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Jane Dee Hull
Secretary of State

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

CHAPTER 78

SENATE BILL 1341

AN ACT

AMENDING SECTIONS 42-1201 AND 42-1204, ARIZONA REVISED STATUTES; RELATING TO LUXURY TAX.

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

Section 1. Section 42-1201, Arizona Revised Statutes, is amended to read:

42-1201. Definitions

A. In this article, unless the context otherwise requires:

1. "Affix" and "affixed" includes imprinting tax meter stamps on packages and individual containers as authorized by the department.

2. "Cannabis" means cannabis as defined in section 36-2501 that is illegally held, possessed, transported, transferred, sold or offered to be sold in violation of the laws of this state.

3. "CIDER" MEANS VINOUS LIQUOR THAT IS MADE FROM THE NORMAL ALCOHOLIC FERMENTATION OF THE JUICE OF SOUND, RIPE APPLES, INCLUDING FLAVORED, SPARKLING AND CARBONATED CIDER AND CIDER MADE FROM CONDENSED APPLE MUST, THAT CONTAINS MORE THAN ONE-HALF OF ONE PER CENT OF ALCOHOL BY VOLUME BUT NOT MORE THAN SEVEN PER CENT OF ALCOHOL BY VOLUME.

~~3.~~ 4. "Cigarette" means all rolls of tobacco or any substitute therefor wrapped in paper or any substance other than tobacco.

~~4.~~ 5. "Cigars" means all rolls of tobacco or any substitute therefor wrapped with tobacco.

~~5.~~ 6. "Consumer" means a person who comes into possession of any luxuries subject to the tax imposed by this article for the purpose of using,

giving away or disposing of such luxuries in any manner other than by sale, barter or exchange.

~~6.~~ 7. "Controlled substance" means controlled substance as defined in section 36-2501 that is illegally held, possessed, transported, sold or offered to be sold in violation of the laws of this state, but does not include cannabis.

~~7.~~ 8. "Dealer" means any person in this state who manufactures, produces, ships, transports or imports into this state or in any manner acquires or possesses cannabis or a controlled substance upon which the taxes have not been paid as required by this article.

~~8.~~ 9. "Distributor" means any person who manufactures, produces, ships, transports or imports into this state or in any manner acquires or possesses for the purpose of making the first sale of the following:

(a) Cigarettes without stamps affixed as required by this article.

(b) Cigars or other tobacco products upon which the taxes have not been paid as required by this article.

~~9.~~ 10. "Domestic farm winery" means a domestic farm winery licensed pursuant to title 4, chapter 2, article 1.

~~10.~~ 11. "Domestic microbrewery" means a domestic microbrewery licensed pursuant to title 4, chapter 2, article 1.

~~11.~~ 12. "First sale" means the first sale or distribution in intrastate commerce or the first use or consumption of cigarettes, cigars or other tobacco products.

~~12.~~ 13. "Luxury" means any article, object or device upon which a tax is imposed under the provisions of this article.

~~13.~~ 14. "Malt liquor" means any liquid containing more than one-half of one per cent alcohol by volume and which is made by the process of fermentation and not distillation of hops or grains, but not including liquids made by the process of distillation of such substances.

~~14.~~ 15. "Person" means any individual, firm, partnership, joint venture, association, corporation, municipal corporation, estate, trust, club, society or other group or combination acting as a unit, and the plural as well as the singular number.

~~15.~~ 16. "Retailer" means any person who comes into possession of spirituous, vinous or malt liquor subject to the taxes imposed by this article for the purpose of selling such luxuries for consumption and not for resale.

~~16.~~ 17. "Spirituous liquor" means any liquid containing more than one-half of one per cent alcohol by volume, which is produced by distillation of any fermented substance and which is used or prepared for use as a beverage.

~~17.~~ 18. "Vinous liquor" means any liquid containing more than one-half of one per cent alcohol by volume made by the process of fermentation of grapes, berries, fruits, vegetables or other substances, but not including

those liquids in which hops or grains are used in the process of fermentation and not including liquids made by the process of distillation of such substances.

~~18.~~ 19. "Whole cannabis plant" means any plant of the genus cannabis regardless of size or capability of reproduction and whether growing or not that is illegally held, possessed, transported, transferred, sold or offered to be sold in violation of the laws of this state.

~~19.~~ 20. "Wholesaler" means a person who sells any spirituous, vinous or malt liquor taxed under the provisions of this article to retail dealers or for the purposes of resale only.

B. "Spirituous liquor", "vinous liquor" and "malt liquor" shall not be deemed to include medicines unsuitable for beverage purposes.

Sec. 2. Section 42-1204, Arizona Revised Statutes, is amended to read:

42-1204. Levy of tax; purpose; classification of luxuries; applicable rate

A. In addition to all other taxes there is levied and imposed and there shall be collected and paid to the state treasurer in the manner provided by this article, on all spirituous, vinous, and malt liquors, on all cigarettes, cigars, smoking tobacco, plug tobacco, snuff and other forms of tobacco, and on cannabis and controlled substances, for use as may be prescribed by law the following tax:

1. On each sealed container of spirituous liquor at the rate of three dollars per gallon and at a proportionate rate for any lesser or greater quantity than one gallon.

2. On each container of vinous liquor, EXCEPT CIDER, of which the alcoholic content is not greater than twenty-four per cent by volume at the rate of eighty-four cents per gallon and at a proportionate rate for any lesser or greater quantity than one gallon.

3. On each container of vinous liquor of which the alcoholic content is greater than twenty-four per cent by volume, containing eight ounces or less, twenty-five cents, and for each eight ounces for containers containing more than eight ounces, twenty-five cents.

4. On each gallon of malt liquor OR CIDER, sixteen cents, and at a proportionate rate for any lesser or greater quantity than one gallon.

5. On each cigarette, seven-twentieths cent.

6. On smoking tobacco, snuff, fine cut chewing tobacco, cut and granulated tobacco, shorts and refuse of fine cut chewing tobacco, and refuse, scraps, clippings, cuttings and sweepings of tobacco, excluding tobacco powder or tobacco products used exclusively for agricultural or horticultural purposes and unfit for human consumption, two cents per ounce or major fraction thereof.

7. On all cavendish, plug or twist tobacco, one-half cent per ounce or fractional part thereof.

8. On each twenty small cigars or fractional part thereof weighing not more than three pounds per thousand, four cents.

9. On cigars of all descriptions except those included in paragraph 8 of this subsection, made of tobacco or any substitute therefor, if manufactured to retail at not more than five cents each, two cents on each three cigars, but if manufactured to retail at more than five cents each, two cents on each cigar.

10. On each ounce of cannabis, ten dollars, and at a proportionate rate for any greater or lesser quantity than one ounce, or five hundred dollars for three whole cannabis plants and five hundred dollars for each additional whole plant, except that persons who are not required to obtain a license pursuant to section 42-1203.01, subsection E are not subject to the tax under this paragraph.

11. On each ounce of controlled substance, two hundred fifty dollars, and at a proportionate rate for any greater or lesser quantity than one ounce, except that persons who are not required to obtain a license pursuant to section 42-1203.01, subsection E are not subject to the tax under this paragraph.

B. Monies collected pursuant to this section shall be distributed as follows:

1. Of the monies collected as prescribed by the terms of subsection A, paragraphs 1 and 3 of this section, three and one-half cents of the rates levied on each of the items prescribed in such paragraphs shall be allocated for the purpose of raising monies for state school aid.

2. The monies collected as prescribed by the terms of subsection A, paragraphs 10 and 11 of this section shall be allocated in the following manner:

(a) Five per cent of the monies collected shall be deposited in the general fund.

(b) The remainder shall be deposited in the anti-racketeering revolving fund established by section 13-2314.01 for the benefit of the agency or agencies responsible for the seizure of the cannabis or controlled substance.

3. Through June 30, 2000 twenty per cent of the monies collected pursuant to subsection A, paragraph 1 of this section, fifty per cent of the monies collected pursuant to subsection A, paragraphs 2, 3, 4 and 6 through 9 of this section and two-sevenths of the monies collected pursuant to subsection A, paragraph 5 of this section shall be deposited in the corrections fund established by section 41-1641 at the same time as other monies collected pursuant to this section are deposited with the state treasurer. From and after June 30, 2000, except as provided in paragraph 4 of this subsection, such monies shall be deposited pursuant to paragraph 5 of this subsection.

4. Fifty per cent of the monies collected pursuant to subsection A, paragraph 2 of this section, attributable to collections from a domestic farm winery or an in-state producer, manufacturing or producing wine, licensed pursuant to title 4 shall be deposited in the Arizona wine promotional fund established by section 3-555.

5. The remaining monies collected pursuant to this article shall be deposited in the state general fund to aid in defraying necessary and ordinary expenses of the state.

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Jane Dee Hull
Secretary of State

CHAPTER 79

HOUSE BILL 2054

AN ACT

AMENDING SECTIONS 13-812, 13-813, 13-818, 13-819 AND 13-820, ARIZONA REVISED STATUTES; RELATING TO CRIMINAL GARNISHMENT.

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

Section 1. Section 13-812, Arizona Revised Statutes, is amended to read:

13-812. Garnishment for nonpayment of fines, fees, restitution or incarceration costs

A. After a hearing on an order to show cause pursuant to section 13-810, subsection A or after a hearing on a petition to revoke probation pursuant to section 13-804, subsection D or the rules of criminal procedure, the court may issue a writ of criminal garnishment for any fine, fee, restitution or incarceration costs.

B. The court may order garnishment for monies that are owed to a victim or the court, the clerk of the court or the ~~county~~ PROSECUTING attorney pursuant to a court order to pay any fine, fee, restitution or incarceration costs. A writ of criminal garnishment applies to any of the following:

1. The defendant's earnings as defined in section 12-1598.

2. Indebtedness that is owed to a defendant by a garnishee for amounts that are not earnings.

3. Monies that are held by a garnishee on behalf of a defendant.

4. The defendant's personal property that is in the possession of a garnishee.

5. If the garnishee is a corporation, shares or securities of a corporation or a proprietary interest in a corporation that belongs to a defendant.

6. The defendant's earnings or monies that are held by the state department of corrections while the defendant is in the custody of the department.

Sec. 2. Section 13-813, Arizona Revised Statutes, is amended to read:

13-813. Issuance of writ of garnishment; service and return of writ

A. The court shall direct the writ of criminal garnishment to the sheriff, the constable or any other officer who is authorized by law to serve process in the county in which the garnishee is alleged to be. The writ shall summon the garnishee to immediately appear to answer the writ before the court issuing the writ. The garnishee shall appear within the time specified in the writ. The writ shall state all of the following:

1. The amount due to the victim or court, clerk of the court or ~~county~~ PROSECUTING attorney as of the date on which the writ is issued.

2. The name and address of the garnishee or the garnishee's authorized agent.

3. The name and address of the victim or the court, clerk of the court or ~~county~~ PROSECUTING attorney presenting the writ.

4. The last known mailing address of the defendant.

B. The victim or the court, the clerk of the court or the ~~county~~ PROSECUTING attorney shall serve the following on the garnishee:

1. Two copies of the writ of garnishment and summons.

2. A copy of the criminal restitution order.

3. Four copies of the answer form.

4. Two copies of the notice to the defendant.

5. Two copies of the instructions to the garnishee.

C. The victim or the court, the clerk of the court or the ~~county~~ PROSECUTING attorney shall serve on the defendant a copy of the writ of garnishment.

D. The victim or the court, the clerk of the court or the ~~county~~ PROSECUTING attorney may serve a copy of the writ of garnishment on the manager or other officer of a banking corporation or association, savings bank, savings and loan association, credit union, trust company or title insurance company to levy monies that are owed pursuant to a writ of criminal garnishment by one of these organizations or to levy credits or other effects that belong to a defendant and that are in the possession of or under the control of one of these organizations. The copy of the writ shall be served at any office or branch that is located in the county in which the service is made. A garnishment is not effective as to any debt owed by a banking corporation or association, savings bank, savings and loan association, credit union, trust company or title insurance company if the account

evidencing the indebtedness is carried at an office or branch other than the office or branch named in the writ and at which service is made or, as to credits or other effects in its possession or under its control, at any other office or branch unless the service of the writ is accompanied by twenty-five dollars to be paid to the garnishee for the costs of the search. The writ is effective on the payment of the search fee as to any debt owing by a banking corporation or association, savings bank, savings and loan association, credit union, trust company or title insurance company if the account evidencing the indebtedness is carried at any office or branch located in this state, or as to any credits, property or other effects in its possession or under its control, at any office or branch located in this state.

Sec. 3. Section 13-818, Arizona Revised Statutes, is amended to read:

13-818. Order on writ of garnishment for money or property

A. If the garnishee's answer shows that the garnishee holds indebtedness or monies of the defendant, the court shall enter an order of criminal garnishment that requires the garnishee to immediately transfer the indebtedness or monies to the victim or to the court, the clerk of the court or the ~~county~~ PROSECUTING attorney who is named in the writ of garnishment.

B. If the garnishee's answer shows that the garnishee holds personal property or stock of the defendant, the court shall enter an order against the garnishee to hold the personal property or stock of the defendant pending service of a writ of special execution pursuant to section 12-1554.

C. The party who obtains the writ of garnishment shall deliver a copy of the order on the writ to the garnishee and the defendant.

D. An order that is entered pursuant to subsection A or B of this section shall not order more money, stocks or property transferred than is reasonably necessary to satisfy the amount of the outstanding balance of the underlying criminal restitution order.

E. A bank deposit made in the name of two or more persons is subject to garnishment pursuant to section 12-1595, except that "judgment creditor" includes a victim or the court, the clerk of the court or the ~~county~~ PROSECUTING attorney that obtains the writ of garnishment and "judgment debtor" includes a criminal defendant.

Sec. 4. Section 13-819, Arizona Revised Statutes, is amended to read:

13-819. Order on writ of garnishment for earnings; continuing lien

A. The party who obtains the writ of garnishment for earnings shall deliver a copy of the order on the writ to the garnishee and the defendant.

B. After service or delivery of the order is made, section 12-1598.10 applies, except that "judgment ~~debtor~~ CREDITOR" includes a victim or the court, the clerk of the court or the ~~county~~ PROSECUTING attorney that obtains the writ of garnishment and "judgment debtor" includes a criminal defendant.

1 C. Section 12-1598.12 applies to continuing liens for writs of
2 criminal garnishment. Section 12-1598.12 applies to reporting by the party
3 obtaining the writ of criminal garnishment, except that "judgment creditor"
4 includes a victim or the court, the clerk of the court or the ~~county~~
5 PROSECUTING attorney that obtains the writ of garnishment and "judgment
6 debtor" includes a criminal defendant.
7 Sec. 5. Section 13-820, Arizona Revised Statutes, is amended to read:
8 13-820. Contempt proceedings; failure to comply with order
9 If the garnishee fails to comply with the terms of the order of
10 criminal garnishment within thirty days after receiving the order, the victim
11 or the court, the clerk of the court or the ~~county~~ PROSECUTING attorney may
12 petition the court for an order to show cause why the garnishee should not
13 be held in contempt. If the court finds that the failure was wilful or the
14 result of gross negligence, the court shall find the garnishee in contempt
15 and shall award the petitioner reasonable attorney fees, costs and an
16 additional penalty of not more than five hundred dollars.

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CHAPTER 80

HOUSE BILL 2487

AN ACT

AMENDING TITLE 11, CHAPTER 3, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 11-483; AMENDING TITLE 28, CHAPTER 2, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 28-217; RELATING TO CONFIDENTIALITY OF PEACE OFFICER RECORDS.

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

Section 1. Title 11, chapter 3, article 3, Arizona Revised Statutes, is amended by adding section 11-483, to read:

11-483. Records; peace officers; redaction

A. NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, A PEACE OFFICER MAY REQUEST THAT THE GENERAL PUBLIC BE PROHIBITED FROM ACCESSING THE PEACE OFFICER'S RESIDENTIAL ADDRESS AND TELEPHONE NUMBER CONTAINED IN INSTRUMENTS OR WRITINGS RECORDED BY THE COUNTY RECORDER.

B. A PEACE OFFICER MAY REQUEST THIS ACTION BY FILING AN AFFIDAVIT THAT STATES ALL OF THE FOLLOWING:

1. THE PEACE OFFICER'S NAME.

2. THE POSITION THE PEACE OFFICER CURRENTLY HOLDS AND A DESCRIPTION OF THE PEACE OFFICER'S DUTIES.

3. THE REASONS THE PEACE OFFICER REASONABLY BELIEVES THAT THE PEACE OFFICER'S LIFE OR SAFETY OR THAT OF ANOTHER PERSON IS IN DANGER AND THAT REDACTING THE RESIDENTIAL ADDRESS AND TELEPHONE NUMBER FROM INSTRUMENTS OR WRITINGS RECORDED BY THE COUNTY RECORDER WILL SERVE TO REDUCE THE DANGER.

C. THE AFFIDAVIT SHALL BE FILED WITH THE PRESIDING JUDGE OF THE SUPERIOR COURT IN THE COUNTY IN WHICH THE AFFIANT RESIDES. TO PREVENT A MULTIPLICITY OF FILINGS, A PEACE OFFICER SHALL DELIVER THE AFFIDAVIT TO THE

PEACE OFFICER'S COMMANDING OFFICER, WHO SHALL FILE THE AFFIDAVITS AT ONE TIME. IN THE ABSENCE OF AN AFFIDAVIT THAT CONTAINS A REQUEST FOR IMMEDIATE ACTION AND THAT IS SUPPORTED BY FACTS JUSTIFYING AN EARLIER PRESENTATION, THE COMMANDING OFFICER SHALL NOT FILE MORE OFTEN THAN QUARTERLY AFFIDAVITS OF PEACE OFFICERS PRESENTED TO THE COMMANDING OFFICER.

D. ON RECEIPT OF AN AFFIDAVIT OR AFFIDAVITS, THE PRESIDING JUDGE OF THE SUPERIOR COURT SHALL CAUSE TO BE FILED WITH THE CLERK OF THE SUPERIOR COURT A PETITION ON BEHALF OF ALL REQUESTING PEACE OFFICERS. EACH AFFIDAVIT PRESENTED SHALL BE ATTACHED TO THE PETITION. IN THE ABSENCE OF AN AFFIDAVIT THAT CONTAINS A REQUEST FOR IMMEDIATE ACTION AND THAT IS SUPPORTED BY FACTS JUSTIFYING AN EARLIER CONSIDERATION, THE PRESIDING JUDGE MAY ACCUMULATE AFFIDAVITS AND FILE A PETITION AT THE END OF EACH QUARTER.

E. THE PRESIDING JUDGE OF THE SUPERIOR COURT SHALL REVIEW THE PETITION AND EACH ATTACHED AFFIDAVIT TO DETERMINE WHETHER THE ACTION REQUESTED BY EACH PEACE OFFICER SHOULD BE GRANTED. THE PRESIDING JUDGE OF THE SUPERIOR COURT SHALL ORDER THE REDACTION OF THE RESIDENCE ADDRESS AND TELEPHONE NUMBER FROM THE INSTRUMENTS OR WRITINGS RECORDED IN THE COUNTY RECORDER'S OFFICE IF THE JUDGE CONCLUDES THAT THIS ACTION WILL REDUCE A DANGER TO THE LIFE OR SAFETY OF THE AFFIANT OR ANOTHER PERSON.

F. ON ENTRY OF THE COURT ORDER, THE CLERK OF THE SUPERIOR COURT SHALL FILE THE COURT ORDER WITH THE COUNTY RECORDER. NO MORE THAN ONE HUNDRED FIFTY DAYS AFTER THE DATE THE COUNTY RECORDER RECEIVES THE COURT ORDER, THE COUNTY RECORDER SHALL REDACT THE RESIDENCE ADDRESSES AND TELEPHONE NUMBERS OF THE PEACE OFFICERS LISTED IN THE COURT ORDER FROM THE INSTRUMENTS OR WRITINGS RECORDED IN THE COUNTY RECORDER'S OFFICE. THE RESIDENCE ADDRESS AND TELEPHONE NUMBER SHALL NOT BE DISCLOSED AND ARE NOT PART OF A PUBLIC RECORD.

G. IF THE COURT DENIES AN AFFIANT'S REQUEST PURSUANT TO THIS SECTION, THE AFFIANT MAY REQUEST A COURT HEARING. THE HEARING SHALL BE CONDUCTED BY THE COURT IN THE COUNTY WHERE THE PETITION WAS FILED.

Sec. 2. Title 28, chapter 2, article 1, Arizona Revised Statutes, is amended by adding section 28-217, to read:

28-217. <u>Public records; peace officers; redaction</u>

A. NOTWITHSTANDING SECTIONS 28-210 AND 28-216, A PEACE OFFICER MAY REQUEST THAT PERSONS BE PROHIBITED FROM ACCESSING THE PEACE OFFICER'S RESIDENTIAL ADDRESS AND TELEPHONE NUMBER CONTAINED IN ANY RECORD MAINTAINED BY THE DEPARTMENT.

B. A PEACE OFFICER MAY REQUEST THIS ACTION BY FILING AN AFFIDAVIT THAT STATES ALL OF THE FOLLOWING:

1. THE PEACE OFFICER'S NAME.

2. THE POSITION THE PEACE OFFICER CURRENTLY HOLDS AND A DESCRIPTION OF THE PEACE OFFICER'S DUTIES.

3. THE REASONS THE PEACE OFFICER REASONABLY BELIEVES THAT THE PEACE OFFICER'S LIFE OR SAFETY OR THAT OF ANOTHER PERSON IS IN DANGER AND THAT

REDACTING THE RESIDENTIAL ADDRESS AND TELEPHONE NUMBER FROM THE DEPARTMENT'S PUBLIC RECORDS WILL SERVE TO REDUCE THE DANGER.

C. THE AFFIDAVIT SHALL BE FILED WITH THE PRESIDING JUDGE OF THE SUPERIOR COURT IN THE COUNTY IN WHICH THE AFFIANT RESIDES. TO PREVENT A MULTIPLICITY OF FILINGS, A PEACE OFFICER SHALL DELIVER THE AFFIDAVIT TO THE PEACE OFFICER'S COMMANDING OFFICER, WHO SHALL FILE THE AFFIDAVITS AT ONE TIME. IN THE ABSENCE OF AN AFFIDAVIT THAT CONTAINS A REQUEST FOR IMMEDIATE ACTION AND THAT IS SUPPORTED BY FACTS JUSTIFYING AN EARLIER PRESENTATION, THE COMMANDING OFFICER SHALL NOT FILE MORE OFTEN THAN QUARTERLY AFFIDAVITS OF PEACE OFFICERS PRESENTED TO THE COMMANDING OFFICER.

D. ON RECEIPT OF AN AFFIDAVIT OR AFFIDAVITS, THE PRESIDING JUDGE OF THE SUPERIOR COURT SHALL CAUSE TO BE FILED WITH THE CLERK OF THE SUPERIOR COURT A PETITION ON BEHALF OF ALL REQUESTING PEACE OFFICERS. EACH AFFIDAVIT PRESENTED SHALL BE ATTACHED TO THE PETITION. IN THE ABSENCE OF AN AFFIDAVIT THAT CONTAINS A REQUEST FOR IMMEDIATE ACTION AND THAT IS SUPPORTED BY FACTS JUSTIFYING AN EARLIER CONSIDERATION, THE PRESIDING JUDGE MAY ACCUMULATE AFFIDAVITS AND FILE A PETITION AT THE END OF EACH QUARTER.

E. THE PRESIDING JUDGE OF THE SUPERIOR COURT SHALL REVIEW THE PETITION AND EACH ATTACHED AFFIDAVIT TO DETERMINE WHETHER THE ACTION REQUESTED BY EACH PEACE OFFICER SHOULD BE GRANTED. THE PRESIDING JUDGE OF THE SUPERIOR COURT SHALL ORDER THE REDACTION OF THE RESIDENCE ADDRESS AND TELEPHONE NUMBER FROM THE PUBLIC RECORDS MAINTAINED BY THE DEPARTMENT IF THE JUDGE CONCLUDES THAT THIS ACTION WILL REDUCE A DANGER TO THE LIFE OR SAFETY OF THE AFFIANT OR ANOTHER PERSON.

F. ON ENTRY OF THE COURT ORDER, THE CLERK OF THE SUPERIOR COURT SHALL FILE THE COURT ORDER WITH THE DEPARTMENT. NO MORE THAN ONE HUNDRED FIFTY DAYS AFTER THE DATE THE DEPARTMENT RECEIVES THE COURT ORDER, THE DEPARTMENT SHALL REDACT THE RESIDENCE ADDRESSES AND TELEPHONE NUMBERS OF THE PEACE OFFICERS LISTED IN THE COURT ORDER FROM THE PUBLIC RECORDS OF THE DEPARTMENT. THE RESIDENCE ADDRESS AND TELEPHONE NUMBER SHALL NOT BE DISCLOSED AND ARE NOT PART OF A PUBLIC RECORD.

G. IF THE COURT DENIES AN AFFIANT'S REQUEST PURSUANT TO THIS SECTION, THE AFFIANT MAY REQUEST A COURT HEARING. THE HEARING SHALL BE CONDUCTED BY THE COURT IN THE COUNTY WHERE THE PETITION WAS FILED.

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CHAPTER 81

SENATE BILL 1019

AN ACT

AMENDING SECTIONS 6-101, 6-123, 6-128, 6-140, 6-183, 6-184, 6-186, 6-241, 6-322, 6-324, 6-326 AND 6-327, ARIZONA REVISED STATUTES; AMENDING TITLE 6, CHAPTER 2, ARTICLE 7, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 6-328 THROUGH 6-331; AMENDING SECTIONS 6-1001 AND 6-1113, ARIZONA REVISED STATUTES; RELATING TO BANKS AND FINANCIAL INSTITUTIONS.

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

Section 1. Section 6-101, Arizona Revised Statutes, is amended to read:

6-101. Definitions

In this title, unless the context otherwise requires:

1. "Automated teller machine" means an automated device THAT IS established by a bank, savings and loan association or credit union AND that facilitates customer-bank communications activities, including taking deposits and disbursing cash drawn against a customer's deposit account or a customer's preapproved loan account, at a location separate from the home office or a branch.

2. "BANK" MEANS A CORPORATION THAT HOLDS A BANKING PERMIT ISSUED PURSUANT TO CHAPTER 2 OF THIS TITLE.

~~2.~~ 3. "Banking office" means any place of business of the bank at which deposits are received, checks are paid or money is loaned but does not include the premises used for computer operations, proofing, record keeping, accounting, storage, maintenance or other administrative or service functions.

4. "BRANCH" MEANS ANY BANKING OFFICE OTHER THAN THE PRINCIPAL BANKING OFFICE.

~~3.~~ 5. "Department" means the state banking department.

~~4.~~ 6. "Enterprise" means any person under the jurisdiction of the department other than a financial institution.

~~5.~~ 7. "Federal deposit insurance corporation" includes any successor to the corporation or other agency or instrumentality of the United States which undertakes to discharge the purposes of the corporation.

~~6.~~ 8. "Financial institution" means banks, trust companies, savings and loan associations, credit unions, consumer lenders, international banking facilities and financial institution holding companies under the jurisdiction of the department.

9. "HOME STATE" MEANS THE STATE THAT HAS GRANTED THE BANK ITS CHARTER, PERMIT OR LICENSE TO OPERATE.

10. "HOST STATE" MEANS THE STATE IN WHICH A FINANCIAL INSTITUTION IS DOING BUSINESS AND NOT THE STATE THAT HAS GRANTED THE BANK ITS CHARTER, PERMIT OR LICENSE TO OPERATE.

11. "IN-STATE FINANCIAL INSTITUTION" MEANS A STATE OR FEDERAL BANK, SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION OR HOLDING COMPANY WITH ITS HOME OFFICE LOCATED IN THIS STATE.

~~7.~~ 12. "International banking facility" means a facility represented by a set of asset and liability accounts segregated on the books and records of a commercial bank, the principal office of which is located in this state, and which is incorporated and doing business under the laws of the United States or of this state, a United States branch or agency of a foreign bank, an edge corporation organized under section 25(a) of the federal reserve act (12 United States Code sections 611 through 631) or an agreement corporation having an agreement or undertaking with the board of governors of the federal reserve system under section 25 of the federal reserve act (12 United States Code sections 601 through 604(a)) that includes only international banking facility time deposits and international banking facility extensions of credit as defined in 12 Code of Federal Regulations part 204.

~~8.~~ 13. "National credit union administration" includes any successor to the corporation or other agency or instrumentality of the United States which undertakes to discharge the purposes of the corporation.

14. "OUT-OF-STATE BANK" MEANS A BANK, SAVINGS BANK OR SAVINGS AND LOAN ASSOCIATION THAT IS APPROVED BY THE SUPERINTENDENT PURSUANT TO SECTION 6-322 AND THAT HAS A CHARTER, A PERMIT OR ANY OTHER LICENSE TO OPERATE THAT IS ISSUED BY A STATE OTHER THAN THIS STATE.

15. "OUT-OF-STATE FINANCIAL INSTITUTION" MEANS A STATE OR FEDERAL BANK, SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION OR HOLDING COMPANY WITH ITS HOME OFFICE IN A STATE OTHER THAN THIS STATE.

~~9.~~ 16. "Superintendent" means the superintendent of banks.

~~10.~~ 17. "Title" includes this title, title 32, chapter 9 and title 44, chapter 2.1.

Sec. 2. Section 6-123, Arizona Revised Statutes, is amended to read:

6-123. Superintendent; powers

In addition to the other powers, express or implied, the superintendent may:

1. Exercise all powers necessary for the administration and enforcement of the laws and rules relating to financial institutions and enterprises.

2. In accordance with title 41, chapter 6, adopt rules necessary or appropriate to administer, enforce and accomplish the purposes of this title and adopt rules and issue orders limiting transactions between financial institutions or enterprises and the directors, officers or employees of the financial institutions or enterprises.

3. Require appropriate records, documents, information and reports from any financial institution or enterprise.

4. Submit to the department of public safety the name and fingerprints of any applicant or licensee or the name of any organizer, director or officer of any corporate applicant or licensee for:

(a) A banking permit.

(b) Permission to organize a savings and loan association or credit union.

(c) Any license.

(d) Any certificate.

(e) AUTHORITY TO ENGAGE IN INTERSTATE BANKING AND BRANCHING IN THIS STATE.

The department of public safety shall report the criminal record, if any, of such applicant, licensee or organizer, director or officer of such corporate applicant or licensee within ninety days of receipt of the request of the superintendent.

5. Employ appraisers to appraise any property owned or held as security by any financial institution or enterprise. The reasonable expenses and compensation of such appraisers shall be paid by the financial institution or enterprise.

6. Hold membership in, pay dues to and attend the convention of the national and regional organizations of state officials occupying like offices or performing similar functions.

7. COOPERATE WITH OTHER REGULATORY AGENCIES AND PROFESSIONAL ASSOCIATIONS TO PROMOTE THE EFFICIENT, SAFE AND SOUND OPERATION AND REGULATION OF INTERSTATE BANKING AND BRANCHING ACTIVITIES, INCLUDING THE FORMULATION OF INTERSTATE EXAMINATION POLICIES AND PROCEDURES AND THE DRAFTING OF MODEL RULES AND AGREEMENTS.

Sec. 3. Section 6-128, Arizona Revised Statutes, is amended to read:

6-128. Joint examinations; acceptance of federal regulatory and other authorized examinations

A. The examination of a financial institution OR ENTERPRISE may be made in coordination with any authorized federal examination OR AN EXAMINATION BY ANOTHER STATE. The superintendent in his discretion may accept the examination report ~~of~~ OR OTHER INFORMATION COMPILED OR GENERATED BY a federal regulatory authority OR BY ANOTHER STATE REGULATORY AUTHORITY THAT HAS JURISDICTION OVER THE FINANCIAL INSTITUTION OR ENTERPRISE in lieu of any examination authorized or required by the laws of this state. Acceptance of the examination reports shall not be a waiver of the examination assessments provided by law, and reports so accepted are considered for all purposes as an official report of the department.

B. THE SUPERINTENDENT MAY TAKE ANY REASONABLE AND LAWFUL ACTION TO COORDINATE THE EXAMINATION OF FINANCIAL INSTITUTIONS OR ENTERPRISES, INCLUDING:

1. NEGOTIATING AND ENTERING INTO COOPERATIVE AGREEMENTS WITH AN AGENCY OF ANOTHER STATE OR OF THE FEDERAL GOVERNMENT.

2. SHARING INFORMATION AND REPORTS WITH PERSONS AS PRESCRIBED BY SECTION 6-129.

Sec. 4. Section 6-140, Arizona Revised Statutes, is amended to read:

6-140. Credit cards; reporting rates; quarterly report of superintendent; definition

A. A financial institution which issues revolving loan accounts resulting from credit card accounts to persons residing in this state shall report to the superintendent the financial institution's current interest rate for all such credit card accounts. The report shall include the following information, if applicable:

1. The interest rate for the credit card as an annual percentage rate as that term is defined in the federal consumer credit protection act (15 United States Code section 1606). If interest rates vary depending on the outstanding balances, the financial institution shall disclose that rate separately.

2. The annual fee charged for obtaining the credit card.

3. The amount of any late payment or delinquency charge.

4. The existence of a grace period during which no interest is charged on the outstanding balance.

5. The minimum monthly payment.

6. The amount or method of determining any other charge permitted by section 44-1205, subsection C.

7. Any inducement offered by a financial institution to a holder of its credit card or an applicant for its credit card.

B. Within thirty days after a change in the information required by subsection A of this section the financial institution shall report such change to the superintendent.

C. The superintendent shall at least quarterly compile a report of the interest rates of each financial institution for the types of credit card accounts issued to persons in this state. The superintendent shall distribute this report in a manner deemed appropriate by the superintendent, and the superintendent shall make the report available to the public for inspection and copying.

D. For the purposes of this section, IN ADDITION TO THE ENTITIES INCLUDED IN THE DEFINITION IN SECTION 6-101, PARAGRAPH 8, "financial institution" ALSO includes a national bank, FEDERAL SAVINGS BANK, federal savings and loan association or federal credit union with its home office in this state OR WITH A BRANCH IN THIS STATE.

Sec. 5. Section 6-183, Arizona Revised Statutes, is amended to read:

6-183. Rights, powers and privileges of national banks

Except as prohibited by federal law, a national ~~banking association~~ BANK with ~~its principal place of business~~ A BANKING OFFICE in this state shall have all the rights, powers and privileges and shall be entitled to the same exemptions and immunities as banks holding banking permits under this chapter.

Sec. 6. Section 6-184, Arizona Revised Statutes, is amended to read:

6-184. General corporate and banking powers; incidental powers; deposit insurance; federal reserve and home loan bank membership

A. A corporation holding a banking permit under this chapter may:

1. Except as prohibited by law, exercise the powers derived from its existence as an Arizona corporation.

2. Except as prohibited by law, exercise any power and engage in any activity which it could exercise or engage in if it were a national banking association with ~~its principal place of business~~ A BANKING OFFICE in this state.

3. Directly or through a bank subsidiary engage in any lawful activity which is reasonably related or incidental to banking. All activities in which any bank was lawfully engaged directly or through a subsidiary on December 31, 1971~~,~~ are declared to be incidental and related to banking for the purposes of this paragraph.

4. Do the acts necessary to obtain and maintain insurance of its deposits by the federal deposit insurance corporation.

5. Do the acts necessary to acquire and hold membership in the federal reserve system or the federal home loan bank.

6. Except as prohibited by law, directly or through a bank subsidiary, make any loan or investment, offer accounts or engage in any business activity authorized for national banking associations, federal savings banks,

or state or federally chartered or licensed savings and loan associations doing business in this state. This paragraph is subject to section 33-1571.

7. Except as prohibited by law and subject to such rules ~~and regulations~~ as the superintendent may adopt, through a bank subsidiary, invest in real estate in the state or interests therein, including corporations, partnerships, and joint ventures which acquire, develop, improve, hold, lease, operate and sell real estate. This paragraph is subject to section 33-1571.

B. AN IN-STATE FINANCIAL INSTITUTION OR AN OUT-OF-STATE FINANCIAL INSTITUTION MAY ACT AS AN AGENT OF ANY OTHER IN-STATE FINANCIAL INSTITUTION OR OUT-OF-STATE FINANCIAL INSTITUTION THAT IS A SUBSIDIARY OF THE SAME HOLDING COMPANY FOR PURPOSES OF CONDUCTING THE ACTIVITIES AUTHORIZED BY THIS SUBSECTION. THIS SUBSECTION APPLIES REGARDLESS OF WHETHER THE AFFILIATED ENTITIES SHARE THE SAME HOME STATE. AN IN-STATE FINANCIAL INSTITUTION OR AN OUT-OF-STATE FINANCIAL INSTITUTION ENTERING INTO AN AGENCY RELATIONSHIP SHALL NOTIFY THE SUPERINTENDENT OF THAT AGENCY RELATIONSHIP AT LEAST TEN DAYS BEFORE THE EFFECTIVE DATE OF THAT AGENCY RELATIONSHIP. AGENCY RELATIONSHIPS AMONG AFFILIATES SHALL BE CONSISTENT WITH SAFE AND SOUND BUSINESS PRACTICES AND SHALL COMPLY WITH ALL APPLICABLE LAWS AND RULES. AN IN-STATE FINANCIAL INSTITUTION OR AN OUT-OF-STATE FINANCIAL INSTITUTION ACTING AS AN AGENT IS NOT DEEMED TO BE A BRANCH OF THE AFFILIATE SOLELY BECAUSE OF ACTIVITIES LAWFULLY CONDUCTED PURSUANT TO THIS SUBSECTION. AN IN-STATE FINANCIAL INSTITUTION OR AN OUT-OF-STATE FINANCIAL INSTITUTION THAT IS ACTING AS AN AGENT FOR AN AFFILIATED ENTITY MAY DO ANY OF THE FOLLOWING:

1. RECEIVE DEPOSITS.
2. RENEW TIME DEPOSITS.
3. SERVICE LOANS.
4. RECEIVE PAYMENTS ON LOANS AND OTHER OBLIGATIONS.
5. PERFORM OTHER CUSTOMARY BANKING SERVICES WITH THE PRIOR APPROVAL OF THE SUPERINTENDENT.

C. AN IN-STATE FINANCIAL INSTITUTION OR AN OUT-OF-STATE FINANCIAL INSTITUTION ACTING AS AN AGENT AS PRESCRIBED BY SUBSECTION B OF THIS SECTION ON BEHALF OF AN AFFILIATED FINANCIAL INSTITUTION MAY NOT DO ANY OF THE FOLLOWING:

1. OPEN DEMAND, SAVINGS OR TIME ACCOUNTS.
2. EVALUATE OR APPROVE LOANS.
3. DISBURSE LOAN MONIES.
4. CONDUCT ANY ACTIVITY AS AN AGENT THAT IT IS PROHIBITED FROM CONDUCTING AS A PRINCIPAL UNDER ANY APPLICABLE LAW OR RULE.

D. AN IN-STATE FINANCIAL INSTITUTION OR AN OUT-OF-STATE FINANCIAL INSTITUTION THAT IS ACTING AS A PRINCIPAL AS PRESCRIBED BY SUBSECTION B OF THIS SECTION MAY NOT HAVE ITS AFFILIATED ENTITY ACT AS AN AGENT ON ITS BEHALF IN CONDUCTING ANY OF THE FOLLOWING:

1. ANY ACTIVITY THAT IS PROHIBITED TO THE PRINCIPAL.
2. ANY ACTIVITY THAT IS PROHIBITED TO THE AGENT.

Sec. 7. Section 6-186, Arizona Revised Statutes, is amended to read:

6-186. Annual audit and report

A. An audit of the affairs of the bank INCLUDING AN OUT-OF-STATE BANK shall be made annually as of the end of its fiscal year by or under the direction of the board of directors. The superintendent may prescribe certain minimum requirements of the audit and shall require the filing of a copy of the report covering the audit with the superintendent. The audit shall be filed with the superintendent not more than one hundred twenty days after the end of the bank's OR OUT-OF-STATE BANK'S fiscal year, unless the superintendent extends the time period for good cause shown. The audit is not a substitute for or in lieu of the examination by the superintendent required by section 6-122.

B. AN OUT-OF-STATE BANK MAY SATISFY AN AUDIT REQUIREMENT BY FILING WITH THE SUPERINTENDENT A COPY OF THE AUDIT REPORT THAT IS REQUIRED BY ITS HOME STATE REGULATOR WITHIN FIFTEEN DAYS AFTER FILING THAT REPORT WITH THE HOME STATE.

Sec. 8. Section 6-241, Arizona Revised Statutes, is amended to read:

6-241. Banking days; notice; closing

A. A bank is authorized to fix from time to time the days and hours when each of its banking offices THAT ARE LOCATED IN THIS STATE will be open to the public for its banking business. The days and hours need not be the same for each office. The bank shall notify the superintendent of the days and hours of each banking office and of any change in the scheduled days and hours of each office. The bank shall give further notice by whatever means it selects as best calculated to advise the public of any change.

B. In an emergency or threat of an emergency or other circumstances beyond the control of the bank which would imperil persons or property or impede normal operations, all or any of its banking offices THAT ARE LOCATED IN THIS STATE may be or remain closed. Notice of the closing shall be given to the superintendent as promptly as conditions will permit. The superintendent may order the reopening of any office on his finding that conditions justifying the closing under this subsection do not then exist.

C. Any day on which a bank shall pursuant to this section be or remain closed shall with respect to the bank be deemed a legal holiday.

D. Any office of a bank may be closed under subsection A or B, even though other offices of the bank are open, but any day of such closing shall not be a legal holiday in respect to any acts to be performed by or at the bank on such day unless the act is to be performed only by or at the office which is closed.

E. Where pursuant to agreement or law any act is to be performed by or at a bank on any day when such bank shall pursuant to this section be or

remain closed, the act may be performed on the next succeeding banking day with the effect as though performed on the appointed day.

F. Nothing in any law of this state shall in any manner whatsoever affect the validity of or render void or voidable the payment, satisfaction or acceptance of ~~a~~ ANY check or other negotiable instrument~~,~~ or any other transaction by a bank because done or performed on any holiday or partial holiday or during any time other than regular banking hours, but nothing in this subsection shall be construed to compel a bank to perform any of the acts or transactions aforesaid except at its own option.

G. THIS SECTION APPLIES TO OUT-OF-STATE BANKS.

Sec. 9. Section 6-322, Arizona Revised Statutes, is amended to read:

6-322. Interstate acquisitions; approval of superintendent; exception

A. EXCEPT AS OTHERWISE EXPRESSLY PERMITTED BY FEDERAL LAW, an out-of-state financial institution shall not acquire an in-state financial institution unless the superintendent has approved the acquisition. THE SUPERINTENDENT SHALL NOT APPROVE AN ACQUISITION UNLESS THE SUPERINTENDENT HAS DETERMINED THAT DEPOSITS HELD IN THIS STATE WILL BE INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION WHEN BUSINESS IN THIS STATE IS COMMENCED. ~~If the acquired institution is to be operated as a bank, the acquisition shall result in an in-state financial institution, except for such an acquisition consummated between May 1, 1990 and June 15, 1990, the acquisition may result in an out-of-state financial institution with branches in Arizona, if the out-of-state financial institution transfers all or substantially all of the assets acquired to an in-state financial institution within ninety days of the acquisition. This section does not prohibit a person from negotiating or entering into agreements subject to the condition that the acquisition will not be effective until approval of the superintendent is obtained.~~

B. FOR THOSE OUT-OF-STATE FINANCIAL INSTITUTIONS REQUIRED TO OBTAIN APPROVAL FROM THE SUPERINTENDENT AS PRESCRIBED BY SUBSECTION A, the acquiring financial institution shall submit to the superintendent a written application for approval in the form the superintendent prescribes. The acquiring financial institution shall accompany the application with such information, data and records as the superintendent may require in order to make ~~his~~ THE determination. IN AN INTERSTATE TRANSACTION, THE SUPERINTENDENT MAY ACCEPT AN APPLICATION THAT IS IN THE FORM AND MANNER PRESCRIBED BY THE STATE OR FEDERAL AGENCY THAT IS THE PRIMARY REGULATOR OF THE APPLICANT AND THAT IS SUPPLEMENTED AS NECESSARY TO ALLOW THE SUPERINTENDENT TO DETERMINE WHETHER TO DENY OR APPROVE THE APPLICATION. ~~For this purpose~~ The superintendent shall adopt rules prescribing the form and the information, data or records ~~which he~~ THAT THE SUPERINTENDENT requires. IN EVALUATING APPLICATIONS FOR ACQUISITION PURSUANT TO SUBSECTION F, THE SUPERINTENDENT MAY GIVE CONSIDERATION TO THE POTENTIAL IMPACT OF THE ACQUISITION ON THE FINANCIAL STABILITY OF THE ACQUIRING INSTITUTION.

C. A newly established in-state financial institution created for the purpose of acquiring all or substantially all the assets of a former in-state financial institution from an out-of-state financial institution shall not constitute a de novo entry if the acquisition by the newly established in-state financial institution is completed within ninety days of the date on which the out-of-state financial institution acquired all or substantially all of the assets of the former in-state financial institution.

D. IN THE CASE OF AN OUT-OF-STATE FINANCIAL INSTITUTION THAT IS NOT REQUIRED TO OBTAIN THE APPROVAL OF THE SUPERINTENDENT, THE OUT-OF-STATE FINANCIAL INSTITUTION SHALL GIVE WRITTEN NOTICE OF THE ACQUISITION TO THE SUPERINTENDENT TEN DAYS BEFORE THE EFFECTIVE DATE OF THE ACQUISITION, UNLESS A SHORTER TIME IS PRESCRIBED BY FEDERAL LAW.

E. FROM AND AFTER AUGUST 31, 2001, AN OUT-OF-STATE FINANCIAL INSTITUTION MAY ACQUIRE A BRANCH OF AN IN-STATE FINANCIAL INSTITUTION FOR OPERATION AS A BRANCH WITHOUT ACQUIRING THE ENTIRE IN-STATE FINANCIAL INSTITUTION OR ITS PERMIT. A BRANCH OF AN IN-STATE FINANCIAL INSTITUTION IS NOT ELIGIBLE TO BE ACQUIRED UNLESS IT HAS BEEN IN CONTINUOUS OPERATION FIVE OR MORE YEARS.

F. NOTWITHSTANDING SUBSECTION E, AN OUT-OF-STATE FINANCIAL INSTITUTION MAY ACQUIRE A BRANCH OF AN IN-STATE FINANCIAL INSTITUTION WITHOUT ACQUIRING THE ENTIRE INSTITUTION IF ALL OF THE FOLLOWING APPLY:

1. THE FINANCIAL INSTITUTION PROPOSED TO BE ACQUIRED IS IN DANGER OF BEING PLACED IN RECEIVERSHIP.

2. THE ACQUISITION IS NECESSARY TO PROTECT THE FINANCIAL INTERESTS OF THE IN-STATE FINANCIAL INSTITUTION'S DEPOSITORS AND CREDITORS.

3. THE TERMS OF THE ACQUISITION ARE ACCEPTABLE TO THE RELEVANT FEDERAL AGENCY.

4. THE SUPERINTENDENT APPROVES THE ACQUISITION PURSUANT TO THIS SECTION IN WRITING.

Sec. 10. Section 6-324, Arizona Revised Statutes, is amended to read:

6-324. <u>De novo entry by certain financial institutions</u>

~~From and after June 30, 1992~~ An out-of-state financial institution may establish a bank, savings and loan association or holding company in this state through de novo entry subject to the applicable laws of this state. AN IN-STATE FINANCIAL INSTITUTION MAY NOT BE ACQUIRED FOR OPERATION AS A BRANCH BY AN OUT-OF-STATE FINANCIAL INSTITUTION UNTIL IT HAS BEEN IN CONTINUOUS OPERATION FOR FIVE OR MORE YEARS ON THE DATE OF THE PROPOSED ACQUISITION.

Sec. 11. Section 6-326, Arizona Revised Statutes, is amended to read:

6-326. <u>Denial of application; grounds</u>

The superintendent shall deny an application for acquisition of an in-state financial institution if the superintendent finds any of the following:

1. The financial condition of the acquiring out-of-state financial institution is such that it may jeopardize the financial stability of the in-state financial institution or prejudice the interests of the depositors, beneficiaries, creditors or shareholders of the in-state financial institution.

2. Any plan or proposal to liquidate the in-state financial institution, to merge or consolidate the in-state financial institution or to make any other major change in the business, corporate structure or management of the in-state financial institution is not fair and reasonable to the depositors, beneficiaries, creditors or shareholders of the in-state financial institution.

3. ~~That~~ The applicant has exhibited, or has acquired a reputation for, such lack of honesty or integrity to indicate that it would not be in the interest of the depositors, beneficiaries, creditors or shareholders of the in-state financial institution or in the interest of the public~~,~~ to permit such applicant to control the in-state financial institution.

4. The applicant neglects, fails or refuses to furnish to the superintendent any information requested by the superintendent.

5. THE APPLICANT FAILS TO OBTAIN ANY REQUIRED APPROVAL FROM A FEDERAL OR STATE AGENCY WITH AUTHORITY OVER ANY OF THE FINANCIAL INSTITUTIONS THAT ARE PARTICIPATING IN THE TRANSACTION.

~~5.~~ 6. The acquisition is contrary to law.

Sec. 12. Section 6-327, Arizona Revised Statutes, is amended to read:

6-327. Applicable laws and rules; cooperative agreements; contracting exemption

A. Any bank, savings and loan association, out-of-state financial institution or holding company doing business as such in this state is subject to the applicable laws of this state and all the rules adopted pursuant to such laws, including examination and supervision by the superintendent.

B. IN THE CASE OF AN ACQUISITION TO CREATE A BRANCH IN THIS STATE, THE ACQUISITION IS PROHIBITED UNLESS THE HOME STATE OF THE OUT-OF-STATE FINANCIAL INSTITUTION PERMITS RECIPROCAL ACQUISITIONS FOR THE SAME PURPOSES.

C. AN OUT-OF-STATE FINANCIAL INSTITUTION THAT ACQUIRES AN IN-STATE FINANCIAL INSTITUTION OR AN OUT-OF-STATE FINANCIAL INSTITUTION THAT IS THE RESULT OF A MERGER WITH AN IN-STATE FINANCIAL INSTITUTION MAY DO EITHER OF THE FOLLOWING SUBJECT TO APPLICABLE STATE AND FEDERAL LAWS:

1. CONTINUE TO OPERATE THE IN-STATE FINANCIAL INSTITUTION.

2. CONVERT ANY EXISTING PRINCIPAL BANKING OFFICE OR ANY OR ALL BRANCHES IN THIS STATE INTO A BRANCH OF THE OUT-OF-STATE FINANCIAL INSTITUTION.

D. AN IN-STATE BRANCH OF AN OUT-OF-STATE FINANCIAL INSTITUTION SHALL COMPLY WITH THE LAWS OF THE INSTITUTION'S HOME STATE, OR SHALL COMPLY WITH

FEDERAL LAW IN THE CASE OF A FEDERALLY CHARTERED INSTITUTION. THE LAWS OF THE INSTITUTION'S HOME STATE APPLY, EXCEPT AS FOLLOWS:

1. THE LAWS OF THIS STATE APPLY IF NECESSARY TO PRESERVE THE SAFETY AND SOUND OPERATION OF A BRANCH IN THIS STATE OR TO OTHERWISE PROTECT THE CITIZENS OF THIS STATE.

2. ANY LAWS OF THIS STATE REGARDING COMMUNITY REINVESTMENT, CONSUMER PROTECTION, FAIR LENDING AND INTRASTATE BRANCHING APPLY TO A BRANCH IN THIS STATE OF AN OUT-OF-STATE FINANCIAL INSTITUTION TO THE SAME EXTENT THAT THOSE LAWS APPLY TO AN IN-STATE FINANCIAL INSTITUTION.

3. AN OUT-OF-STATE FINANCIAL INSTITUTION THAT IS AUTHORIZED TO OPERATE A BRANCH IN THIS STATE MAY ENGAGE IN ACTIVITY ONLY TO THE EXTENT PERMISSIBLE FOR AN IN-STATE FINANCIAL INSTITUTION.

E. SUBSECTION D DOES NOT LIMIT THE JURISDICTION OR AUTHORITY OF THE SUPERINTENDENT TO EXAMINE, SUPERVISE AND REGULATE AN OUT-OF-STATE FINANCIAL INSTITUTION THAT IS OPERATING OR SEEKING TO OPERATE A BRANCH IN THIS STATE OR TO TAKE ANY ACTION OR ISSUE ANY ORDER WITH RESPECT TO THAT BRANCH.

F. AN OUT-OF-STATE BANK THAT OPERATES A BRANCH IN THIS STATE SHALL DO BOTH OF THE FOLLOWING:

1. OBTAIN A GRANT OF AUTHORITY TO TRANSACT BUSINESS IN THIS STATE AND COMPLY WITH ALL OTHER APPLICABLE FILING REQUIREMENTS PRESCRIBED BY TITLE 10 TO THE SAME EXTENT AS ANY OTHER ENTITY TRANSACTING BUSINESS IN THIS STATE.

2. PROVIDE WRITTEN NOTICE TO THE SUPERINTENDENT OF THE OUT-OF-STATE BANK'S GRANT OF AUTHORITY TO TRANSACT BUSINESS IN THIS STATE.

~~B.~~ G. The superintendent may ~~promulgate~~ ADOPT rules, including the imposition of reasonable application and examination fees, to implement and administer this article.

~~C.~~ H. The superintendent may DO ANY OF THE FOLLOWING:

1. EXAMINE, SUPERVISE AND REGULATE A BRANCH OPERATED IN THIS STATE BY AN OUT-OF-STATE BANK AND TAKE ANY ACTION OR ISSUE ANY ORDER WITH RESPECT TO THAT BRANCH.

2. EXAMINE, SUPERVISE AND REGULATE A BRANCH OPERATED IN ANOTHER STATE BY A BANK AND TAKE ANY ACTION OR ISSUE ANY ORDER WITH RESPECT TO THAT BRANCH.

3. COORDINATE THESE ACTIVITIES WITH ANY OTHER STATE OR FEDERAL AGENCY THAT SHARES JURISDICTION OVER THAT FINANCIAL INSTITUTION.

4. COORDINATE THE EXAMINATION, SUPERVISION AND REGULATION OF ANY IN-STATE FINANCIAL INSTITUTION WITH THE EXAMINATION, SUPERVISION AND REGULATION OF A BRANCH OR AFFILIATED FINANCIAL INSTITUTION THAT IS OPERATING IN ANOTHER STATE BY DOING ANY OF THE FOLLOWING:

(a) CONTRACTING WITH AN AGENCY THAT SHARES JURISDICTION OVER THE FINANCIAL INSTITUTION TO RETAIN ITS EXAMINERS AT A REASONABLE RATE OF COMPENSATION.

(b) OFFERING THE SERVICES OF THE DEPARTMENT'S EXAMINERS AT A REASONABLE RATE OF COMPENSATION TO AN AGENCY THAT SHARES JURISDICTION OVER THE FINANCIAL INSTITUTION.

(c) COLLECTING FEES ON BEHALF OF OR RECEIVING PAYMENT OF FEES THROUGH AN AGENCY THAT HAS JURISDICTION OVER THE FINANCIAL INSTITUTION.

5. Enter into cooperative agreements with federal and state regulatory authorities for the examination and supervision of any acquired or de novo entry bank, savings and loan association or holding company and may accept reports of examination and other records from those authorities instead of conducting ~~his own examinations~~ AN EXAMINATION.

I. THE DEPARTMENT IS EXEMPT FROM TITLE 41, CHAPTER 23 IN CONTRACTING FOR EXAMINERS PURSUANT TO SUBSECTION H, PARAGRAPH 4, SUBDIVISION (a).

Sec. 13. Title 6, chapter 2, article 7, Arizona Revised Statutes, is amended by adding sections 6-328 through 6-331, to read:

6-328. Deposit concentration limits

A. NEITHER AN OUT-OF-STATE FINANCIAL INSTITUTION NOR AN IN-STATE FINANCIAL INSTITUTION SHALL ACQUIRE ANOTHER OUT-OF-STATE FINANCIAL INSTITUTION OR IN-STATE FINANCIAL INSTITUTION IF EITHER OF THE FOLLOWING CONDITIONS EXIST:

1. THE RESULTING OUT-OF-STATE FINANCIAL INSTITUTION, IN-STATE FINANCIAL INSTITUTION OR AFFILIATION WOULD CONTROL THIRTY PER CENT OR MORE OF THE BANK DEPOSITS HELD IN THIS STATE.

2. ONE OF THE OUT-OF-STATE FINANCIAL INSTITUTIONS OR IN-STATE FINANCIAL INSTITUTIONS IN THE ACQUISITION ALREADY CONTROLS THIRTY PER CENT OR MORE OF THE BANK DEPOSITS HELD IN THIS STATE.

B. SUBSECTION A DOES NOT APPLY TO ANY INTERSTATE ACQUISITION INVOLVING ONLY ALREADY AFFILIATED ENTITIES.

C. THE SUPERINTENDENT, BY ORDER AND ON FINDINGS OF FACT AND CONCLUSIONS OF LAW, MAY WAIVE THE DEPOSIT CONCENTRATION LIMIT PRESCRIBED BY SUBSECTION A. IN DETERMINING WHETHER TO WAIVE THE DEPOSIT CONCENTRATION LIMIT, THE SUPERINTENDENT SHALL NOT DISCRIMINATE AGAINST OUT-OF-STATE FINANCIAL INSTITUTIONS AND SHALL NOT GRANT A WAIVER UNLESS THE SUPERINTENDENT FINDS THAT THE WAIVER WILL PROMOTE ANY OF THE FOLLOWING:

1. THE AVAILABILITY OF FINANCIAL SERVICES.

2. THE MARKETABILITY OF IN-STATE FINANCIAL INSTITUTIONS.

3. ANOTHER PUBLIC INTEREST.

6-329. Deposit production offices

A. EXCEPT AS PRESCRIBED BY SUBSECTION B OF THIS SECTION, A PERSON SHALL NOT ESTABLISH OR OPERATE A DEPOSIT PRODUCTION OFFICE OR SIMILAR OFFICE IN THIS STATE FOR THE PURPOSE OF SOLICITING DEPOSITS OR SIMILAR EVIDENCE OF INDEBTEDNESS OR PARTICIPATION INTERESTS IN INDEBTEDNESS.

B. THIS SECTION DOES NOT APPLY TO ACTIVITIES CONDUCTED AT THE MAIN OFFICE OR A BRANCH OF AN AFFILIATED FINANCIAL INSTITUTION THAT IS ACTING AS AN AGENT AS PRESCRIBED BY SECTION 6-184.

C. IN DETERMINING WHETHER AN ACTIVITY IS PROHIBITED BY THIS SECTION, THE SUPERINTENDENT SHALL CONSIDER THE FACTORS SPECIFIED IN THE RIEGLE-NEAL

INTERSTATE BANKING AND BRANCHING EFFICIENCY ACT OF 1994, SECTION 109 (c)(2) (P.L. 103-328; 108 STAT. 2338; 12 UNITED STATES CODE SECTION 1835a(c)(2)).

6-330. Rights, powers and privileges of out-of-state banks

EXCEPT AS PROHIBITED BY FEDERAL LAW, AN OUT-OF-STATE BANK THAT HAS A BANKING OFFICE IN THIS STATE HAS ALL OF THE RIGHTS, POWERS AND PRIVILEGES AND IS ENTITLED TO THE SAME EXEMPTIONS AND IMMUNITIES AS A COMPARABLE IN-STATE FINANCIAL INSTITUTION THAT HOLDS A PERMIT UNDER THIS TITLE AND IS SUBJECT TO ALL OF THE PROVISIONS OF THIS TITLE TO THE SAME EXTENT AS A COMPARABLE IN-STATE FINANCIAL INSTITUTION.

6-331. Enforcement

A. IF THE SUPERINTENDENT DETERMINES THAT A BRANCH THAT IS MAINTAINED IN THIS STATE BY AN OUT-OF-STATE BANK IS BEING OPERATED IN VIOLATION OF ANY LAW OF THIS STATE OR ANY RULE ADOPTED BY THIS STATE OR THAT THE BRANCH IS BEING OPERATED IN AN UNSAFE OR UNSOUND MANNER, THE SUPERINTENDENT HAS AUTHORITY TO TAKE ALL ENFORCEMENT ACTIONS AGAINST THAT BRANCH AS IF THE BRANCH WERE REGULATED PURSUANT TO SECTION 6-201.

B. THE SUPERINTENDENT SHALL PROMPTLY NOTIFY THE REGULATORY AGENCY OF THE OUT-OF-STATE BANK'S HOME STATE OF EACH ENFORCEMENT ACTION TAKEN AGAINST THE OUT-OF-STATE BANK AND TO THE EXTENT PRACTICABLE SHALL CONSULT AND COOPERATE WITH THE REGULATORY AGENCIES OF THE OUT-OF-STATE BANK IN PURSUING AND RESOLVING ANY ENFORCEMENT ACTIONS.

Sec. 14. Section 6-1001, Arizona Revised Statutes, is amended to read:

6-1001. Definitions

In this article, unless the context otherwise requires:

1. "Lessee" means a person contracting with a lessor for the use of a safe deposit repository.

2. "Lessor" means a corporation or association authorized under the laws of this state, ANY OTHER STATE or ~~of~~ the United States to do business as a bank, trust company, credit union or savings and loan association and maintaining safe deposit repositories for public use.

3. "Safe deposit repository" or "repository" means a safe deposit box or ANY other safe deposit receptacle and includes THE lessor's vault space made available for use by the lessee in common with others for the storage of property or documents.

Sec. 15. Section 6-1113, Arizona Revised Statutes, is amended to read:

6-1113. Reports; examination; costs

A. The superintendent may require reports from and examine financial institution holding companies and each subsidiary of the holding companies. The superintendent shall accept the examination and financial reports of the appropriate federal OR STATE holding company regulatory authority in lieu of any examination or financial report authorized or required by this chapter. The reports so accepted are considered for all purposes as official reports of the department.

1 B. Notwithstanding subsection A of this section, the superintendent
2 may require reports from and examine financial institution holding companies
3 and their subsidiaries if it appears to the superintendent that any of these
4 entities has engaged, is engaging or is about to engage in any act, practice
5 or transaction which constitutes an unsafe or unsound practice or a violation
6 of this title or any rule or order of the superintendent. This section does
7 not prohibit the department from participating with federal regulators in the
8 examinations to aid in enforcing this title.
9 C. The cost of any examination shall be assessed against and paid by
10 each financial institution holding company pursuant to section 6-125.
11 Sec. 16. Effective date
12 This act is effective from and after August 31, 1996.

APPROVED BY THE GOVERNOR APRIL 3, 1996

FILED IN THE OFFICE OF THE SECRETARY OF STATE ARPIL 3, 1996

GHAZ9695

Senate Engrossed

FILED

Jane Dee Hull
Secretary of State

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

CHAPTER 82

SENATE BILL 1064

AN ACT

AMENDING SECTION 35-457, ARIZONA REVISED STATUTES; RELATING TO PUBLIC BONDS.

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

Section 1. Section 35-457, Arizona Revised Statutes, is amended to read:

35-457. Sale of bonds; notice; bids; forfeiture of deposit

A. Any or all of the bonds may be sold by calling for bids at public sale or bonds may be sold under an accelerated bidding process. If sold under an accelerated bidding process, the bonds shall be sold at the lowest cost the governing body deems then available after having received at least three pricing quotations from recognized purchasers of bonds of the type being sold. The bonds may be sold below, at or above par. If the bonds are sold below par, the aggregate amount of discount plus interest to be paid on the bonds must not exceed the amount of interest that would be payable on the bonds over the maturity schedule prescribed by the governing body at the maximum rate set out in the resolution calling the election at which the bonds were voted. If sold by public sale before the sale of any bonds the governing body or board shall at a meeting thereof enter upon its record an order directing the sale of the bonds and the date and hour of the sale, and cause a copy of the order to be published at least once a week for two successive weeks in cities having a population of fifteen thousand or more persons according to the most recent federal census, and once a week for four successive weeks in all other political subdivisions before the sale in one or more designated daily or weekly newspapers, together with a notice that

sealed proposals will be received for purchase of the bonds on the date and hour named in the order.

B. If the bonds are sold by public sale, all sealed proposals shall be received on the date and hour named in the order and the governing body or board shall award the bonds to the highest and most responsible bidder. All bids shall be accompanied by a ~~certified check~~ BID GUARANTEE for not less than two per cent of the total par value of the bonds. THE BID GUARANTEE MAY BE IN THE FORM OF A CERTIFIED CHECK OR A BOND ISSUED BY A SURETY COMPANY LICENSED BY THE DEPARTMENT OF INSURANCE TO DO BUSINESS IN THIS STATE. The governing body or board may reject any and all bids and return such ~~certified checks~~ BID GUARANTEES. If the successful bidder does not carry out the terms of the proposal to purchase the bonds, the ~~certified check deposited by such bidder~~ BID GUARANTEE shall be ~~cashed and the amount thereof~~ forfeited as stipulated and liquidated damages.

C. Notwithstanding any other provision of this section, bonds may be sold to natural persons residing in this state by negotiated sale on terms the governing body deems to be the best then available and may bear interest payable at such times as shall be determined by the governing body. Bonds may be sold below, at or above par, provided that if the bonds are sold below par, the aggregate amount of discount plus interest to be paid on the bonds must not exceed the amount of interest that would be payable on the bonds over the maturity schedule prescribed by the governing body at the maximum rate set out in the resolution calling the election at which the bonds were voted.

APPROVED BY THE GOVERNOR APRIL 3, 1996

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 3, 1996

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House Engrossed

FILED

Jane Dee Hull
Secretary of State

State of Arizona
House of Representatives
Forty-second Legislature
Second Regular Session
1996

CHAPTER 83

HOUSE BILL 2089

AN ACT

AMENDING SECTION 8-225, ARIZONA REVISED STATUTES; AMENDING SECTION 11-584, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1985, CHAPTER 78, SECTION 1; AMENDING SECTION 11-584, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1995, CHAPTER 250, SECTION 1; RELATING TO PUBLIC DEFENDERS.

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

Section 1. Section 8-225, Arizona Revised Statutes, is amended to read:

8-225. Counsel right of child, parent or guardian; waiver; appointment; reimbursement; guardian ad litem

A. In all proceedings conducted pursuant to this title and the rules of procedure for the juvenile court, a child has the right to be represented by counsel.

B. If a child, parent or guardian is found to be indigent, the juvenile court shall appoint an attorney to represent such person or persons unless counsel for the child is waived by both the child and the parent or guardian.

C. Prior to any court appearance which may result in detention, institutionalization or mental health hospitalization of a child, the court shall appoint counsel for the child if counsel has not been retained by or for the child, unless counsel is waived by both the child and a parent or guardian with whom the child resides or resided prior to the filing of a petition. The child, parent or guardian may withdraw the waiver of counsel at any time.

D. Waiver of counsel pursuant to this section is subject to the provisions of rule 6, subsection (c) of the rules of procedure for the juvenile court.

E. If there appears to be a conflict of interest between a child and ~~his~~ THE CHILD'S parent or guardian including a conflict of interest arising from payment of the fee for appointed counsel under subsection G, the juvenile court may appoint an attorney for the child in addition to ~~that~~ THE ATTORNEY appointed for the parent or guardian or employed by the parent or guardian.

F. The judge of the juvenile court may fix a reasonable sum to be paid by the county for the services of an appointed attorney.

G. If the court finds that the parent or guardian of a child has sufficient financial resources to reimburse, at least in part, the costs of the services of an attorney appointed pursuant to this section, the court shall order the parent or guardian to pay to the appointed attorney or the county, through the clerk of the court, an amount that the parent or guardian is able to pay without incurring substantial hardship to the family. Failure to obey an order under this subsection is not grounds for contempt or grounds for withdrawal by the appointed attorney. An order under this section may be enforced in the manner of a civil judgment.

H. In a county where there is a public defender, the public defender may act as attorney in EITHER:

1. A delinquency or incorrigibility proceeding when requested by the juvenile court.

2. ANY OTHER JUVENILE PROCEEDING THAT IS CONDUCTED PURSUANT TO THIS TITLE IF THE BOARD OF SUPERVISORS AUTHORIZES THE APPOINTMENT OF THE PUBLIC DEFENDER.

I. In all juvenile court proceedings in which the dependency petition includes an allegation that the child is abused or neglected, the court shall appoint a guardian ad litem to protect the child's best interests. This guardian may be an attorney or a court appointed special advocate.

Sec. 2. Section 11-584, Arizona Revised Statutes, as amended by Laws 1985, chapter 78, section 1, is amended to read:

11-584. <u>Duties; reimbursement</u>

A. The public defender shall perform the following duties:

1. Upon order of the court, defend, advise and counsel without expense, subject to the provisions of subsection B, to the defendant any person who is not financially able to employ counsel in the following proceedings:

(a) Offenses triable in the superior, municipal or justice courts at all stages of the proceedings, including the preliminary examination, but only for those offenses which by law require that counsel be provided.

(b) Extradition hearings.

(c) Sanity hearings only when appointed by the court under ~~provisions of~~ title 36, chapter 5.

(d) Involuntary commitment hearings held pursuant to title 36, chapter 18, only if appointed by the court.

(e) Juvenile delinquency and incorrigibility proceedings only when appointed by the court under ~~provisions of~~ section 8-225.

(f) Appeals to a higher court or courts.

(g) ALL JUVENILE PROCEEDINGS OTHER THAN DELINQUENCY AND INCORRIGIBILITY PROCEEDINGS UNDER SUBDIVISION (e), INCLUDING SERVING AS A GUARDIAN AD LITEM, WHEN APPOINTED BY THE COURT PURSUANT TO SECTION 8-225, IF THE COURT APPOINTS THE PUBLIC DEFENDER AND THE BOARD OF SUPERVISORS HAS ADVISED THE PRESIDING JUDGE OF THE COUNTY THAT THE PUBLIC DEFENDER IS AUTHORIZED TO ACCEPT THE APPOINTMENT.

2. Keep a record of all services rendered by ~~him~~ THE PUBLIC DEFENDER in that capacity and file with the board of supervisors an annual report of those services.

B. Although the services of the public defender shall be without expense to the defendant the sentencing court may, as a condition of probation, require that the defendant repay to the county a reasonable amount to reimburse the county for the cost of such defendant's defense. In determining the amount and method of payment the court shall take into account the financial resources of the defendant and the nature of the burden that such payment will impose.

Sec. 3. Section 11-584, Arizona Revised Statutes, as amended by Laws 1995, chapter 250, section 1, is amended to read:

11-584. Duties; reimbursement

A. The public defender shall perform the following duties:

1. Upon order of the court, defend, advise and counsel without expense, subject to the provisions of subsection B of this section, to the defendant any person who is not financially able to employ counsel in the following proceedings:

(a) Offenses triable in the superior, municipal or justice courts at all stages of the proceedings, including the preliminary examination, but only for those offenses which by law require that counsel be provided.

(b) Extradition hearings.

(c) Sanity hearings only when appointed by the court under ~~provisions of~~ title 36, chapter 5.

(d) Involuntary commitment hearings held pursuant to title 36, chapter 18, only if appointed by the court.

(e) Commitment hearings held pursuant to section 13-4518 only if appointed by the court.

(f) Juvenile delinquency and incorrigibility proceedings only when appointed by the court under ~~provisions of~~ section 8-225.

(g) Appeals to a higher court or courts.

(h) ALL JUVENILE PROCEEDINGS OTHER THAN DELINQUENCY AND INCORRIGIBILITY PROCEEDINGS UNDER SUBDIVISION (f), INCLUDING SERVING AS A GUARDIAN AD LITEM, WHEN APPOINTED BY THE COURT PURSUANT TO SECTION 8-225, IF THE COURT APPOINTS THE PUBLIC DEFENDER AND THE BOARD OF SUPERVISORS HAS ADVISED THE PRESIDING JUDGE OF THE COUNTY THAT THE PUBLIC DEFENDER IS AUTHORIZED TO ACCEPT THE APPOINTMENT.

2. Keep a record of all services rendered by ~~him~~ THE PUBLIC DEFENDER in that capacity and file with the board of supervisors an annual report of those services.

B. Although the services of the public defender shall be without expense to the defendant the sentencing court may, as a condition of probation, require that the defendant repay to the county a reasonable amount to reimburse the county for the cost of such defendant's defense. In determining the amount and method of payment the court shall take into account the financial resources of the defendant and the nature of the burden that such payment will impose.

Sec. 4. Delayed effective date

Section 3 of this act is effective on October 1, 1996.

APPROVED BY THE GOVERNOR APRIL 3, 1996

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 3, 1996