House Engrossed Senate Bill

FILED

KEN BENNETT
SECRETARY OF STATE

State of Arizona
Senate
Forty-ninth Legislature
Second Regular Session
2010

CHAPTER 202

SENATE BILL 1137

AN ACT

AMENDING SECTIONS 28-307, 28-332, 28-372, 28-773, 28-5810, 32-2352 AND 42-2003, ARIZONA REVISED STATUTES; RELATING TO TRANSPORTATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 28-307, Arizona Revised Statutes, is amended to read:

28-307. Long-range statewide transportation plan; board duties

A. The board shall develop a statewide transportation plan as provided in this section and section 28-506.

B. The statewide plan shall be adopted on or before December 31, ~~2004~~ 2006 and shall be reviewed and updated on or before July 1 of each fifth year thereafter. The board shall update the dollar estimates in the statewide plan every two years in conjunction with the certifications required by section 28-335.

C. In establishing the statewide plan, the board shall endeavor to ensure that the future transportation system facilitates, rather than directs, future development in this state. To the greatest extent possible, the board shall ensure that the statewide plan reflects the future transportation needs of the various areas of this state as reflected in adopted local and regional land use and general plans.

D. In establishing the statewide plan, the board shall consider, to the greatest extent possible, local, regional and tribal transportation plans.

Sec. 2. Section 28-332, Arizona Revised Statutes, is amended to read:

28-332. Department of transportation jurisdiction; duties; divisions

A. The exclusive control and jurisdiction over state highways, state routes, state owned airports and all state owned transportation systems or modes are vested in the department of transportation.

B. The department shall:

1. Register motor vehicles and aircraft, license drivers, collect revenues, enforce motor vehicle and aviation statutes and perform related functions.

2. Do multimodal state transportation planning, cooperate and coordinate transportation planning with local governments and establish an annually updated priority program of capital improvements for all transportation modes.

3. Design and construct transportation facilities in accordance with a priority plan and maintain and operate state highways, state owned airports and state public transportation systems.

4. Investigate new transportation systems and cooperate with and advise local governments concerning the development and operation of public transit systems.

5. Have administrative jurisdiction of transportation safety programs and implement them in accordance with applicable law.

C. In order to carry out the responsibilities enumerated in subsection B, the department is organized into the following divisions:

1. Motor vehicle.

2. Transportation planning.
3. Highways.
4. Aeronautics.
5. Public transit.
6. Administrative services.

D. THE DIRECTOR MAY DO ANY OF THE FOLLOWING:

1. ESTABLISH DIVISIONS IN ADDITION TO THOSE PRESCRIBED IN SUBSECTION C.

2. REORGANIZE THE DEPARTMENT.

3. CONSOLIDATE THE DEPARTMENT.

~~D.~~ E. The department shall provide general administrative support, equipment and office and meeting space to the Arizona international development authority established by title 41, chapter 45.

Sec. 3. Section 28-372, Arizona Revised Statutes, is amended to read:

28-372. Returned checks; dishonored electronic payments; fees

A. The director may assess:

1. The fee specified in section 44-6852 for a check, draft or order that has been dishonored because of insufficient monies, payments stopped or closed accounts.

2. Collection costs.

3. A fee to be determined by the director for each electronic payment that has been dishonored because of insufficient monies, payments stopped or closed accounts.

B. The director shall deposit, pursuant to sections 35-146 and 35-147, ~~service~~ fees AND COSTS ASSESSED PURSUANT TO SUBSECTION A OF THIS SECTION for dishonored checks, drafts, orders or electronic payments ~~that were submitted for titling and registering vehicles~~ in the state highway fund established by section 28-6991. ~~The director shall deposit, pursuant to sections 35-146 and 35-147, all other service fees collected under subsection A of this section in the highway user revenue fund.~~

Sec. 4. Section 28-773, Arizona Revised Statutes, is amended to read:

28-773. Intersection entrance

~~A. The driver of a vehicle shall stop as required by section 28-855 at the entrance to a through highway and shall yield the right-of-way to other vehicles that have entered the intersection from the through highway or that are approaching so closely on the through highway as to constitute an immediate hazard, but the driver having so yielded may proceed and the drivers of all other vehicles approaching the intersection on the through highway shall yield the right-of-way to the vehicle that is proceeding into or across the through highway.~~

~~B.~~ The driver of a vehicle shall stop in obedience to a stop sign as required by ~~this chapter at an intersection where a stop sign is erected at one or more entrances to the intersection although not a part of a through highway, shall~~ SECTION 28-855 AND THEN proceed ~~cautiously and shall yield~~ WITH CAUTION YIELDING to vehicles that are not ~~obliged~~ REQUIRED to stop and

that are within the intersection or are approaching so closely as to constitute an immediate hazard~~, but may then proceed~~.

Sec. 5. Section 28-5810, Arizona Revised Statutes, is amended to read:

28-5810. Rental vehicle surcharge; reimbursement; definition

A. A person engaged in the business of renting motor vehicles without drivers shall collect, at the time the rental vehicle is rented, a five per cent surcharge on each rental contract that is for a period of one hundred eighty days or less.

B. The surcharge:

1. Shall be computed on the total amount stated in the rental contract, less any taxes and fees imposed by title 42, chapter 5, article 1 and title 48, chapter 26, article 2.

2. Is not subject to the taxes imposed by title 42, chapter 5, article 1 and title 48, chapter 26, article 2.

3. Shall be noted on the rental contract and collected pursuant to the contract.

4. Shall be retained by the vehicle owner or person engaged in the business of renting rental vehicles.

5. Shall be used only for reimbursement of the amount of vehicle license tax imposed on the rental vehicle pursuant to section 28-5801 and paid by the rental vehicle owner or person engaged in the business of renting rental vehicles at the time of vehicle registration.

C. On February 15 of each year, a person who is engaged in the business of renting rental vehicles and who collects a surcharge pursuant to this section shall file a report with the director stating:

1. The total amount of vehicle license tax paid the previous year.

2. The total amount of vehicle rental revenues for the previous year.

3. The amount by which the surcharge exceeds the amount of vehicle license tax.

D. Surcharges collected in excess of the amount of vehicle license tax paid shall be remitted, deposited and distributed pursuant to section 28-5808.

E. The report to the director required by this section shall be a sworn statement subject to penalty of perjury for misrepresenting the amount of vehicle license tax paid or the amount of surcharge collected.

F. The director shall adopt rules prescribing auditing procedures, records maintenance and other requirements necessary to administer this section.

G. TO ASSIST WITH ADMINISTERING THIS ARTICLE, EACH YEAR AT THE REQUEST OF THE DIRECTOR OF THE DEPARTMENT OF TRANSPORTATION, THE DEPARTMENT OF REVENUE SHALL PROVIDE A REPORT TO THE DIRECTOR OF THE DEPARTMENT OF TRANSPORTATION THAT INCLUDES, TO THE EXTENT AVAILABLE, THE FOLLOWING:

1. THE NAMES OF ALL OF THE PERSONS WHO ARE ENGAGED IN THE BUSINESS OF RENTING RENTAL VEHICLES AND WHO HOLD A TRANSACTION PRIVILEGE TAX LICENSE PURSUANT TO SECTION 42-5071.

2. THE ADDRESS OF THE BUSINESS.

3. THE EFFECTIVE DATE OF THE LICENSE.

~~G.~~ H. For the purposes of this section, "rental vehicle" means both of the following:

1. A passenger vehicle that is designed to transport fifteen or fewer passengers and that is rented without a driver.

2. A truck, trailer or semitrailer that has a gross vehicle weight of less than twenty-six thousand one pounds, that is rented without a driver and that is used in the transportation of personal property.

Sec. 6. Section 32-2352, Arizona Revised Statutes, is amended to read:

32-2352. Enforcement; contract with private entity

A. The director ~~shall~~, subject to title 41, chapter 6, SHALL adopt ~~and prescribe~~ such rules concerning the administration and enforcement of this chapter as are necessary to carry out the intent of this chapter and to protect the public. The director or ~~his~~ THE DIRECTOR'S authorized representative shall inspect the school facilities and equipment used by applicants and licensees under ~~the provisions of~~ this chapter and examine applicants for instructor's licenses.

B. The director shall administer and enforce ~~the provisions of~~ this chapter.

C. THE DIRECTOR MAY CONTRACT WITH A PRIVATE ENTITY TO CONDUCT INSPECTIONS PURSUANT TO THIS SECTION AND TO ADMINISTER ANY RULES ADOPTED PURSUANT TO THIS SECTION THAT RELATE TO THE LICENSURE AND ADMINISTRATION OF TRAFFIC SURVIVAL SCHOOLS PURSUANT TO THIS CHAPTER. THE TERM OF ANY CONTRACT ENTERED INTO PURSUANT TO THIS SUBSECTION SHALL NOT EXCEED FIVE YEARS WITH A RIGHT TO RENEW FOR AN ADDITIONAL FIVE YEARS. THE PRIVATE ENTITY THAT CONTRACTS WITH THE DIRECTOR PURSUANT TO THIS SUBSECTION:

1. SHALL NOT PROVIDE TRAFFIC SURVIVAL SCHOOL COURSES.

2. MAY CHARGE A FEE TO EACH PERSON WHO ENROLLS IN TRAFFIC SURVIVAL SCHOOL.

Sec. 7. Section 42-2003, Arizona Revised Statutes, is amended to read:

42-2003. Authorized disclosure of confidential information

A. Confidential information relating to:

1. A taxpayer may be disclosed to the taxpayer, its successor in interest or a designee of the taxpayer who is authorized in writing by the taxpayer. A principal corporate officer of a parent corporation may execute a written authorization for a controlled subsidiary.

2. A corporate taxpayer may be disclosed to any principal officer, any person designated by a principal officer or any person designated in a resolution by the corporate board of directors or other similar governing body.

3. A partnership may be disclosed to any partner of the partnership. This exception does not include disclosure of confidential information of a particular partner unless otherwise authorized.

4. An estate may be disclosed to the personal representative of the estate and to any heir, next of kin or beneficiary under the will of the decedent if the department finds that the heir, next of kin or beneficiary has a material interest which will be affected by the confidential information.

5. A trust may be disclosed to the trustee or trustees, jointly or separately, and to the grantor or any beneficiary of the trust if the department finds that the grantor or beneficiary has a material interest which will be affected by the confidential information.

6. Any taxpayer may be disclosed if the taxpayer has waived any rights to confidentiality either in writing or on the record in any administrative or judicial proceeding.

7. The name and taxpayer identification numbers of persons issued direct payment permits may be publicly disclosed.

B. Confidential information may be disclosed to:

1. Any employee of the department whose official duties involve tax administration.

2. The office of the attorney general solely for its use in preparation for, or in an investigation which may result in, any proceeding involving tax administration before the department or any other agency or board of this state, or before any grand jury or any state or federal court.

3. The department of liquor licenses and control for its use in determining whether a spirituous liquor licensee has paid all transaction privilege taxes and affiliated excise taxes incurred as a result of the sale of spirituous liquor, as defined in section 4-101, at the licensed establishment and imposed on the licensed establishments by this state and its political subdivisions.

4. Other state tax officials whose official duties require the disclosure for proper tax administration purposes if the information is sought in connection with an investigation or any other proceeding conducted by the official. Any disclosure is limited to information of a taxpayer who is being investigated or who is a party to a proceeding conducted by the official.

5. The following agencies, officials and organizations, if they grant substantially similar privileges to the department for the type of information being sought, pursuant to statute and a written agreement between the department and the foreign country, agency, state, Indian tribe or organization:

(a) The United States internal revenue service, alcohol and tobacco tax and trade bureau of the United States treasury, United States bureau of alcohol, tobacco, firearms and explosives of the United States department of justice, United States drug enforcement agency and federal bureau of investigation.

(b) A state tax official of another state.

(c) An organization of states, federation of tax administrators or multistate tax commission that operates an information exchange for tax administration purposes.

(d) An agency, official or organization of a foreign country with responsibilities that are comparable to those listed in subdivision (a), (b) or (c) of this paragraph.

(e) An agency, official or organization of an Indian tribal government with responsibilities comparable to the responsibilities of the agencies, officials or organizations identified in subdivision (a), (b) or (c) of this paragraph.

6. The auditor general, in connection with any audit of the department subject to the restrictions in section 42-2002, subsection D.

7. Any person to the extent necessary for effective tax administration in connection with:

(a) The processing, storage, transmission, destruction and reproduction of the information.

(b) The programming, maintenance, repair, testing and procurement of equipment for purposes of tax administration.

8. The office of administrative hearings relating to taxes administered by the department pursuant to section 42-1101, but the department shall not disclose any confidential information:

(a) Regarding income tax, withholding tax or estate tax.

(b) On any tax issue relating to information associated with the reporting of income tax, withholding tax or estate tax.

9. The United States treasury inspector general for tax administration for the purpose of reporting a violation of internal revenue code section 7213A (26 United States Code section 7213A), unauthorized inspection of returns or return information.

10. The financial management service of the United States treasury department for use in the treasury offset program.

11. The United States treasury department or its authorized agent for use in the state income tax levy program and in the electronic federal tax payment system.

12. The department of commerce for its use in:

(a) Qualifying motion picture production companies for the tax incentives provided for motion picture production under chapter 5 of this title and sections 43-1075 and 43-1163.

(b) Qualifying applicants for the motion picture infrastructure project tax credits under sections 43-1075.01 and 43-1163.01.

(c) Qualifying renewable energy operations for the tax incentives under sections 42-12006, 43-1083.01 and 43-1164.01.

(d) Fulfilling its annual reporting responsibility pursuant to section 41-1511, subsections T and U and section 41-1517, subsections S and T.

13. A prosecutor for purposes of section 32-1164, subsection C.

14. The state fire marshal for use in determining compliance with and enforcing title 41, chapter 16, article 3.1.

15. THE DEPARTMENT OF TRANSPORTATION FOR ITS USE IN ADMINISTERING TAXES AND SURCHARGES PRESCRIBED BY TITLE 28.

C. Confidential information may be disclosed in any state or federal judicial or administrative proceeding pertaining to tax administration pursuant to the following conditions:

1. One or more of the following circumstances must apply:

(a) The taxpayer is a party to the proceeding.

(b) The proceeding arose out of, or in connection with, determining the taxpayer's civil or criminal liability, or the collection of the taxpayer's civil liability, with respect to any tax imposed under this title or title 43.

(c) The treatment of an item reflected on the taxpayer's return is directly related to the resolution of an issue in the proceeding.

(d) Return information directly relates to a transactional relationship between a person who is a party to the proceeding and the taxpayer and directly affects the resolution of an issue in the proceeding.

2. Confidential information may not be disclosed under this subsection if the disclosure is prohibited by section 42-2002, subsection C or D.

D. Identity information may be disclosed for purposes of notifying persons entitled to tax refunds if the department is unable to locate the persons after reasonable effort.

E. The department, upon the request of any person, shall provide the names and addresses of bingo licensees as defined in section 5-401, verify whether or not a person has a privilege license and number, a distributor's license and number or a withholding license and number or disclose the information to be posted on the department's ~~web site~~ WEBSITE or otherwise publicly accessible pursuant to section 42-1124, subsection F and section 42-3201, subsection A.

F. A department employee, in connection with the official duties relating to any audit, collection activity or civil or criminal investigation, may disclose return information to the extent that disclosure is necessary to obtain information which is not otherwise reasonably available. These official duties include the correct determination of and liability for tax, the amount to be collected or the enforcement of other state tax revenue laws.

G. If an organization is exempt from this state's income tax as provided in section 43-1201 for any taxable year, the name and address of the organization and the application filed by the organization upon which the department made its determination for exemption together with any papers submitted in support of the application and any letter or document issued by the department concerning the application are open to public inspection.

H. Confidential information relating to transaction privilege tax, use tax, severance tax, jet fuel excise and use tax and rental occupancy tax may be disclosed to any county, city or town tax official if the information relates to a taxpayer who is or may be taxable by the county, city or town. Any taxpayer information released by the department to the county, city or town:

1. May only be used for internal purposes.

2. May not be disclosed to the public in any manner that does not comply with confidentiality standards established by the department. The county, city or town shall agree in writing with the department that any release of confidential information that violates the confidentiality standards adopted by the department will result in the immediate suspension of any rights of the county, city or town to receive taxpayer information under this subsection.

I. The department may disclose statistical information gathered from confidential information if it does not disclose confidential information attributable to any one taxpayer. In order to comply with the requirements of section 42-5029, subsection A, paragraph 3, the department may disclose to the state treasurer statistical information gathered from confidential information, even if it discloses confidential information attributable to a taxpayer.

J. The department may disclose the aggregate amounts of any tax credit, tax deduction or tax exemption enacted after January 1, 1994. Information subject to disclosure under this subsection shall not be disclosed if a taxpayer demonstrates to the department that such information would give an unfair advantage to competitors.

K. Except as provided in section 42-2002, subsection C, confidential information, described in section 42-2001, paragraph 2, subdivision (a), item (iii), may be disclosed to law enforcement agencies for law enforcement purposes.

L. The department may provide transaction privilege tax license information to property tax officials in a county for the purpose of identification and verification of the tax status of commercial property.

M. The department may provide transaction privilege tax, luxury tax, use tax, property tax and severance tax information to the ombudsman-citizens aide pursuant to title 41, chapter 8, article 5.

N. Except as provided in section 42-2002, subsection D, a court may order the department to disclose confidential information pertaining to a party to an action. An order shall be made only upon a showing of good cause and that the party seeking the information has made demand upon the taxpayer for the information.

O. This section does not prohibit the disclosure by the department of any information or documents submitted to the department by a bingo licensee. Before disclosing the information the department shall obtain the name and address of the person requesting the information.

P. If the department is required or permitted to disclose confidential information, it may charge the person or agency requesting the information for the reasonable cost of its services.

Q. Except as provided in section 42-2002, subsection D, the department of revenue shall release confidential information as requested by the department of economic security pursuant to section 42-1122 or 46-291. Information disclosed under this subsection is limited to the same type of information that the United States internal revenue service is authorized to disclose under section 6103(l)(6) of the internal revenue code.

R. Except as provided in section 42-2002, subsection D, the department of revenue shall release confidential information as requested by the courts and clerks of the court pursuant to section 42-1122.

S. To comply with the requirements of section 42-5031, the department may disclose to the state treasurer, to the county stadium district board of directors and to any city or town tax official that is part of the county stadium district confidential information attributable to a taxpayer's business activity conducted in the county stadium district.

T. The department shall release confidential information as requested by the attorney general for purposes of determining compliance with and enforcing section 44-7101, the master settlement agreement referred to therein and subsequent agreements to which the state is a party that amend or implement the master settlement agreement. Information disclosed under this subsection is limited to luxury tax information relating to tobacco manufacturers, distributors, wholesalers and retailers and information collected by the department pursuant to section 44-7101(2)(j).

U. For proceedings before the department, the office of administrative hearings, the board of tax appeals or any state or federal court involving penalties that were assessed against a return preparer or electronic return preparer pursuant to section 42-1103.02 or 42-1125.01, confidential information may be disclosed only before the judge or administrative law judge adjudicating the proceeding, the parties to the proceeding and the parties' representatives in the proceeding prior to its introduction into evidence in the proceeding. The confidential information may be introduced as evidence in the proceeding only if the taxpayer's name, the names of any dependents listed on the return, all social security numbers, the taxpayer's address, the taxpayer's signature and any attachments containing any of the foregoing information are redacted and if either:

1. The treatment of an item reflected on such return is or may be related to the resolution of an issue in the proceeding.

2. Such return or return information relates or may relate to a transactional relationship between a person who is a party to the proceeding and the taxpayer which directly affects the resolution of an issue in the proceeding.

1 V. The department may disclose to the attorney general confidential
2 information received under section 44-7111 and requested by the attorney
3 general for purposes of determining compliance with and enforcing section
4 44-7111. The department and attorney general shall share with each other the
5 information received under section 44-7111, and may share the information
6 with other federal, state or local agencies only for the purposes of
7 enforcement of section 44-7101, section 44-7111 or corresponding laws of
8 other states.
9 W. The department may provide the name and address of qualifying
10 hospitals and qualifying health care organizations, as defined in section
11 42-5001, to a business classified and reporting transaction privilege tax
12 under the utilities classification.

APPROVED BY THE GOVERNOR APRIL 28, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 28, 2010.

Passed the House April 20, 2010,

by the following vote: 55 Ayes,

2 Nays, 3 Not Voting

Speaker of the House

Cheryl Laube

Chief Clerk of the House

Passed the Senate February 22, 2010,

by the following vote: 21 Ayes,

9 Nays, 0 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR
This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20_____,

at _____ o'clock _____ M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

S.B. 1137

SENATE CONCURS IN HOUSE
AMENDMENTS AND FINAL PASSAGE

Passed the Senate April 22, 20 10

by the following vote: 19 Ayes,

9 Nays, 2 Not Voting

Barbara Leff
~~President~~ of the Senate
President Pro Tempore

Charmain Billington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

23 day of April, 20 10

at 9:05 o'clock A. M.

Nicole Bonde
Secretary to the Governor

Approved this 28th day of

April

at 1:31 o'clock P. M.

Jan Brewer
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 28th day of April, 20 10

at 4:29 o'clock P M.

Ken Bennett
Secretary of State

S.B. 1137