of the department of revenue, or a taxpayer may file and appeal directly to  
2 the board of tax appeals pursuant to section 42-124.

3 D. EXCEPT AS PROVIDED IN SUBSECTIONS A AND E OF THIS SECTION AND  
4 NOTWITHSTANDING ANY OTHER ADMINISTRATIVE PROCEEDING ESTABLISHED IN STATUTE  
5 OR ADMINISTRATIVE RULE, SECTIONS 41-1092.03 THROUGH 41-1092.11 APPLY TO ALL  
6 APPEALABLE AGENCY ACTIONS AND SECTIONS 41-1092.04, 41-1092.05, 41-1092.07,  
7 41-1092.08, 41-1092.09, 41-1092.10 AND 41-1092.11 APPLY TO ALL CONTESTED  
8 CASES EXCEPT CONTESTED CASES WITH OR APPEALABLE AGENCY ACTIONS OF  
9 SELF-SUPPORTING REGULATORY AGENCIES THAT ARE SUPERVISED BY BOARDS OR  
10 COMMISSIONS WHOSE MEMBERS ARE APPOINTED BY THE GOVERNOR.

11 E. SECTIONS 41-1092.03, 41-1092.08, 41-1092.09, 41-1092.10 AND  
12 41-1092.11 DO NOT APPLY TO THE DEPARTMENT OF REVENUE.

13 Sec. 47. Title 41, chapter 6, article 10, Arizona Revised Statutes,  
14 is amended by adding sections 41-1092.03 through 41-1092.11, to read:

15 41-1092.03. Notice of appealable agency action; hearing;  
16 informal settlement conference; applicability

17 A. AN AGENCY SHALL SERVE NOTICE OF AN APPEALABLE AGENCY ACTION  
18 PURSUANT TO SECTION 41-1092.04. THE NOTICE SHALL INCLUDE A DESCRIPTION OF  
19 THE PARTY'S RIGHT TO REQUEST A HEARING ON AN APPEALABLE AGENCY ACTION AND TO  
20 REQUEST AN INFORMAL SETTLEMENT CONFERENCE PURSUANT TO SECTION 41-1092.06.

21 B. A PARTY MAY OBTAIN A HEARING ON AN APPEALABLE AGENCY ACTION BY  
22 FILING A NOTICE OF APPEAL WITH THE AGENCY WITHIN THIRTY DAYS AFTER RECEIVING  
23 THE NOTICE PRESCRIBED IN SUBSECTION A OF THIS SECTION. THE NOTICE MAY BE  
24 FILED BY A PARTY WHOSE LEGAL RIGHTS, DUTIES OR PRIVILEGES WERE DETERMINED BY  
25 THE APPEALABLE AGENCY ACTION. A NOTICE OF APPEAL ALSO MAY BE FILED BY A  
26 PARTY WHO WILL BE ADVERSELY AFFECTED BY THE APPEALABLE AGENCY ACTION AND WHO  
27 EXERCISED ANY RIGHT TO COMMENT ON THE ACTION PROVIDED BY LAW OR RULE,  
28 PROVIDED THAT THE GROUNDS FOR APPEAL ARE LIMITED TO ISSUES RAISED IN THAT  
29 PARTY'S COMMENTS. THE NOTICE OF APPEAL SHALL IDENTIFY THE PARTY, THE PARTY'S  
30 ADDRESS, THE AGENCY AND THE ACTION BEING APPEALED AND SHALL CONTAIN A CONCISE  
31 STATEMENT OF THE REASONS FOR THE APPEAL. THE AGENCY SHALL NOTIFY THE OFFICE  
32 OF THE APPEAL AND THE OFFICE SHALL SCHEDULE A HEARING PURSUANT TO SECTION  
33 41-1092.05, EXCEPT AS PROVIDED IN SECTION 41-1092.01, SUBSECTION F.

34 C. IF GOOD CAUSE IS SHOWN AN AGENCY HEAD MAY ACCEPT AN APPEAL THAT IS  
35 NOT FILED IN A TIMELY MANNER.

36 41-1092.04. Service of documents

37 UNLESS OTHERWISE PROVIDED IN THIS ARTICLE, EVERY NOTICE OR DECISION  
38 UNDER THIS ARTICLE SHALL BE SERVED BY PERSONAL DELIVERY OR CERTIFIED MAIL,  
39 RETURN RECEIPT REQUESTED, OR BY ANY OTHER METHOD REASONABLY CALCULATED TO  
40 EFFECT ACTUAL NOTICE ON THE AGENCY AND EVERY OTHER PARTY TO THE ACTION TO THE  
41 PARTY'S LAST ADDRESS OF RECORD WITH THE AGENCY. EACH PARTY SHALL INFORM THE  
42 AGENCY AND THE OFFICE OF ANY CHANGE OF ADDRESS WITHIN FIVE DAYS OF THE  
43 CHANGE.



1 AVOIDING NEEDLESS CONSUMPTION OF TIME AND PROTECTING WITNESSES FROM  
2 HARASSMENT OR UNDUE EMBARRASSMENT.

3 D. ALL HEARINGS SHALL BE RECORDED. THE ADMINISTRATIVE LAW JUDGE SHALL  
4 SECURE EITHER A COURT REPORTER OR AN ELECTRONIC MEANS OF PRODUCING A CLEAR  
5 AND ACCURATE RECORD OF THE PROCEEDING AT THE AGENCY'S EXPENSE. ANY PARTY  
6 THAT REQUESTS A TRANSCRIPT OF THE PROCEEDING SHALL PAY THE COSTS OF THE  
7 TRANSCRIPT TO THE COURT REPORTER OR OTHER TRANSCRIBER.

8 41-1092.08. Final administrative decisions; review

9 A. THE ADMINISTRATIVE LAW JUDGE SHALL ISSUE A WRITTEN DECISION WITHIN  
10 FIFTEEN DAYS AFTER THE HEARING IS CONCLUDED. THE WRITTEN DECISION SHALL  
11 CONTAIN A CONCISE EXPLANATION OF THE REASONS SUPPORTING THE DECISION. THE  
12 ADMINISTRATIVE LAW JUDGE SHALL SERVE A COPY OF THE DECISION ON THE AGENCY.  
13 UPON REQUEST OF THE AGENCY, THE OFFICE SHALL ALSO TRANSMIT TO THE AGENCY THE  
14 RECORD OF THE HEARING AS PRESCRIBED IN SECTION 41-1092.10, EXCEPT AS PROVIDED  
15 IN SECTION 41-1092.01, SUBSECTION F.

16 B. WITHIN THIRTY DAYS AFTER RECEIVING A COPY OF THE ADMINISTRATIVE LAW  
17 JUDGE'S DECISION, THE HEAD OF THE AGENCY MAY REVIEW THE DECISION AND ACCEPT,  
18 REJECT OR MODIFY IT. IF THE HEAD OF THE AGENCY DECLINES TO REVIEW THE  
19 ADMINISTRATIVE LAW JUDGE'S DECISION, THE AGENCY SHALL SERVE A COPY OF THE  
20 DECISION ON ALL PARTIES. IF THE HEAD OF THE AGENCY REJECTS OR MODIFIES THE  
21 DECISION THE AGENCY HEAD MUST FILE WITH THE OFFICE, EXCEPT AS PROVIDED IN  
22 SECTION 41-1092.01, SUBSECTION F, AND SERVE ON ALL PARTIES A COPY OF THE  
23 ADMINISTRATIVE LAW JUDGE'S DECISION WITH THE REJECTION OR MODIFICATION AND  
24 A WRITTEN JUSTIFICATION SETTING FORTH THE REASONS FOR THE REJECTION OR  
25 MODIFICATION.

26 C. A BOARD OR COMMISSION WHOSE MEMBERS ARE APPOINTED BY THE GOVERNOR  
27 MAY REVIEW THE DECISION OF THE AGENCY HEAD, AS PROVIDED BY LAW, AND MAKE THE  
28 FINAL ADMINISTRATIVE DECISION.

29 D. THE DECISION OF THE AGENCY HEAD IS THE FINAL ADMINISTRATIVE  
30 DECISION UNLESS EITHER:

31 1. THE AGENCY HEAD DOES NOT REVIEW THE ADMINISTRATIVE LAW JUDGE  
32 DECISION PURSUANT TO SUBSECTION B OF THIS SECTION, IN WHICH CASE THE  
33 ADMINISTRATIVE LAW JUDGE DECISION IS THE FINAL ADMINISTRATIVE DECISION.

34 2. THE DECISION OF THE AGENCY HEAD IS SUBJECT TO REVIEW PURSUANT TO  
35 SUBSECTION C OF THIS SECTION.

36 E. IF A BOARD OR COMMISSION WHOSE MEMBERS ARE APPOINTED BY THE  
37 GOVERNOR MAKES THE FINAL ADMINISTRATIVE DECISION AS AN ADMINISTRATIVE LAW  
38 JUDGE OR UPON REVIEW OF THE DECISION OF THE AGENCY HEAD, THE DECISION IS NOT  
39 SUBJECT TO REVIEW BY THE HEAD OF THE AGENCY.

40 F. IF A PARTY HAS NOT REQUESTED A HEARING UPON RECEIPT OF A NOTICE OF  
41 APPEALABLE AGENCY ACTION PURSUANT TO SECTION 41-1092.03, THE APPEALABLE  
42 AGENCY ACTION IS NOT SUBJECT TO JUDICIAL REVIEW PURSUANT TO SECTIONS  
43 41-1092.10 AND 41-1092.11.



1 B. UNLESS OTHERWISE PRESCRIBED IN THE STATUTE UNDER AUTHORITY OF WHICH  
2 THE FINAL ADMINISTRATIVE DECISION WAS MADE, AN ACTION TO REVIEW A FINAL  
3 ADMINISTRATIVE DECISION MAY BE COMMENCED IN THE SUPERIOR COURT OF ANY COUNTY  
4 IN WHICH ANY OF THE FOLLOWING CONDITIONS APPLY:

5 1. ANY PART OF THE HEARING OR PROCEEDING CULMINATING IN THE DECISION  
6 OF THE AGENCY WAS HELD.

7 2. ANY PART OF THE SUBJECT MATTER INVOLVED IS SITUATED.

8 3. ANY PART OF THE TRANSACTION GIVING RISE TO THE ADMINISTRATIVE  
9 PROCEEDINGS OCCURRED.

10 C. THE SUPERIOR COURT, WITH OR WITHOUT BOND, AND BEFORE OR AFTER  
11 ANSWER, MAY STAY THE DECISION IN WHOLE OR IN PART PENDING FINAL DISPOSITION  
12 OF THE CASE, AFTER NOTICE TO THE AGENCY AND FOR GOOD CAUSE SHOWN.

13 D. TECHNICAL ERRORS IN THE ADMINISTRATIVE PROCEEDINGS OR FAILURE TO  
14 OBSERVE TECHNICAL RULES OF EVIDENCE SHALL NOT CONSTITUTE GROUNDS FOR REVERSAL  
15 OF THE DECISION, UNLESS IT APPEARS TO THE COURT THAT THE ERROR OR FAILURE  
16 AFFECTED THE RIGHTS OF A PARTY AND RESULTED IN INJUSTICE TO THE PARTY.

17 E. ON MOTION OF A PARTY BEFORE RENDITION OF JUDGMENT, THE COURT SHALL  
18 MAKE FINDINGS OF FACT AND STATE CONCLUSIONS OF LAW ON WHICH ITS JUDGMENT IS  
19 BASED.

20 F. IF APPLICABLE, THE RULES OF CIVIL PROCEDURE IN SUPERIOR COURTS,  
21 INCLUDING RULES RELATING TO APPEALS TO THE SUPREME COURT, SHALL APPLY TO ALL  
22 PROCEEDINGS EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE.

23 G. SERVICE OF PROCESS, SCOPE OF JUDICIAL REVIEW AND COSTS AWARDED TO  
24 THE DEFENDANT AGENCY SHALL BE AS PROVIDED IN SECTIONS 12-906, 12-910 AND  
25 12-912.

26 Sec. 48. Section 45-316, Arizona Revised Statutes, is amended to read:

27 45-316. Violation; civil penalties

28 A. A person who knowingly violates any provision of this article is  
29 subject to a civil penalty of not more than one hundred dollars for the first  
30 violation. A person who has previously been found in violation of any  
31 provision of this article is subject to a civil penalty of not more than two  
32 hundred fifty dollars for a second or any subsequent violation. The  
33 distribution, sale, offering for sale, importation or installation in this  
34 state of each plumbing fixture that fails to comply with the standards  
35 prescribed by this article constitutes a separate violation. Tampering with  
36 a fixture that was originally designed to comply with the standards  
37 prescribed by this article constitutes a violation. If a violation involves  
38 installing a fixture that does not comply with the standards prescribed by  
39 this article, the person who acquired the building or plumbing permit or the  
40 person who installed the fixture, or both, are subject to the penalties  
41 specified in this section.

1           B. The director, or a local official designated pursuant to section  
2 9-500.08 or 11-251.09, shall bring an action to recover penalties under this  
3 section in superior court in the county in which the violation occurred,  
4 after a hearing conducted pursuant to section 45-318.

5           C. This section does not apply to the owner or occupant of a  
6 residential dwelling who violates this article in connection with the  
7 installation of a plumbing fixture in a residential dwelling occupied by the  
8 owner or occupant.

9           D. Except as provided in sections 9-500.08 and 11-251.09, all  
10 penalties collected under this article shall be ~~deposited~~ TRANSMITTED TO THE  
11 STATE TREASURER FOR DEPOSIT in the ~~groundwater enforcement fund established~~  
12 ~~by section 45-637~~ STATE GENERAL FUND.

13           Sec. 49. Section 45-635, Arizona Revised Statutes, is amended to read:

14           45-635. Violation; civil penalties

15           A. A person who is determined pursuant to section 45-634 to be in  
16 violation of this chapter or a permit, rule, regulation or order issued or  
17 adopted pursuant to this chapter may be assessed a civil penalty in an amount  
18 not exceeding:

19           1. Except as provided in paragraph 3 of this subsection, one hundred  
20 dollars per day of violation not directly related to illegal withdrawal, use  
21 or transportation of groundwater.

22           2. Ten thousand dollars per day of violation directly related to  
23 illegal withdrawal, use or transportation of groundwater.

24           3. In the Santa Cruz active management area, ten thousand dollars per  
25 day of violation for a violation of an applicable conservation requirement  
26 established by the director pursuant to article 9 of this chapter for the  
27 withdrawal of water, other than stored water, from a well or the distribution  
28 or use of water, other than stored water, withdrawn from a well.

29           B. An action to recover penalties under this section shall be brought  
30 by the director in the superior court in the county in which the violation  
31 occurred.

32           C. In determining the amount of the penalty, the court shall consider  
33 the degree of harm to the public, whether the violation was knowing or  
34 wilful, the past conduct of the defendant, whether the defendant should have  
35 been on notice of the violation, whether the defendant has taken steps to  
36 cease, remove or mitigate the violation and any other relevant information.

37           D. ALL CIVIL PENALTIES ASSESSED PURSUANT TO THIS SECTION SHALL BE  
38 TRANSMITTED TO THE STATE TREASURER FOR DEPOSIT IN THE STATE GENERAL FUND.

39           Sec. 50. Repeal

40           Section 45-637, Arizona Revised Statutes, is repealed.

1           Sec. 51. Section 45-876.01, Arizona Revised Statutes, is amended to  
2 read:

3           45-876.01. Annual report; groundwater replenishment district  
4                                   and replenishment district members; penalties

5           A. Each groundwater replenishment district shall file an annual report  
6 with the director that includes:

7           1. The total amount of water that was stored by the district during  
8 the reporting year pursuant to each water storage permit issued to it under  
9 this chapter.

10           2. The amount of water stored by the district during the reporting  
11 year to be credited to the master replenishment account.

12           3. The amount of water stored by the district during the reporting  
13 year to be credited to the district's long-term storage account.

14           4. The amount of long-term storage credits the district has  
15 transferred and credited to its master replenishment account during the  
16 reporting year.

17           5. If the reporting year was a drought year, as defined in section  
18 48-4401, for any district member:

19           (a) The amount of any debit that was registered to the district's  
20 drought relief account for the reporting year, as provided in section  
21 48-4467.

22           (b) Each district member's share of the debit.

23           (c) The ending balance of the account.

24           (d) The historic annual per acre surface water deliveries, as defined  
25 in section 48-4401, for the reporting year of each irrigation district and  
26 water users' association that delivered surface water for non-irrigation use  
27 on land in the district during the reporting year.

28           6. Each district member's replenishment obligation determined pursuant  
29 to section 48-4463.

30           7. Other information as the director may require.

31           B. The annual report shall be maintained on a calendar year basis and  
32 shall be filed no later than May 15 of each year for the preceding year,  
33 which is the reporting year.

34           C. In addition to the annual report required by this section and  
35 section 45-632, each groundwater replenishment district member shall file an  
36 annual report with the director that includes the information prescribed by  
37 section 48-4463, subsection A. The annual report required by this subsection  
38 shall be maintained on a calendar year basis and shall be filed with the  
39 director no later than March 31 of each year for the preceding calendar year  
40 which is the reporting year.

41           D. The director may assess and collect a penalty of up to one thousand  
42 dollars for each day that a report is delinquent for a groundwater  
43 replenishment district or one of its members that is required to file an  
44 annual report and that fails to file the report when due. The director shall

1 transmit all penalties collected pursuant to this section to the state  
2 treasurer for deposit in the ~~groundwater enforcement fund established by~~  
3 ~~section 45-637~~ STATE GENERAL FUND.

4 Sec. 52. Section 45-877.01, Arizona Revised Statutes, is amended to  
5 read:

6 45-877.01. Annual reports by conservation districts; penalties

7 A. Each conservation district shall file an annual report with the  
8 director that includes for each active management area in which a member land  
9 or member service area is or may be located:

10 1. The total amount of water that was stored by the conservation  
11 district during the reporting year pursuant to each water storage permit  
12 issued to it under this chapter.

13 2. The amount of water stored by the conservation district during the  
14 reporting year to be credited to the conservation district's conservation  
15 district account.

16 3. The amount of water stored by the conservation district during the  
17 reporting year to be credited to the conservation district's long-term  
18 storage account.

19 4. The amount of long-term storage credits the conservation district  
20 has transferred and credited to its conservation district account during the  
21 reporting year.

22 5. The groundwater replenishment obligation as defined in section  
23 48-3701 for the reporting year.

24 6. The contract replenishment obligation as defined in section 48-4801  
25 for the reporting year.

26 7. The information required under section 48-3775.

27 8. Other information as the director may require.

28 B. The annual report required under subsection A of this section shall  
29 be maintained on a calendar year basis and shall be filed with the director  
30 no later than August 31 of each year for the preceding calendar year, which  
31 is the reporting year.

32 C. If the conservation district fails to file the report when due, the  
33 director may assess and collect a penalty of up to one hundred dollars for  
34 each day the annual report is delinquent. The director shall transmit all  
35 penalties collected pursuant to this subsection to the state treasurer for  
36 deposit in the ~~groundwater enforcement fund established by section 45-637~~  
37 STATE GENERAL FUND.

38 D. If a municipal provider as defined in section 48-3701 does not  
39 timely file the annual report required by section 48-3775, the director may  
40 assess and collect a penalty of up to one thousand dollars for each day the  
41 annual report is delinquent. The director shall transmit all penalties  
42 collected pursuant to this subsection to the state treasurer for deposit in  
43 the ~~groundwater enforcement fund established by section 45-637~~ STATE GENERAL  
44 FUND.

1           Sec. 53. Section 45-878.01, Arizona Revised Statutes, is amended to  
2 read:

3           45-878.01. Annual reports by water districts; penalties

4           A. Each water district shall file an annual report with the director  
5 that includes for the active management area in which a water district member  
6 land or water district member service area is or may be located:

7           1. The total amount of water that was stored by the water district  
8 during the reporting year pursuant to each water storage permit issued to it  
9 under this chapter.

10           2. The amount of water stored by the water district during the  
11 reporting year to be credited to the water district's water district account.

12           3. The amount of water stored by the water district during the  
13 reporting year to be credited to the water district's long-term storage  
14 account.

15           4. The amount of long-term storage credits the water district has  
16 transferred and credited to its water district account during the reporting  
17 year.

18           5. The water district groundwater replenishment obligation as defined  
19 in section 48-4801 for the reporting year.

20           6. The contract replenishment obligation as defined in section 48-4801  
21 for the reporting year.

22           7. The information required under section 48-4976.

23           8. Other information as the director may require.

24           B. The annual report required under subsection A of this section shall  
25 be maintained on a calendar year basis and shall be filed with the director  
26 no later than August 31 of each year for the preceding calendar year, which  
27 is the reporting year.

28           C. If the water district fails to file the report when due, the  
29 director may assess and collect a penalty of up to one hundred dollars for  
30 each day the annual report is delinquent. The director shall transmit all  
31 penalties collected pursuant to this subsection to the state treasurer for  
32 deposit in the ~~groundwater enforcement fund established by section 45-637~~  
33 STATE GENERAL FUND.

34           D. If a municipal provider as defined in section 48-3701 does not  
35 timely file the annual report required by section 48-4876, the director may  
36 assess and collect a penalty of up to one thousand dollars for each day the  
37 annual report is delinquent. The director shall transmit all penalties  
38 collected pursuant to this subsection to the state treasurer for deposit in  
39 the ~~groundwater enforcement fund established by section 45-637~~ STATE GENERAL  
40 FUND.

1           Sec. 54. Section 45-882.01, Arizona Revised Statutes, is amended to  
2 read:

3           45-882.01. Violation: civil penalties

4           A. A person who is determined pursuant to section 45-881.01 to be in  
5 violation of this chapter or a permit, rule or order issued or adopted  
6 pursuant to this chapter may be assessed a civil penalty in an amount not  
7 exceeding:

8           1. One hundred dollars per day of violation that is not directly  
9 related to illegal storage, recovery or use of stored water.

10           2. Ten thousand dollars per day of violation that is directly related  
11 to illegal storage, recovery or use of stored water.

12           B. An action to recover penalties under this section shall be brought  
13 by the director in the superior court in the county in which the violation  
14 occurred.

15           C. In determining the amount of the penalty, the court shall consider  
16 the degree of harm to the public, whether the violation was knowing or  
17 wilful, the past conduct of the defendant, whether the defendant should have  
18 been on notice of the violation, whether the defendant has taken steps to  
19 cease, remove or mitigate the violation and any other relevant information.

20           D. The director shall transmit all civil penalties assessed under this  
21 section to the state treasurer for deposit in the ~~groundwater enforcement~~  
22 ~~fund established by section 45-637~~ STATE GENERAL FUND.

23           Sec. 55. Section 45-1004, Arizona Revised Statutes, is amended to  
24 read:

25           45-1004. Annual report of water exchange; record keeping;  
26 penalties

27           A. Each person who is authorized to give or receive any water pursuant  
28 to a water exchange contract enrolled under section 45-1021, a water exchange  
29 permit issued under section 45-1041, or a notice of water exchange filed with  
30 the director under section 45-1051 shall file an annual report with the  
31 director, whether or not any water was actually given or received. The  
32 report shall contain:

33           1. The name and address of the person filing the report.

34           2. The source and quantity of water received pursuant to the water  
35 exchange in the preceding calendar year on a month by month basis.

36           3. The source and quantity of water given pursuant to the water  
37 exchange in the preceding calendar year on a month by month basis.

38           4. Such other information as the director may require to carry out the  
39 purposes of this chapter.

40           B. Each report shall contain either a sworn statement or a  
41 certification, under penalty of perjury, that the information contained in  
42 the report is true and correct according to the best belief and knowledge of  
43 the person filing the report.

1 C. The annual report shall be maintained on a calendar year basis  
2 unless a different accounting period is authorized by the director and is  
3 specified in the water exchange contract, permit or notice. The report shall  
4 be filed with the director no later than March 31 of each year for the  
5 preceding calendar year unless the director has authorized a different  
6 accounting period, in which case the report shall be filed no later than the  
7 end of the third month after the closing date of the accounting period. If  
8 a person who is required under this section to file an annual report fails  
9 to file a report for a calendar year on or before March 31 of the following  
10 year or a later date authorized by the director, the director may assess and  
11 collect a penalty of twenty-five dollars for each month or portion of a month  
12 that the annual report is delinquent. The total penalty assessed under this  
13 subsection shall not exceed one hundred fifty dollars. All penalties  
14 collected under this subsection shall be ~~deposited~~ TRANSMITTED TO THE STATE  
15 TREASURER FOR DEPOSIT in the ~~groundwater enforcement fund established by~~  
16 ~~section 45-637~~ STATE GENERAL FUND.

17 D. Each person required to file an annual report under this section  
18 shall maintain current accurate records of the withdrawals, diversions and  
19 use of any water given or received in a water exchange.

20 E. The records and reports required to be kept and filed under this  
21 section shall be in such form as the director prescribes. The director shall  
22 prepare blank forms and furnish them on request. Failure to receive or  
23 obtain the forms does not relieve any person of responsibility for keeping  
24 the required records or making any required report.

25 Sec. 56. Section 45-1063, Arizona Revised Statutes, is amended to  
26 read:

27 45-1063. Civil penalties

28 A. A person who is determined pursuant to section 45-1062 to be in  
29 violation of any provision of this chapter, a permit or order issued pursuant  
30 to this chapter or a rule adopted to carry out the purpose of this chapter  
31 may be assessed a civil penalty in an amount not exceeding:

32 1. One hundred dollars per day for a violation not directly related  
33 to the illegal withdrawal, diversion or use of water pursuant to a water  
34 exchange.

35 2. One thousand dollars per day for a violation directly related to  
36 the illegal withdrawal, diversion or use of water pursuant to a water  
37 exchange.

38 B. The director shall bring any action to recover penalties under this  
39 section in superior court in the county in which the violation occurred.

40 C. In determining the amount of the penalty, the court shall consider  
41 the degree of harm to the public, whether the violation was knowing or  
42 wilful, the past conduct of the defendant, whether the defendant should have  
43 been on notice of the violation, whether the defendant has taken steps to  
44 cease, remove or mitigate the violation and any other relevant information.

1 D. All penalties collected under this article shall be ~~deposited~~  
2 TRANSMITTED TO THE STATE TREASURER FOR DEPOSIT in the ~~groundwater enforcement~~  
3 ~~fund established by section 45-637~~ STATE GENERAL FUND.

4 Sec. 57. Section 49-113, Arizona Revised Statutes, is amended to read:  
5 49-113. Fees; unpaid amounts; penalties; audits

6 A. For self-reported fees in this title, the director shall require  
7 the payer to sign a certification that the amount reported is accurate.

8 B. The director shall collect interest on the unpaid amount of every  
9 payment, fee, self-reported fee, tax, assessment, cost and penalty authorized  
10 by this title at the rate determined pursuant to section 42-134 from the date  
11 required for payment until the full amount is paid. If nonpayment is due to  
12 wilful neglect, the director shall also collect an additional five per cent  
13 penalty of up to twenty-five per cent of the amount due for each month or  
14 fraction of a month the amount is past due. All monies collected pursuant  
15 to this section shall be ~~deposited~~ TRANSMITTED TO THE STATE TREASURER FOR  
16 DEPOSIT in the ~~same fund in which the principal payment is deposited~~ STATE  
17 GENERAL FUND.

18 C. The director may require a person who is required to make a payment  
19 pursuant to this title to appear at reasonable times and on reasonable notice  
20 at the director's office and produce records and information that are  
21 specified in the notice to determine compliance with this title.

22 D. The director shall audit the records of a sufficient number of  
23 persons under this section to ensure general compliance with its  
24 requirements.

25 Sec. 58. Section 49-262, Arizona Revised Statutes, is amended to read:  
26 49-262. Injunctive relief; civil penalties; recovery of

27 litigation costs

28 A. If the director has reason to believe that a person is in violation  
29 of any provision of article 2 or 3 of this chapter, a rule adopted pursuant  
30 to article 2 or 3 of this chapter, a discharge limitation or any other  
31 condition of a permit issued under article 2 or 3 of this chapter or believes  
32 that a person is creating an actual or potential endangerment to the public  
33 health or environment because of acts performed in violation of this chapter,  
34 whether or not the person has requested a hearing, the director, through the  
35 attorney general, may request a temporary restraining order, a preliminary  
36 injunction, a permanent injunction or any other relief necessary to protect  
37 the public health.

38 B. Notwithstanding any other provision of this chapter, if the  
39 director, the county attorney or the attorney general has reason to believe  
40 that a person is creating an imminent and substantial endangerment to the  
41 public health or environment because of acts performed in violation of  
42 article 2 or 3 of this chapter the county attorney or attorney general may  
43 request a temporary restraining order, a preliminary injunction, a permanent  
44 injunction or any other relief necessary to protect the public health.

1 C. A person who violates any provision of article 2 or 3 of this  
2 chapter or a rule, permit, discharge limitation or order issued or adopted  
3 pursuant to article 2 or 3 of this chapter is subject to a civil penalty of  
4 not to exceed twenty-five thousand dollars per day per violation. The  
5 attorney general may, and at the request of the director shall, commence an  
6 action in superior court to recover civil penalties provided by this section.

7 D. The court, in issuing any final order in any civil action brought  
8 under this section, may award costs of litigation, including reasonable  
9 attorney and expert witness fees, to any substantially prevailing party if  
10 the court determines such an award is appropriate. If a temporary  
11 restraining order is sought, the court may require the filing of a bond or  
12 equivalent security.

13 E. All civil penalties except litigation costs obtained under this  
14 section shall be ~~deposited~~ TRANSMITTED TO THE STATE TREASURER FOR DEPOSIT in  
15 the ~~water quality assurance revolving fund established under section 49-282~~  
16 STATE GENERAL FUND.

17 Sec. 59. Section 49-263, Arizona Revised Statutes, is amended to read:

18 49-263. Criminal violations; classification; civil penalties;  
19 definition

20 A. It is unlawful to:

21 1. Discharge without a permit or appropriate authority under this  
22 chapter.

23 2. Fail to monitor, sample or report discharges as required by a  
24 permit issued under this chapter.

25 3. Violate a discharge limitation specified in a permit issued under  
26 this chapter.

27 4. Violate a water quality standard.

28 B. A person who with criminal negligence performs an act prohibited  
29 under subsection A of this section is guilty of a class 6 felony.

30 C. A person who knowingly performs an act prohibited under subsection  
31 A of this section is guilty of a class 5 felony.

32 D. A person who knowingly or recklessly manifests an extreme  
33 indifference for human life in performing an act prohibited under subsection  
34 A of this section is guilty of a class 2 felony.

35 E. A violation of any provision of this chapter for which a penalty  
36 is not otherwise prescribed is a class 2 misdemeanor.

37 F. The attorney general may enforce this section.

38 G. Monetary criminal penalties obtained under this section shall be  
39 ~~deposited~~ TRANSMITTED TO THE STATE TREASURER FOR DEPOSIT in the ~~water quality~~  
40 ~~assurance revolving~~ STATE GENERAL fund.

41 H. For purposes of this section "person" has the meaning assigned to  
42 that term by section 13-105.

1           Sec. 60. Section 49-282, Arizona Revised Statutes, as amended by Laws  
2 1995, chapter 202, section 8, is amended to read:

3           49-282. Water quality assurance revolving fund; uses; remedial  
4                           action criteria

5           A. A water quality assurance revolving fund is established in the  
6 state treasury to be administered by the director. The fund consists of  
7 monies from the following sources:

8           1. Monies appropriated by the legislature including monies  
9 appropriated pursuant to section 42-1341, subsection C, paragraph 4,  
10 subdivision (d).

11           2. Fertilizer license fees allocated under section 3-272, subsection  
12 B, paragraph 2.

13           3. Pesticide registration fees allocated under section 3-351,  
14 subsection D, paragraph 2.

15           4. The tax on water use pursuant to section 42-1552.

16           5. Water quality assurance fees collected under section 45-616.

17           6. Industrial discharge registration fees collected under section  
18 49-209.

19           7. Manifest resubmittal fees collected under section 49-922.01.

20           8. Hazardous waste facility registration fees collected under section  
21 49-929.

22           9. Hazardous waste resource recovery facility registration fees  
23 collected under section 49-930.

24           ~~10. Monies obtained as civil or criminal penalties imposed under this~~  
25 ~~chapter.~~

26           ~~11.~~ 10. Monies recovered from responsible parties as remedial action  
27 costs.

28           ~~12.~~ 11. Monies received as costs for a review of remedial actions at  
29 the request of a person other than the state as prescribed by section 49-285,  
30 subsection B.

31           B. Monies in the fund are exempt from lapsing under section 35-190.  
32 Interest earned on monies in the fund shall be credited to the fund. Any  
33 amount remaining in the fund on June 30 of each year exceeding twenty-five  
34 million dollars shall be deposited in the state general fund.

35           C. Monies from the water quality assurance revolving fund shall be  
36 used for the following purposes:

37           1. To provide state matching monies or to meet such other obligations  
38 as are prescribed by section 104 of CERCLA.

39           2. For all reasonable and necessary costs incurred in remedial actions  
40 if a responsible party cannot be determined or identified by the director.

41           3. For all reasonable and necessary costs incurred in remedial actions  
42 if a responsible party has failed or refused to undertake a remedial action  
43 after being ordered to do so by the director.

1           4. For the reasonable and necessary costs of monitoring, assessing,  
2 identifying, locating and evaluating the degradation, destruction, loss of  
3 or threat to the waters of the state resulting from a release of a hazardous  
4 substance to the environment.

5           5. For the reasonable and necessary costs of conducting site  
6 investigations, feasibility studies, health effect studies and risk  
7 assessments related to the release of a hazardous substance to the  
8 environment that has posed or may pose a threat to the waters of the state.

9           6. For the reasonable and necessary costs of administering the fund.

10           7. For the costs of the water quality monitoring program described in  
11 section 49-225.

12           8. For emergency response use as prescribed in section 49-282.02.

13           9. Compliance monitoring, investigation and enforcement activities  
14 pertaining to generating, transporting, treating, storing and disposing of  
15 hazardous waste. The amount to be used for this type of activity is limited  
16 to the amount received in the prior fiscal year for the hazardous waste  
17 facility registration fee.

18           D. Remedial actions shall:

19           1. Assure the protection of public health and welfare and the  
20 environment.

21           2. To the extent practicable, provide for the control, management or  
22 cleanup of the hazardous substances so as to allow the maximum beneficial use  
23 of the waters of the state.

24           3. Be cost-effective over the period of potential exposure to such  
25 substances.

26           E. The director shall adopt rules governing the uses of monies from  
27 the fund, the determination of priorities among cleanup sites and the  
28 selection of remedial actions to be undertaken either under the fund or by  
29 a responsible party, including the level and extent of cleanup. The director  
30 may adopt CERCLA rules, guidelines or procedures by reference. In adopting  
31 the rules required by this subsection and in selecting remedial actions the  
32 director shall consider the following factors:

33           1. Population, environmental and welfare concerns at risk.

34           2. Routes of exposure.

35           3. Amount, concentration, hazardous properties, environmental fate,  
36 such as the ability to bio-accumulate, persistence and probability of  
37 reaching the waters of the state, and the form of the substance present.

38           4. Physical factors affecting human exposure such as hydrogeology,  
39 climate and the extent of previous and expected migration.

40           5. The extent to which a responsible party can be identified and the  
41 ability of that party to reimburse the fund for remedial action costs.

42           6. The extent to which the amount of water available for beneficial  
43 uses will be preserved by a particular type of remedial action.

1           7. The technical practicality and cost-effectiveness of remedial  
2 actions applicable to a site.

3           8. The availability of other appropriate federal or state remedial  
4 action and enforcement mechanisms, including funding sources established  
5 under CERCLA, to respond to the release.

6           F. Remedial actions required by this article shall be consistent with  
7 the requirements of title 45, chapter 2.

8           G. Any political subdivision of this state which uses, used or may use  
9 waters of the state for drinking water purposes or any state agency,  
10 regardless of whether the political subdivision or state agency is a  
11 responsible party, may apply to the director for a loan of monies from the  
12 fund to be used for remedial action. An application to the fund for remedial  
13 action costs shall not be treated as an admission that a political  
14 subdivision or an agency of the state is a responsible party, but a political  
15 subdivision or a state agency that is a responsible party is liable for  
16 remedial action costs in the same manner, including reimbursement of the  
17 fund, as any other responsible party. The political subdivision shall  
18 commit a local matching amount at least equal to the amount sought from the  
19 fund.

20           Sec. 61. Section 49-284, Arizona Revised Statutes, is amended to read:  
21 49-284. Notice; reportable quantities; penalties

22           A. Notwithstanding any other requirement of state or federal law, any  
23 person who is the owner or operator of a facility shall, as soon as the  
24 person has knowledge of any release, other than a release in compliance with  
25 the limits or conditions in a federal or state permit, of a hazardous  
26 substance from such facility, immediately notify the director of the release  
27 if EITHER:

28           1. The release is in a quantity equal to or greater than that which  
29 is required to be reported to the national response center under section 103  
30 of CERCLA (42 United States Code section 9603), ~~or~~.

31           2. The release is in a quantity equal to or greater than that  
32 determined pursuant to subsection B, ~~OF THIS SECTION~~ and

33           ~~3. The~~ THE release was not reported to the national response center  
34 before ~~the effective date of this article~~ AUGUST 13, 1986.

35           B. The director shall, by rule, establish reportable quantities for  
36 those hazardous substances for which such quantities have not been  
37 established under section 102 of CERCLA (42 United States Code section 9602).  
38 The director may determine that one single quantity shall be the reportable  
39 quantity for that hazardous substance, regardless of the medium into which  
40 the hazardous substance is released.

41           C. Any person who fails to immediately notify the director as provided  
42 in subsection A of this section is subject to a civil penalty of not to  
43 exceed ten thousand dollars. The attorney general may, and at the request  
44 of the director shall, commence an action in superior court to recover civil

1 penalties provided by this subsection. ALL CIVIL PENALTIES ASSESSED PURSUANT  
2 TO THIS SECTION SHALL BE TRANSMITTED TO THE STATE TREASURER FOR DEPOSIT IN  
3 THE STATE GENERAL FUND.

4 D. Notification received pursuant to this section or information  
5 obtained by the exploitation of such notification shall not be used against  
6 any reporting person in any criminal case, except a prosecution for perjury  
7 or for giving a false statement.

8 Sec. 62. Section 49-287, Arizona Revised Statutes, is amended to read:

9 49-287. Enforcement; use of fund; inspections and information  
10 gathering; civil penalties

11 A. Except as provided in section 49-286, the provisions of this  
12 article are independent of and are not subject to the enforcement remedies  
13 of article 4 of this chapter and section 49-264.

14 B. This section does not preclude the department from initiating  
15 actions pursuant to sections 107(a) and 107(f) of CERCLA, section 7002 of the  
16 resource conservation and recovery act, section 505 of the clean water act  
17 and section 1449 of the safe drinking water act.

18 C. Judicial actions initiated pursuant to this section have precedence  
19 over all other civil proceedings.

20 D. If there is a release or the threat of a release of a hazardous  
21 substance which may present an imminent and substantial danger to the public  
22 health or welfare:

23 1. The director may take such remedial action as he deems necessary  
24 to protect the public health or welfare or the environment.

25 2. The attorney general may request a temporary restraining order, a  
26 preliminary injunction, a permanent injunction or any other relief necessary  
27 to protect the public health or welfare or the environment from the release.

28 3. The director may issue an order requiring abatement of such release  
29 or threat of a release and appropriate remedial action if the action is  
30 consistent with the criteria listed in and rules adopted pursuant to section  
31 49-282 and before taking such action the director provides written notice to  
32 the responsible party, if known, and the owner of the real property where the  
33 facility is located if the owner is not a responsible party. The notice  
34 shall include:

35 (a) The reasons for the remedial action.

36 (b) A reasonable time for beginning and completing the actions, taking  
37 into account the urgency of the actions for protecting public health or  
38 welfare or the waters of the state.

39 (c) The steps taken to comply with the criteria listed in and rules  
40 adopted pursuant to section 49-282.

41 (d) The intention of this state or a political subdivision to take  
42 remedial action and the possible liability of the responsible party for the  
43 costs of such actions if that action is not taken by the responsible party.

1           4. The director may initiate the notification and settlement process  
2 established pursuant to section 49-291.

3           E. A remedial action order issued under subsection D of this section  
4 becomes final and enforceable in the superior court for purposes of  
5 subsections H and I of this section unless, within thirty days after the  
6 receipt of the order, the recipient moves to quash or modify the order in the  
7 superior court. If the motion to quash or modify the order raises issues of  
8 fact, the recipient of the order and the state are entitled to conduct  
9 expedited discovery on application to the court and are entitled to a  
10 priority for trial. A party who undertakes the actions prescribed in a  
11 remedial action order issued pursuant to this section may obtain a court  
12 order to recover from the fund the reasonable and necessary costs of the  
13 actions if the party demonstrates to the court that the actions required by  
14 the order were arbitrary and capricious or otherwise were not in accordance  
15 with law or that the party is not a responsible party as prescribed by  
16 section 49-283.

17           F. If there is a release or the threat of a release of any pollutant  
18 which may present an imminent and substantial danger to the public health or  
19 welfare, the director may take such remedial action as he deems necessary to  
20 protect the public health or welfare or the environment.

21           G. Any remedial action costs incurred by the director pursuant to the  
22 procedures in subsection D of this section may be recovered in a civil action  
23 brought by the attorney general against any responsible party.

24           H. A responsible party who wilfully violates or fails or refuses to  
25 comply with any order of the director under subsection D, paragraph 3 of this  
26 section may, in an action brought in the superior court in the appropriate  
27 county to enforce such order, be assessed a civil penalty of not more than  
28 five thousand dollars for each day in which the violation occurs or the  
29 failure to comply continues. ALL CIVIL PENALTIES ASSESSED PURSUANT TO THIS  
30 SUBSECTION SHALL BE TRANSMITTED TO THE STATE TREASURER FOR DEPOSIT IN THE  
31 STATE GENERAL FUND.

32           I. A responsible party who fails, without sufficient cause, to  
33 properly provide remedial action on order of the director pursuant to  
34 subsection D, paragraph 3 of this section may be liable to this state for  
35 punitive damages in an amount up to three times the amount of any costs  
36 incurred by the director as a result of the failure to take proper action.  
37 The attorney general may commence a civil action against the responsible  
38 party to recover the punitive damages. Any monies received by this state  
39 pursuant to this subsection shall be deposited in the ~~water quality assurance~~  
40 ~~revolving~~ STATE GENERAL FUND. The director's failure to comply with the  
41 requirements of section 49-282 is a defense to an action for punitive damages  
42 and the amount of the punitive damages requested may be reduced, in full or  
43 in part.

1 J. If the director may act pursuant to this section, he may undertake  
2 such investigations, monitoring, surveys, testing and other information  
3 gathering as he may deem necessary or appropriate to identify the existence  
4 and extent of the release or threat of a release, the source and nature of  
5 the hazardous substances and the extent of danger to the public health or  
6 welfare or to the environment. In addition, the director may undertake such  
7 planning, legal, fiscal, economic, engineering, architectural and other  
8 studies or investigations as he may deem necessary or appropriate to plan and  
9 direct response actions, to recover the costs of response actions and to  
10 enforce this article.

11 Sec. 63. Section 49-288, Arizona Revised Statutes, is amended to read:  
12 49-288. Information gathering and access; enforcement; civil  
13 penalties

14 A. The director may take an action authorized under subsection B or  
15 C of this section to determine the need for, to select or to undertake any  
16 remedial action pursuant to this article or to otherwise enforce the  
17 provisions of this article or a rule adopted pursuant to this article. Any  
18 such action taken regarding the release or threatened release of a pollutant  
19 shall not require a person to create information or documents not then in  
20 existence.

21 B. The director may ~~make a request to~~ require a person who has or may  
22 have information relevant to a release or threatened release of a hazardous  
23 substance, or pollutant as identified by the director in the request,  
24 including information relating to the ability of a person to pay for or to  
25 undertake remedial actions pursuant to this article, to furnish, after  
26 reasonable notice, information or documents relating to such release or  
27 threatened release or to grant access at all reasonable times, after  
28 reasonable notice, to a facility or other place owned or operated by the  
29 person to inspect and copy all documents or records relating to such release  
30 or threatened release. At the option of the person, the person may copy and  
31 furnish, at the person's expense, all such documents or records to the  
32 director.

33 C. The director or an agent designated by the director with  
34 appropriate documentation that identifies the person who has been given  
35 authority from the director, after reasonable notice, may enter a facility  
36 or other place at reasonable times under any of the following circumstances:

37 1. Where a hazardous substance or a regulated substance as defined in  
38 section 49-1001 may be or has been generated, stored, treated, disposed of  
39 or transported from and which may be related to a release or threatened  
40 release of a hazardous substance or regulated substance.

41 2. From which or to which a hazardous substance or a regulated  
42 substance as defined in section 49-1001 has been or may have been released  
43 or where such release is or may be threatened.

1           3. Where entry is needed to determine the need for remedial actions  
2 or the appropriate remedial actions or to effectuate remedial actions  
3 pursuant to this article.

4           4. To inspect and obtain samples of any suspected hazardous substance  
5 or a regulated substance as defined in section 49-1001 which has been or may  
6 have been released or where such release is or may be threatened, including  
7 samples of containers or labeling.

8           D. If a sample is obtained pursuant to subsection C, paragraph 4 of  
9 this section, the director shall, before leaving the premises, give to the  
10 owner, operator or other person in control of the facility or other place  
11 from which the samples were obtained a receipt describing the sample obtained  
12 and, if requested, a portion of each sample. A copy of the results of any  
13 analysis made of such samples shall be furnished promptly to the owner,  
14 operator or other person in control, if such person can be located.  
15 Inspections pursuant to subsection C, paragraph 4 of this section shall be  
16 completed with reasonable promptness.

17           E. If consent is not granted regarding any request made by the  
18 director under subsections A through C of this section, then the director may  
19 issue an order requiring compliance with the request within a specified time  
20 period that the director determines is appropriate under the circumstances.  
21 The order shall provide that the time period for compliance shall be extended  
22 for good cause shown as determined by the director. The order may not be  
23 issued until an opportunity for consultation as is reasonably appropriate  
24 under the circumstances has been afforded to the person to whom the request  
25 is made.

26           F. The director may ask the attorney general to commence a civil  
27 action to compel compliance with a request made pursuant to subsections A  
28 through C of this section or an order issued pursuant to subsection E of this  
29 section.

30           G. The court may assess a civil penalty of not to exceed five thousand  
31 dollars for each day of noncompliance against any person who unreasonably  
32 fails to comply with an order issued pursuant to subsection E of this  
33 section. ALL CIVIL PENALTIES ASSESSED PURSUANT TO THIS SECTION SHALL BE  
34 TRANSMITTED TO THE STATE TREASURER FOR DEPOSIT IN THE STATE GENERAL FUND.  
35 The attorney general, at the request of the director, may commence an action  
36 in superior court to recover civil penalties provided for in this subsection.  
37 In determining the amount of a civil penalty under this subsection, the court  
38 shall consider:

- 39           1. The seriousness of the act of noncompliance under this section.
- 40           2. As an aggravating factor only, the economic benefit, if any,  
41 resulting from the act of noncompliance under this section.
- 42           3. Any history of such violation.
- 43           4. Any good faith efforts to comply with the order.
- 44           5. The economic impact of the penalty on the person.

1           6. Such other factors as the court deems relevant.

2           H. Nothing in this section shall preclude the director from securing  
3 access or obtaining information in any other lawful manner.

4           Sec. 64. Section 49-304, Arizona Revised Statutes, is amended to read:

5           49-304. Penalty for groundwater protection data gap

6           A. A registrant of a pesticide identified in section 49-303,  
7 subsection B, paragraph 1 is subject to a penalty of up to ten thousand  
8 dollars for each day the groundwater protection data gap exists. In  
9 determining the amount of the penalty, the following shall be considered:

10           1. The extent to which the registrant has made every effort to submit  
11 the valid, complete and adequate information within the required time limits.

12           2. Circumstances beyond the control of the registrant that have  
13 prevented the registrant from submitting valid, complete and adequate  
14 information within the required time limits.

15           B. If there is a dispute between the director and a registrant  
16 regarding the existence of a groundwater protection data gap, the director  
17 or registrant shall submit the issues of the dispute to the water quality  
18 appeals board pursuant to section 49-323. The water quality appeals board  
19 shall review the evidence submitted by the registrant and the director and  
20 make recommendations to the director on whether or not the groundwater  
21 protection data gap exists.

22           C. Subsections A and B of this section do not apply to a pesticide  
23 product whose registration has lapsed, has been voluntarily withdrawn or has  
24 been cancelled, or to a product that has been granted a current extension  
25 pursuant to section 49-302.

26           D. The attorney general may enforce this section.

27           E. Any monetary penalties obtained under this section shall be  
28 ~~deposited~~ TRANSMITTED TO THE STATE TREASURER FOR DEPOSIT in the ~~water quality~~  
29 ~~assurance revolving~~ STATE GENERAL fund.

30           Sec. 65. Section 49-354, Arizona Revised Statutes, is amended to read:

31           49-354. Enforcement; violation; classification; compliance  
32 orders; injunctive relief; civil penalties

33           A. A person who violates a provision of this article or a regulation  
34 adopted pursuant to this article is guilty of a class 2 misdemeanor for each  
35 violation. In the instance of a continuing violation, each day A VIOLATION  
36 CONTINUES constitutes a separate offense.

37           B. If the director determines that a person is in violation of a  
38 provision of this article or a rule adopted pursuant to this article, the  
39 director may issue an order requiring compliance immediately or within a  
40 specified time period. A compliance order shall state with reasonable  
41 specificity the nature of the violation, a time for compliance if applicable  
42 and the right to a hearing. The director shall transmit the compliance order  
43 to the alleged violator by certified mail, return receipt requested, or by  
44 hand delivery. A compliance order becomes final and enforceable in the

1 superior court unless within thirty days after the receipt of the order the  
2 alleged violator requests a hearing before an administrative law judge. If  
3 a hearing is requested, the order does not become final until the  
4 administrative law judge has issued a final decision on the appeal. Appeals  
5 shall be conducted pursuant to title 12, chapter 7, article 6. At the  
6 request of the director the attorney general may begin an action in superior  
7 court to enforce orders issued under this subsection after an order becomes  
8 final.

9 C. If the director has reason to believe that a person is in violation  
10 of a provision of this article or a rule ADOPTED or an order ~~adopted~~ ISSUED  
11 pursuant to this article or believes that a person is creating an actual or  
12 potential endangerment to the public health because of acts performed in  
13 violation of this article or a rule adopted pursuant to this article, the  
14 director, through the attorney general, may request a temporary restraining  
15 order, a preliminary injunction, a permanent injunction or any other relief  
16 necessary to protect the public health.

17 D. A person who violates any provision of this article or a rule  
18 adopted pursuant to this article is subject to a civil penalty of not to  
19 exceed five hundred dollars per day per violation. The attorney general may,  
20 and at the request of the director shall, begin an action in superior court  
21 to recover civil penalties provided by this section. All civil penalties,  
22 except litigation costs obtained under this subsection, shall be ~~deposited~~  
23 TRANSMITTED TO THE STATE TREASURER FOR DEPOSIT in the ~~small water systems~~  
24 ~~fund established under section 49-355~~ STATE GENERAL FUND.

25 Sec. 66. Section 49-355, Arizona Revised Statutes, is amended to read:

26 49-355. Small water systems fund

27 A. A small water systems fund is established in the department of  
28 environmental quality. The fund consists of monies appropriated by the  
29 legislature ~~and monies obtained as civil penalties imposed under section~~  
30 ~~49-354~~. Monies in the fund are exempt from lapsing under section 35-190.  
31 Interest earned on monies in the fund shall be credited to the fund.

32 B. Monies from the small water systems fund shall be used to:

33 1. Develop public education and information programs for owners,  
34 operators and customers of small water systems.

35 2. Provide advice and assistance in managerial, accounting,  
36 engineering and other technical areas for owners and operators of small water  
37 systems.

38 3. Integrate and coordinate information data bases among the  
39 government agencies involved in regulating small water systems.

40 4. Develop other programs which would benefit the owners, operators  
41 and customers of small water systems.

1           Sec. 67. Section 49-455, Arizona Revised Statutes, is amended to read:  
2           49-455. Permit administration fund

3           A. A permit administration fund is established in the state treasury  
4 consisting of fees, ~~penalties~~ and interest collected pursuant to this  
5 article. The director shall administer the fund subject to annual  
6 legislative appropriation. On notice from the director, the state treasurer  
7 shall invest and divest monies in the fund as provided in section 35-313, and  
8 monies earned from investment shall be credited to the fund. Monies in the  
9 fund are exempt from the provisions of section 35-190 relating to lapsing of  
10 appropriations.

11           B. Monies in the fund collected pursuant to sections 49-426, ~~AND~~  
12 49-426.01, ~~49-463 and 49-464~~ shall be used for the following:

13           1. In the case of fees collected pursuant to section 49-426,  
14 subsection ~~F~~ E, paragraph 1, all reasonable direct and indirect costs  
15 required to develop and administer the permit program requirements of title  
16 V of the clean air act.

17           2. In the case of other fees, administering permits or revisions  
18 issued pursuant to section 49-426 or 49-426.01 or conducting inspections.

19           C. No more than five per cent of the monies in the fund may be used  
20 for the collection of monies, unless otherwise provided under title V of the  
21 clean air act.

22           D. No more than five per cent of the monies in the fund may be used  
23 for general administration of the fund unless otherwise provided under title  
24 V of the clean air act.

25           Sec. 68. Section 49-463, Arizona Revised Statutes, is amended to read:  
26           49-463. Violations; civil penalties

27           A. A person who violates any provision of this article, any permit or  
28 permit condition issued pursuant to this article, any fee or filing  
29 requirement, any rule adopted pursuant to this article, an effective order  
30 of abatement issued pursuant to this article or any duty to allow or carry  
31 out inspection, entry or monitoring activities, is subject to a civil penalty  
32 of not more than ten thousand dollars per day per violation. The attorney  
33 general at the request of the director shall file an action in superior court  
34 to recover penalties provided for in this section.

35           B. For purposes of determining the number of days of violation for  
36 which a civil penalty may be assessed under this section, if the director has  
37 notified the source of the violation and makes a prima facie showing that the  
38 conduct or events giving rise to the violation are likely to have continued  
39 or recurred past the date of notice, the days of violation shall be presumed  
40 to include the date of such notice and each day thereafter until the violator  
41 establishes that continuous compliance has been achieved, except to the  
42 extent that the violator can prove by a preponderance of the evidence that  
43 there were intervening days during which no violation occurred or that the  
44 violation was not continuing in nature. Notice under this section is

1 accomplished by the issuance of a notice of violation or order of abatement  
2 or by filing a complaint in superior court that alleges any violation  
3 described in subsection A ~~of this section.~~

4 C. In determining the amount of a civil penalty under this section,  
5 the court shall consider all of the following:

- 6 1. The seriousness of the violation.
- 7 2. As an aggravating factor only, the economic benefit, if any,  
8 resulting from the violation.
- 9 3. Any history of that violation.
- 10 4. Any good faith efforts to comply with the applicable requirements.
- 11 5. The economic impact of the penalty on the violator.
- 12 6. The duration of the violation as established by any credible  
13 evidence including evidence other than the applicable test method.
- 14 7. Payment by the violator of penalties previously assessed for the  
15 same violation.
- 16 8. Other factors the court deems relevant.

17 D. All penalties collected pursuant to this section shall be ~~deposited~~  
18 TRANSMITTED TO THE STATE TREASURER FOR DEPOSIT in the ~~air pollution control~~  
19 ~~permit fund established in section 49-455~~ STATE GENERAL FUND.

20 Sec. 69. Section 49-464, Arizona Revised Statutes, is amended to read:

21 49-464. Violation; classification; penalties; definition

22 ~~From and after October 31, 1994.~~

23 A. A person who knowingly releases into the ambient air any extremely  
24 hazardous substance listed pursuant to 42 ~~U.S.C.~~ UNITED STATES CODE section  
25 11002(a)(2) or any hazardous air pollutant and who knows at the time that he  
26 thereby places another person in imminent danger of death or serious bodily  
27 injury shall be guilty of a class 2 felony. For any air pollutant for which  
28 the administrator or director has established a standard by regulation or in  
29 a permit, a release of such pollutant in accordance with that standard shall  
30 not constitute a violation of this subsection. For purposes of determining  
31 whether a defendant who is an individual knew that the violation placed  
32 another in imminent danger of serious bodily injury both of the following  
33 shall apply:

34 1. The defendant is responsible only for actual awareness or actual  
35 belief possessed.

36 2. Knowledge possessed by another person but not by the defendant may  
37 not be attributed to the defendant.

38 Notwithstanding paragraphs 1 and 2 of this subsection, circumstantial  
39 evidence, including evidence that the defendant took affirmative steps to be  
40 shielded from relevant information, may be used to prove knowledge.

41 B. A person who operates a source that is required to have a permit  
42 both under this article and under title V of the clean air act and who  
43 knowingly operates such source without a permit issued by the director and  
44 without having filed a complete application for renewal of an existing permit

1 in accordance with title V of the clean air act and this article is guilty  
2 of a class 5 felony.

3 C. A person who operates a source that is subject to an emission  
4 standard that is required to be imposed in the source's permit both under  
5 this article and under title V of the clean air act, and who knowingly  
6 violates such emission standard is guilty of a class 5 felony.

7 D. A person who is subject to an effective order of abatement issued  
8 under this article and who knowingly violates such order is guilty of a class  
9 5 felony.

10 E. A person who is required by the director pursuant to this article  
11 to conduct performance tests, and who knowingly alters or modifies any such  
12 performance test in order to render the results inaccurate is guilty of a  
13 class 5 felony.

14 F. A person who is required by the director to maintain any monitoring  
15 device pursuant to this article, and who knowingly alters, modifies or  
16 destroys such monitoring device in order to render the device inaccurate is  
17 guilty of a class 5 felony.

18 G. A person who operates a source that is required to have a permit  
19 issued pursuant to this article and that is subject to a material permit  
20 condition other than an emission standard identified in subsection C of this  
21 section, and who knowingly violates such permit condition is guilty of a  
22 class 6 felony. For purposes of this subsection a material permit condition  
23 means a permit condition determined by the director by rule to be material  
24 after considering the following criteria:

25 1. The effect of the permit condition on public health and the  
26 environment.

27 2. The effect of the permit condition on the department's ability to  
28 enforce the permit program.

29 3. The effect of noncompliance with the permit condition on emissions.

30 4. The effect of the permit condition on the director's ability to  
31 determine a source's compliance status.

32 The director shall adopt the rules required by this subsection and section  
33 49-514, subsection G by November 1, 1993.

34 H. A person who is required to obtain a permit before commencing  
35 construction of a source both under this article and under title V of the  
36 clean air act, and who knowingly commences construction of such source  
37 without a permit issued by the director is guilty of a class 6 felony.

38 I. A person who operates a source that is not identified in subsection  
39 B of this section and that requires a permit under this article, and who  
40 knowingly operates such source without a permit issued by the director and  
41 without having filed a complete application for renewal of an existing permit  
42 in accordance with this article is guilty of a class 6 felony.

43 J. A person who is required by the director pursuant to this article  
44 to operate a monitoring device, and who knowingly fails to maintain, operate

1 or repair such monitoring device in order to render the device inaccurate is  
2 guilty of a class 6 felony.

3 K. A person who is required to obtain a permit to commence  
4 construction of a source under this article but not under title V of the  
5 clean air act, and who acting with criminal negligence commences construction  
6 of such source without a permit issued by the director is guilty of a class  
7 1 misdemeanor.

8 L. A person who acting with criminal negligence does any of the  
9 following is guilty of a class 1 misdemeanor:

10 1. Violates a permit condition not described in subsection C or G of  
11 this section.

12 2. Violates an opacity standard, unless the opacity standard is  
13 required by section 111 or title I, part C or D, of the clean air act.

14 3. Violates a fee or filing requirement established both under this  
15 article and under title V of the clean air act.

16 4. Violates any other provision of this article for which a penalty  
17 is not otherwise prescribed.

18 M. Under this section, a knowing violation that continues for more  
19 than one day, but that results from a single act or series of related acts,  
20 constitutes the commission of a single offense.

21 N. The attorney general may enforce the provisions of this section.

22 O. In determining the amount of a fine under this section, the court  
23 shall consider all of the following:

24 1. The seriousness of the violation.

25 2. As an aggravating factor only, the economic benefit, if any,  
26 resulting from the violation.

27 3. Any history of that violation.

28 4. Any good faith efforts to comply with the applicable requirements.

29 5. The economic impact of the penalty of the violator.

30 6. The duration of the violation as established by any credible  
31 evidence including evidence other than the applicable test method.

32 7. Payment by the violator of penalties previously assessed for the  
33 same violation.

34 8. Other aggravating and mitigating ~~factor~~ FACTORS as the court deems  
35 relevant.

36 P. It shall be an affirmative defense to any prosecution under  
37 subsection A of this section that the conduct charged was freely consented  
38 to by the person endangered and that the danger and conduct charged were  
39 reasonably foreseeable hazards of either of the following:

40 1. An occupation, business or profession.

41 2. Medical treatment or medical or scientific experimentation  
42 conducted by professionally approved methods provided that the person  
43 endangered was made aware of the risk involved in the treatment or  
44 experimentation prior to giving consent.

1 Q. It shall be an affirmative defense to any prosecution for violation  
2 of an emission standard or opacity standard under subsection C or G or  
3 subsection L, paragraph 1, 2 or 4 of this section that both of the following  
4 conditions were satisfied:

5 1. The violation was reported by verbal or facsimile notification to  
6 the director within twenty-four hours after the source first learned of the  
7 violation.

8 2. The owner or operator of the source provided written notification  
9 to the director containing all of the following information within  
10 seventy-two hours following the verbal or facsimile notification:

11 (a) Confirmation of the violation for which verbal or facsimile  
12 notification was provided.

13 (b) Identification of the practicable corrective measures that have  
14 been undertaken or will be undertaken to control and minimize emissions until  
15 compliance with the applicable standard is achieved.

16 In the case of continuous or recurring violations, the notification  
17 requirement shall be satisfied if the source provides the required  
18 notification after violations are first detected and includes in such  
19 notification an estimate of the time the violations will continue.  
20 Violations occurring after the estimated time period shall require additional  
21 notification pursuant to the first sentence of this paragraph.

22 R. It shall be an affirmative defense to any prosecution under  
23 subsection B, H, I or K of this section for operating a source or commencing  
24 construction without a permit that, after accurately disclosing in writing  
25 all relevant information that is necessary to assess the requirement to  
26 obtain a permit and that is requested by a permitting authority, the  
27 defendant obtained and relied upon the written advice of a permitting  
28 authority that no permit was necessary. Failure of a permitting authority  
29 to respond in writing to a request for a determination under this subsection  
30 within fourteen days after receiving the information described above IN THIS  
31 SUBSECTION shall be deemed to be advice that no permit was necessary for  
32 purposes of this subsection.

33 S. The defendant may establish an affirmative defense provided by this  
34 section by a preponderance of the evidence.

35 T. Under this section, to prove a knowing violation the state must  
36 prove actual knowledge of circumstances constituting each element of the  
37 offense which, as defined, requires proof of a culpable mental state. Actual  
38 knowledge may be proved by either direct or circumstantial evidence,  
39 including evidence that the person deliberately avoided acquiring such  
40 knowledge. A person's knowledge may not be inferred merely by his or her  
41 position within an enterprise.

42 U. ALL CIVIL OR CRIMINAL PENALTIES OR FINES ASSESSED PURSUANT TO THIS  
43 SECTION SHALL BE TRANSMITTED TO THE STATE TREASURER FOR DEPOSIT IN THE STATE  
44 GENERAL FUND.

1           ~~U-~~ V. For purposes of this section, ~~the term~~ "emission standard"  
2 means a numeric limitation on the volume or concentration of air pollutants  
3 in emissions from a source or a specific design, equipment or work practice  
4 standard, the purpose of which is to eliminate or reduce the volume or  
5 concentration of pollutants emitted by a source. ~~The term~~ Emission standard  
6 does not include opacity standards. Violations of emission standards shall  
7 be determined in the manner prescribed by the applicable regulations issued  
8 by the administrator or the director.

9           Sec. 70. Section 49-923, Arizona Revised Statutes, is amended to read:  
10           49-923. Compliance orders; civil penalties; injunctive relief

11           A. If the director has reasonable cause to believe that a person is  
12 violating this article or article 1 of this chapter or a permit or rule  
13 issued or adopted pursuant to this article or article 1 of this chapter, the  
14 director may serve upon the person an order requiring compliance with such  
15 provision, permit or rule. The order shall state with reasonable  
16 particularity the nature of the violation and shall specify either immediate  
17 compliance or a time period for compliance which the director determines is  
18 reasonable, taking into account the seriousness of the violation and any good  
19 faith efforts to comply with applicable legal requirements. The alleged  
20 violator has thirty days from the date of issuance of the order within which  
21 to request a hearing pursuant to title 41, chapter 6.

22           B. If a violator fails to take corrective action within the time  
23 specified in a compliance order issued pursuant to subsection A OF THIS  
24 SECTION, the director may issue an order assessing a civil penalty of not  
25 more than one thousand dollars for each day of continued noncompliance with  
26 the order. The alleged violator has thirty days from the date of issuance  
27 of the order within which to request a hearing pursuant to title 41,  
28 chapter 6. An attorney or corporate officer or employee of a corporation may  
29 represent the corporation at that hearing.

30           C. Before issuing an order assessing a civil penalty pursuant to  
31 subsection B OF THIS SECTION, the director shall give reasonable notice of  
32 his intent to issue the order and the circumstances of the case to the  
33 attorney general.

34           D. If the director has reasonable cause to believe that an order  
35 issued pursuant to this section is being violated or that a person is  
36 engaging in an act or practice which constitutes a violation for which he is  
37 authorized to issue an order pursuant to this section, the director or the  
38 attorney general may apply to the superior court in the county in which the  
39 violation is occurring for a temporary restraining order, preliminary  
40 injunction or permanent injunction. Such action has precedence over all  
41 other matters pending in the court.

42           E. ALL CIVIL PENALTIES ASSESSED PURSUANT TO THIS SECTION SHALL BE  
43 TRANSMITTED TO THE STATE TREASURER FOR DEPOSIT IN THE STATE GENERAL FUND.

1           Sec. 71. Section 49-924, Arizona Revised Statutes, is amended to read:  
2           49-924. Violations; civil penalty

3           A. A person who violates this article or any permit, rule or order  
4 issued or adopted pursuant to this article is subject to a civil penalty not  
5 exceeding twenty-five thousand dollars for each day of violation.

6           B. The attorney general shall bring an action to recover penalties  
7 under this section in the name of this state in the superior court in the  
8 county in which the violation occurred or in a county in which the department  
9 maintains an office.

10           C. The director may suspend or revoke any permit issued to a person  
11 who violates this article or any permit, rule or order issued or adopted  
12 pursuant to this article, unless the director has previously assessed a civil  
13 penalty for the violation pursuant to section 49-923, subsection B.

14           D. ALL CIVIL PENALTIES ASSESSED PURSUANT TO THIS SECTION SHALL BE  
15 TRANSMITTED TO THE STATE TREASURER FOR DEPOSIT IN THE STATE GENERAL FUND.

16           Sec. 72. Section 49-927, Arizona Revised Statutes, is amended to read:  
17           49-927. Hazardous waste management fund

18           A. A hazardous waste management fund is established to be administered  
19 by the department. The fund consists of monies appropriated by the  
20 legislature, monies collected pursuant to section 49-931, ~~AND monies~~  
21 ~~collected as civil or criminal penalties imposed under this chapter and fees~~  
22 for issuing permits under section 49-922, subsection B, paragraph 5. Monies  
23 in the fund are subject to legislative appropriation and are exempt from  
24 section 35-190 relating to lapsing of appropriations. On notice from the  
25 director, the state treasurer shall invest and divest monies in the fund as  
26 provided in section 35-313. Interest earned on monies in the fund shall be  
27 credited to the fund.

28           B. Monies in the hazardous waste management fund shall be used for the  
29 following purposes:

30           1. Informing, educating and training the general public, treatment,  
31 storage and disposal facility operators, hazardous waste handlers and others.

32           2. Supporting statewide hazardous waste planning and program  
33 development activities.

34           3. Processing, issuing and maintaining permits for treatment, storage  
35 or disposal facilities.

36           4. Compliance monitoring, investigation and enforcement activities  
37 pertaining to generating, transporting, treating, storing and disposing of  
38 hazardous waste under this article.

39           5. Funding the pollution prevention technical assistance program  
40 established in section 49-965 and providing matching funds under section 6605  
41 of the pollution prevention act of 1990 (P.L. 101-508).

42           6. Administration of the pollution prevention program pursuant to  
43 article 4 of this chapter.

1           7. Reimbursement of appropriations received for fiscal year 1991-1992  
2 to the state general fund as provided by law.

3           C. Ten per cent of the monies in the fund shall be transmitted to the  
4 emergency response fund established pursuant to section 26-352 to be used for  
5 staffing local emergency planning committees and equipping local fire  
6 departments, fire districts and public safety agencies for the development  
7 of hazardous materials emergency response teams.

8           Sec. 73. Section 49-932, Arizona Revised Statutes, is amended to read:  
9 49-932. Hazardous waste fuel penalty; disposition of revenue

10          A. A hazardous waste fuel penalty of forty cents per gallon is  
11 established for hazardous waste fuel and hazardous waste that ~~is~~ ARE burned  
12 for energy recovery and that ~~is~~ ARE not generated by the operation of the  
13 business of the burner.

14          B. The director shall collect the penalty established by subsection  
15 A ~~of this section~~ from the burner of the hazardous waste fuel or hazardous  
16 waste.

17          C. Monies collected pursuant to subsection B ~~of this section~~ shall be  
18 ~~deposited~~ TRANSMITTED TO THE STATE TREASURER FOR DEPOSIT in the ~~hazardous~~  
19 ~~waste management fund established pursuant to section 49-927~~ STATE GENERAL  
20 FUND.

21          Sec. 74. Joint study committee on regulatory reform and  
22 enforcement

23          A. The joint study committee on regulatory reform and enforcement is  
24 established consisting of fifteen members as follows:

25           1. Three members of the house of representatives, appointed by the  
26 speaker of the house of representatives, no more than two from the same  
27 political party. The speaker shall designate one of the members as  
28 cochairperson of the committee.

29           2. Three members of the senate, appointed by the president of the  
30 senate, no more than two from the same political party. The president shall  
31 designate one of the members as cochairperson of the committee.

32           3. Three members who are appointed by the governor and who each  
33 represent one of the following groups:

34           (a) County attorneys.

35           (b) Occupational licensing boards.

36           (c) Regulated professions or occupations.

37           4. Four members who are appointed by the governor and who represent  
38 the general public.

39           5. Two members appointed by the governor, one of whom represents a  
40 large state agency and one of whom represents a small state agency.

41          B. The committee shall:

42           1. Conduct hearings and inquire into the extent to which state  
43 government has adopted unnecessary, costly, duplicative or overly burdensome

1 rules and licensing requirements that adversely affect the interest of the  
2 state economy and state residents.

3 2. Conduct hearings and inquire into the extent to which this state  
4 relies on criminal enforcement of regulatory laws and the effectiveness of  
5 this enforcement.

6 3. Conduct hearings and inquire into the procedures used by  
7 occupational licensing boards and commissions for administrative appeals and  
8 the feasibility of the boards and commissions conforming to a uniform state  
9 administrative appeals process.

10 4. Conduct hearings and inquire into the feasibility of requiring  
11 agencies currently exempt from the office of administrative hearings to use  
12 the services and personnel of the office to conduct administrative hearings  
13 and to conform to a uniform state administrative appeals process.

14 5. Conduct hearings and inquire into the effects of the administrative  
15 rule making process on occupational licensing boards and commissions.

16 6. Assess the overall changes recently made in regulatory law.

17 7. Make recommendations as to legislative changes that may be deemed  
18 advisable based on its findings.

19 8. Submit a final report containing its findings and recommendations  
20 to the speaker of the house of representatives, the president of the senate  
21 and the governor on or before December 15, 1997.

22 C. The joint study committee on regulatory reform and enforcement may  
23 use the services of staff from the legislative and executive branches as  
24 needed and as made available by the governor, the speaker of the house of  
25 representatives and the president of the senate.

26 Sec. 75. Applicability

27 Section 12-910, Arizona Revised Statutes, as amended by this act, only  
28 applies to complaints filed with the court of record from and after September  
29 30, 1996.

30 Sec. 76. Applicability

31 Sections 41-1092, 41-1092.01 and 41-1092.02, Arizona Revised Statutes,  
32 as amended by this act, and sections 41-1092.03 through 41-1092.11, Arizona  
33 Revised Statutes, as added by this act, apply to notices of appeal filed with  
34 an agency from and after September 30, 1996.

35 Sec. 77. Delayed repeal

36 Section 74 of this act is repealed from and after December 31, 1997.

37 Sec. 78. Delayed effective date

38 Section 41-1077, Arizona Revised Statutes, as added by section 43 of  
39 this act, is effective from and after December 31, 1997.

40 Sec. 79. Conforming legislation

41 The legislative council staff shall prepare proposed legislation  
42 conforming the Arizona Revised Statutes to the provisions of this act for  
43 consideration in the forty-third legislature, first regular session.

1           Sec. 80. Reporting; implementation of time frames  
2           Beginning January 1, 1997, until December 31, 1998, the governor's  
3 regulatory review council shall report at least quarterly to the  
4 administrative rules oversight committee on the state agencies' progress in  
5 adopting rules to implement licensing time frames according to section  
6 41-1073, Arizona Revised Statutes, as added by section 42 of this act.

APPROVED BY THE GOVERNOR APRIL 9, 1996.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 9, 1996.