

NOTICES OF FINAL RULEMAKING

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

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

PREAMBLE

- 1. Sections Affected**

R4-23-402	Amend
R4-23-601	Amend
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 32-1904(A)(1)

Implementing statutes: A.R.S. §§ 32-1904(B)(5), 32-1929, 32-1930, 32-1931, 32-1934, and 32-1963
- 3. The effective date of the rules:**

November 13, 2000
- 4. A list of all previous notices appearing in the Register addressing the proposed rule:**

Notice of Rulemaking Docket Opening: 5 A.A.R. 1319, May 7, 1999

Notice of Proposed Rulemaking: 6 A.A.R. 1602, May 5, 2000
- 5. The name and address of agency personnel with whom persons may communicate regarding the rule:**

Name:	Dean Wright, Compliance Officer
Address:	Board of Pharmacy 4425 West Olive, #140 Glendale, Arizona 85302
Telephone:	(623) 463-2727, Ext. 131
Fax:	(623) 934-0583
E-Mail:	rxcop@uswest.net
- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**

During the 5-year rule review in 1997, the Board staff noted that Section 601 should be revised to bring the terminology into conformity with state statute. The Precursor Chemical bill, H.B. 2448, passed in the 1999 legislative session makes additional changes to this Section necessary. The Board staff identified a small change to Section 402 that would allow a pharmacist to use professional judgement in determining whether or not to dispense a prescription. The proposed rule includes necessary style, format, and grammar changes to provide a clear, concise, and understandable document.

The proposed rule amends Section R4-23-402 by adding language allowing use of a pharmacist's professional judgement in interpreting a prescription order.

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Section 601 is amended to remove the statement in subsection (B) that out-of-state firms shipping drugs into Arizona do not need a permit issued by the Arizona Board. The 1999 Legislature passed H.B. 2448 (Precursor Chemical bill) requiring the Board to issue permits to anyone (resident or non-resident) who distributes precursor chemicals such as ephedrine, pseudoephedrine, and phenylpropanolamine. These chemicals are active ingredients in common over-the-counter products sold for treatment of flu, colds, and weight loss. The regulation of these chemicals is necessary because they are used as the starting base to manufacture illegally the street drugs, methamphetamine and amphetamine. The proposed rule further amends Section 601 by expanding and clarifying the recordkeeping requirements of persons manufacturing, receiving, selling, or delivering any drug in Arizona. The proposed rule deletes the term "proprietary or patent medicine" and replaces it with the current statutory term, "nonprescription drug". Subsection (E) of Section 601 prohibits the sale of nonprescription drugs in vending machines. The rule repeals subsection (E) because a statutory change made by H.B. 2046 in the 2000 legislative session now allows the use of vending machines to sell nonprescription drugs.

The Board believes that making these rules will benefit the public health and safety by establishing clear standards for pharmacists, pharmacy interns, permits, and the distribution of drugs in Arizona.

7. A reference to any study that the agency relied on in its evaluation of or justification for the rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study, and other supporting material:

Not applicable

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

Not applicable

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

The rule will have a direct economic impact on nonresident firms that ship drugs into Arizona because the rule no longer exempts these firms from registration. These firms will now fall under existing statutes and rules requiring a permit for drug distribution. The permit fees for wholesale drug distribution in Arizona are \$1000 biennially for a full-service drug wholesale permit and \$500 biennially for a nonprescription drug wholesale permit. House Bill 2448 requires that the Board issue a permit to any person who ships a precursor chemical (nonprescription drug) into the state. If taken literally, this bill could include nonresident pharmacies as well as nonresident drug manufacturers and wholesalers. At this time, the Board interprets the bill to include nonresident drug manufacturers and wholesalers who ship a precursor chemical into Arizona. However, amending this rule eliminates the exemption from registration for nonresident firms shipping prescription-only or nonprescription drugs into Arizona. This means the Board must issue a permit to any firm shipping any drug into Arizona. The cost to the Board to permit these nonresident firms will be substantial. Fortunately, House Bill 2448 included an appropriation to cover some of the Board costs. These costs include identifying, contacting, and educating nonresident firms regarding the new requirements, issuing and renewing permits for affected nonresident firms, investigation of complaints against nonresident firms, and enforcement of statutes and rules. Initially, the Board will target nonresident firms that ship precursor chemicals into Arizona and later expand to include all drugs and nonresident pharmacies. The cost to the Board of Pharmacy and the Secretary of State for writing and publishing the rule will be minimal. The rule does not impose any additional costs on Arizona small business or consumers.

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

Section R4-23-601 is amended by deleting subsection (E). Section R4-23-601(E) prohibits the sale of a nonprescription drug in a vending machine. This change is necessary because of a statutory change made in the 2000 legislative session by H.B. 2046. This bill amended A.R.S. § 32-1921 to allow the sale of nonprescription drugs in vending machines effective July 18, 2000. At the request of GRRC staff, the final rule includes various grammar, style, and format changes in Sections 402 and 601 that increase the clarity, conciseness, and understandability of the rule. Because GRRC staff requested numerous changes to Section 606, the Board decided to remove Section 606 from the final rulemaking. Section 606 will be addressed in a separate rulemaking.

11. A summary of the principal comments and the agency response to them:

None

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

Not applicable

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

None

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

No

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

ARTICLE 4. PROFESSIONAL PRACTICES

R4-23-402. Pharmacist, Graduate Intern, and Pharmacy Intern

ARTICLE 6. PERMITS AND DISTRIBUTION OF DRUGS

R4-23-601. General Provisions

ARTICLE 4. PROFESSIONAL PRACTICES

R4-23-402. Pharmacist, Graduate Intern, and Pharmacy Intern

- A.** A pharmacist or a graduate intern or pharmacy intern under the supervision of a pharmacist shall perform the following professional practices in dispensing a prescription medication from a prescription order:
1. Receive, reduce to written form, and manually initial oral prescription orders;
 2. Obtain and record the name of an individual who communicates an oral prescription order;
 3. Obtain, or assume responsibility to obtain, from the patient, patient's agent, or medical practitioner and record, or assume responsibility to record, in the patient's profile, the following information:
 - a. Name, address, telephone number, date of birth (or age), and gender;
 - b. Individual history including known diseases and medical conditions, known drug allergies or drug reactions, and if available a comprehensive list of medications currently taken and medical devices currently used;
 4. Record, or assume responsibility to record, in the patient's profile, a pharmacist's, graduate intern's, or pharmacy intern's comments relevant to the individual's drug therapy, including other information specific to the patient or drug;
 5. Verify the legality and pharmaceutical feasibility of dispensing a drug based upon:
 - a. A patient's allergies,
 - b. Incompatibilities with a patient's currently-taken medications,
 - c. A patient's use of unusual quantities of dangerous drugs or narcotics,
 - d. A medical practitioner's signature, and
 - e. The frequency of refills;
 6. Verify that a dosage is within proper limits;
 7. Interpret the prescription order, which includes exercising professional judgement in determining whether to dispense a particular prescription;
 8. Compound, mix, combine, or otherwise prepare and package prescription medication needed to dispense individual prescription orders;
 9. Prepackage or supervise the prepackaging of drugs by supportive personnel under R4-23-403. For drugs prepackaged by supportive personnel, a pharmacist shall:
 - a. ~~verify~~ Verify the drug to be prepackaged,
 - b. ~~decide~~ Decide the wording and requirements placed on the label, and
 - c. ~~check~~ Check the completed prepackaging procedure and product;
 10. Check a prescription label to ensure that it communicates the prescriber's directions precisely;
 11. Make a final accuracy check on the completed prescription medication and manually initial the finished label;
 12. Record, or assume responsibility to record, a prescription serial number and date dispensed on the original prescription order;
 13. Obtain, or assume responsibility to obtain, permission to refill prescription orders and record, or assume responsibility to record, on the prescription order:
 - a. ~~the date~~ Date dispensed,
 - b. ~~quantity~~ Quantity dispensed, and
 - c. ~~name~~ Name of medical practitioner or medical practitioner's agent who communicates permission to refill the prescription order;
 14. Reduce to written or printed form, or assume responsibility to reduce to written or printed form, a new prescription order received by:
 - a. ~~facsimile~~ Facsimile,
 - b. ~~computer~~ Computer modem, or
 - c. ~~other~~ Other means of communication;
 15. Verify and manually initial a new prescription order received by:
 - a. ~~facsimile~~ Facsimile,

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- ~~b. computer~~ Computer modem, or
 - ~~c. other~~ Other means of communication;
- 16. Record on the original prescription order the name or initials of the pharmacist, graduate intern, or pharmacy intern who originally dispenses the order; and
- 17. Record on the original prescription order the name or initials of the pharmacist, graduate intern, or pharmacy intern who dispenses each refill.
- B.** Only a pharmacist, graduate intern, or pharmacy intern shall provide oral consultation about a prescription medication to a patient or patient's agent in all outpatient settings, including a patient discharged from a hospital. The oral consultation is required whenever the following occurs:
 - 1. The prescription medication has not been previously dispensed to the patient;
 - 2. A new prescription number is assigned to a previously dispensed prescription medication;
 - 3. The prescription medication has not been previously dispensed to the patient in the same strength or dosage form or with the same directions;
 - 4. The pharmacist, through the exercise of professional judgment, determines that oral consultation is warranted; or
 - 5. The patient or patient's agent requests oral consultation.
- C.** Oral consultation shall include:
 - 1. The name, strength, and dosage form of a prescription medication or prescription-only device;
 - 2. The directions for use;
 - 3. The route of administration; and
 - 4. Special instructions, precautions, or storage requirements.
- D.** The pharmacist, through the exercise of professional judgment, may provide oral consultation that includes:
 - 1. Common severe adverse effects, interactions, or therapeutic contraindications, and the action required if they occur;
 - 2. Techniques of self-monitoring drug therapy;
 - 3. The duration of the drug therapy;
 - 4. Prescription refill information; and
 - 5. Action to be taken if a dose is missed.
- E.** Nothing in subsection (B) shall be construed as requiring a pharmacist, graduate intern, or pharmacy intern to provide oral consultation if a patient or patient's agent refuses the consultation.
 - 1. Only a pharmacist, graduate intern, or pharmacy intern shall accept a refusal for consultation.
 - 2. A pharmacist, graduate intern, or pharmacy intern shall document, or assume responsibility to document, a refusal for consultation on the original prescription order or document by alternative methods approved by the Board or its designee.
- F.** When a prescription is delivered to the patient or patient's agent outside the immediate area of a pharmacy and a pharmacist is not present, the prescription shall be accompanied by written or printed patient medication information that, in addition to the requirements in subsection (C), includes:
 - 1. Approved use for the prescription medication;
 - 2. Possible adverse reactions;
 - 3. Drug-drug, food-drug, or disease-drug interactions;
 - 4. Missed dose information; and
 - 5. Telephone number of the dispensing pharmacy.
- G.** A prescription medication or prescription-only device, delivered to a patient at a location where a licensed health care professional is responsible for administering a prescription medication to a patient, is exempt from the requirement of subsection (C).
- H.** A pharmacist, graduate intern, or pharmacy intern shall wear a badge indicating name and title while on duty.
- I.** Nothing in this Section shall prevent hospital pharmacists from accepting prescription orders in accordance with rules pertaining specifically to hospital pharmacies.

ARTICLE 6. PERMITS AND DISTRIBUTION OF DRUGS

R4-23-601. General Provisions

- A.** Permit required to sell drugs: ~~No drugs may be sold~~ A person shall have a current Board permit to:
 - 1. Sell a drug in Arizona, or
 - 2. Sell a drug from outside Arizona and ship the drug into Arizona.
- B.** ~~except by a person having a permit from the Board; except~~ A medical practitioners practitioner is exempt from subsection (A) to may administer drugs a drug for the emergency needs of their patients a patient.
- B.** ~~Out-of-state firms: Out-of-state firms shall not be required to have a permit if licensed in the state from which the drugs are shipped, if drugs are not warehoused in Arizona, and if there is no district office in Arizona.~~
- C.** Permit fee: ~~Permits are issued biennially on an odd- and even-year expiration based on the assigned permit number assigned. The fee, specified in R4-23-205, is not refunded refundable under any circumstances except the Board's failure to comply with the permit time-frames established in R4-23-602.~~

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D. Record of receipt and disposal of drugs.

1. Every person manufacturing a drug, including repackaging or relabeling, shall prepare and retain the manufacturing, repackaging, or relabeling date for each drug.
2. Every person receiving, selling, delivering, or disposing of a drug shall record and retain for not less than 3 years the following information:
 - a. The name, strength, dosage form, and quantity of each drug received, sold, delivered, or disposed;
 - b. The name, address, and license or permit number, if applicable, of the person from whom each drug is received;
 - c. The name, address, and license or permit number, if applicable, of the person to whom each drug is sold or delivered, or of the person who disposes of each drug; and
 - d. The date of each drug receipt, sale, deliver, or disposal.
3. The record required in this subsection shall be available for inspection by the Board or its compliance officer during regular business hours.
4. If the record required in this subsection is stored in a centralized recordkeeping system and not immediately available for inspection, a permittee, manager, or pharmacist-in-charge shall provide the record within 4 working days of the Board's or its compliance officer's request.

~~**E.** Fire- or water-damaged drugs or devices: No person shall expose, sell, or offer to sell any drug or device which has been damaged by water, fire, or from human or animal consumption or use.~~

~~**F.** Sale of drugs, including proprietary or patent medicines by mechanical devices or vending machines prohibited: The use of any mechanical device or vending machine in connection with the sale of any drug, including proprietary or patent medicine, is unlawful.~~

NOTICE OF FINAL RULEMAKING

TITLE 10. LAW

CHAPTER 4. ARIZONA CRIMINAL JUSTICE COMMISSION

PREAMBLE

1. Sections Affected

R10-4-201
R10-4-201
R10-4-201
R10-4-202
R10-4-202
R10-4-202
R10-4-203
R10-4-203
R10-4-204
R10-4-204
R10-4-205
R10-4-205
R10-4-206
R10-4-206
R10-4-207

Rulemaking Action

Repeal
Renumber
Amend
Repeal
Renumber
Amend
Renumber
Amend
Renumber
Amend
Renumber
Amend
Repeal

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 41-2405(A)(8)

Implementing statute: A.R.S. § 41-2407

3. The effective date of the rules:

November 20, 2000

4. A list of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening: 6 A.A.R. 1440, April 14, 2000

Notice of Proposed Rulemaking: 6 A.A.R. 3157, August 25, 2000

5. The name and address of agency personnel with whom persons may communicate regarding the rule:

Name: Donna M. Marcum
Address: 3737 North 7th Street, Suite 260
Phoenix, Arizona 85014
Telephone: (602) 230-0252
Fax: (602) 728-0752

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

The purpose of the Article is to establish the guidelines to be used to govern the Crime Victim Assistance Program. Without the establishment of rules governing the administration of the program, the funds cannot be made available, awarded, or properly administered.

7. A reference to any study that the agency relied on in its evaluation of or justification for the rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study, and other supporting material.

None

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

The promulgation of the rule will not diminish a previous grant of authority of a political subdivision of this state.

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

There will not be any significant economic impact as a result of the amendments to the proposed rules.

Costs/Benefits to Implementing Agency: The Arizona Criminal Justice Commission will experience no increase in its costs, supplies, or services budget. The personnel budget will not be increased. The management of the funds will continue to be accomplished through the use of existing staff. No increase in administrative overhead is anticipated. The benefits to the Arizona Criminal Justice Commission are non-monetary. The proposed rulemaking is more clear and easier for users to understand and comply with.

Costs/Benefits to Other Agencies Directly Affected by the Amendments: Other state agencies will not be adversely affected by the amendments to the rules governing distribution of Crime Victim Assistance funds. The amendments serve only to bring the amended rules into conformance with the language of the Secretary of State's Office and delete reference to the subrogation agreement that is now in statute. The State Treasury Department has no cost increases as a result of the amended rules. The Department already receives and administers the account into which these funds are deposited. There are no monetary or non-monetary benefits for other agencies.

Costs/Benefits to Political Subdivisions: There are no costs for political subdivisions associated with the proposed rulemaking. There may be monetary benefits from the proposed rulemaking if the proposed rules encourage a political subdivision to apply for grant funding. Ease in compliance with the rules may encourage political subdivisions to seek grant funding. The grant funds would provide a proportionate stimulant to the economy of recipient communities through added jobs that may otherwise not be available.

Costs/Benefits to Business: There are no costs to businesses. There may be monetary benefits from the proposed rulemaking for nonprofit businesses if the proposed rules encourage a nonprofit business to seek grant funding. Ease in compliance with the rules may encourage nonprofit organizations to seek grant funding. These funds would support additional services for victims and their immediate families.

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

Technical and grammatical changes were made at the suggestion of the Governor's Regulatory Review Council staff.

11. A summary of the principle comments and the agency response to them:

Prior to drafting rule revisions, the Arizona Criminal Justice Commission held three meetings throughout the state to solicit public input from those who may have an interest in the rules. Meetings were held in Flagstaff, Phoenix, and Tucson, to ensure statewide participation. The amendments serve only to bring the amended rules into conformance with the language of the Secretary of State's Office and delete reference to the subrogation agreement that is now in statute. No comments were received.

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

None

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

None

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

No

15. The full text of the rules follows:

TITLE 10. LAW

CHAPTER 4. ARIZONA CRIMINAL JUSTICE COMMISSION

ARTICLE 2. CRIME VICTIM ASSISTANCE PROGRAM

- R10-4-201. ~~Short Title~~ Definitions
- R10-4-202. ~~Purpose~~ Administration of the Fund
- R10-4-203. ~~Definitions~~ Program Requirements
- R10-4-204. ~~Administration of the Fund~~ Services
- R10-4-205. Program Requirements
- R10-4-206. Services
- R10-4-207. Subrogation Agreement

ARTICLE 2. CRIME VICTIM ASSISTANCE PROGRAM

R10-4-201. Short Title

The provisions of these rules shall be known and cited as the “Arizona Crime Victim Assistance Program”.

R10-4-202. Purpose

The Commission, in recognition of the civic and moral duty of victims of crime to cooperate fully with law enforcement and prosecutorial agencies, and in further recognition of the continuing importance of such citizens’ cooperation to state and local law enforcement efforts and the general effectiveness of the criminal justice system to this state, to ensure that victims of crime are treated with dignity, respect, courtesy and sensitivity in all their dealings with the criminal justice system, shall allocate the public resources available to establish, maintain and support qualified programs that assist victims of crime.

R10-4-201 R10-4-203. Definitions

In these rules:

1. “Commission” means the Arizona Criminal Justice Commission, as established by A.R.S. § 41-2404.
2. “Crime” means conduct, whether completed or preparatory, committed in this state, ~~that which if engaged in by an accountable person, would constitute~~ constitute a crime as defined by the laws of this state whether or not the ~~perpetrator of person committing~~ the act is convicted, “Crime”; ~~“crime”~~ is not an act arising out of the ownership, maintenance, or operation use of a motor vehicle, aircraft, or water vehicle except when a person acts intentionally, knowingly, recklessly, or with criminal negligence, to cause physical injury, threat of physical injury, or death.
3. “Financial support from other sources” means that ~~at least not less than~~ at least 1/4 of the ~~applicant’s program~~ program’s budget (including in-kind contributions) for the fiscal year that funds re being applied for is from sources other than the Fund, including in-kind contributions.
4. “Fund” means the Arizona Crime Victim Compensation and Assistance Fund.
5. “Immediate family” means ~~the victim’s spouse spouses, child children, stepchild, parent parents, stepparent, sibling siblings, stepbrother, stepsister, grandparent grandparents, grandchild grandchildren, or guardian and guardians of the victim.~~ the victim’s spouse spouses, child children, stepchild, parent parents, stepparent, sibling siblings, stepbrother, stepsister, grandparent grandparents, grandchild grandchildren, or guardian and guardians of the victim.
6. “In-kind contribution” means the value of something received or provided that does not have a monetary cost associated with it.
- ~~7.~~ 6. “Qualified program” ~~means is a~~ is a victim assistance program, approved by or affiliated with a prosecuting attorney’s office or ~~other~~ law enforcement agency, ~~that which~~ meets the requirements of ~~R10-4-203 R10-4-205~~ R10-4-203 R10-4-205 of these rules.
- ~~8.~~ 7. “Subrogation” means the substitution of the state, and ~~a the~~ qualified program to the extent that the qualified program used financial support from other sources, in the place of the victim to enforce a lawful claim against a third party to recover the cost of the services provided.
- ~~9.~~ 8. “Substantial financial support from other sources” means ~~at least 1/2 of that an amount at least equal to the financial support given to the a qualified program is from sources other than the Fund. by the Commission for the fiscal year that funds are being applied for.~~ at least 1/2 of that an amount at least equal to the financial support given to the a qualified program is from sources other than the Fund. by the Commission for the fiscal year that funds are being applied for.
- ~~10.~~ 9. “Victim” means ~~a any~~ natural person against whom ~~a any~~ crime is perpetrated, ~~and For the purposes of the Crime Victim Assistance Program “victim” includes the immediate family. of the natural person.~~ and For the purposes of the Crime Victim Assistance Program “victim” includes the immediate family. of the natural person.

R10-4-202 R10-4-204. Administration of the Fund

- A. The Commission shall deposit all funds received under pursuant to A.R.S. Title 31, Chapter 3, Article 4, §§ 31-466(A) and 31-411(F) and any other funds ~~federal monies~~ received for victim assistance in the Crime Victim Assistance Fund.
- B. An application for funds designation and funding by the Commission as a qualified program shall be on a form provided furnished by the Commission ~~and .The application shall include be written and show:~~
 1. The amount of funds ~~Fund monies~~ requested;
 2. A detailed description ~~account~~ of how the funds ~~monies~~ will be spent;

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3. Certification that How the program intends to and will comply with R10-4-203 R10-4-205; and
4. Whether the program will intends to charge for its services and if so how much the charges are for each service.
5. If the applicant is a private nonprofit organization, the applicant shall include:
 - a. Evidence of nonprofit status; and
 - b. Approval letter from a prosecuting attorney's office or law enforcement agency.
- C. A qualified program may receive a portion of the Fund based on an annual policy established by the The Commission shall establish a policy that which promotes statewide distribution and the effective and efficient use of the funds monies.
- D. If Should any funds money received from the Commission remain unexpended by in a qualified program at the end of the contract period fiscal year, the funds such money shall be returned to the Commission within 45 days after the end of the contract and redeposited in the Fund for use by the Commission in the next fiscal year.

R10-4-203 R10-4-205. Program Requirements

- A.** A qualified victim assistance program may is qualified to receive funds funding from the Commission if the program following requirements are met:
1. Does The program does not use Commission funds or federal funds to supplant those funds otherwise available to the program for victim assistance;
 2. Is The program is operated by a public agency or private nonprofit organization, or a combination of public agency and private non profit organization thereof, and that provides services to victims;
 3. If it is an existing program, the program has a record of providing effective services to victims of crime and receiving substantial financial support from sources other than the Fund. In determining whether such services have been effective, the Commission shall consider how long the program has been in operation, and whether an analysis of its activities shows that it achieves its intended results in a cost effective manner;
 4. If it is a new program, the program demonstrates that there is a specific need for services to victims, that such need is not currently being met, and that it has financial support from sources other than the Fund.
 - 3.5. Uses The program utilizes volunteers to the extent that such program volunteers contribute to the effectively effective and efficiently efficient provide provision of victim services to victims;
 - 4.6. Promotes The program promotes within the community served coordinated public and private efforts to assist aid victims within the community served;
 - 5.7. Assists The program assists a victims of crime in seeking available victim compensation benefits;
 - 6.8. Complies The program complies with all applicable civil rights laws requirements;
 - 7.9. Submits to the Commission The program files a quarterly financial reports report on a form provided by the Commission with the Commission. Such report shall contain: a financial report detailing Crime Victim Assistance fund monies received and required matching fund expenditures on a form supplied by the Commission; containing detailed expenditures of funds received from the Commission and detailed expenditures of matching funds;
 8. Submits A program shall file an annual report to with the Commission on a form provided by the Commission. The Such report shall contain the following: information concerning expenditures of Crime Victim Assistance funds and all other program funds;
 - a. Number The number of victims served by type of crime during the reporting period; a list of services provided, and the number of times each service was provided;
 - b. Type of services provided;
 - c. Number of times each service was provided;
 - d.b. Ethnic The ethnic background, age, and sex of each victim served;
 - e. Number and type of assistance provided to victims in obtaining victim compensation; and
 - e- Staff information: the number of hours provided by professionals, paraprofessionals, clerical workers, volunteers, and interns; and
 - f.d. A brief narrative assessment of the impact of Commission funds on the program; victim's reactions to services provided, including illustrative case histories;
 11. The program shall provide such other information and assurances related to the purpose of this rule as the Commission may reasonably require to satisfy state and federal requirements.
- B.** An existing program shall:
1. Have substantial financial support from a source other than the Fund; and
 2. Have a history of providing effective services to crime victims. The Commission shall determine if the services are effective based on the following:
 - a. The length of operation; and
 - b. An assessment of the program's services that shows the results are achieved in a cost effective manner.
- C.** A new programs shall:
1. Have financial support from a source other than the Fund, and
 2. Demonstrate a specific need for victim services that is currently not being met.

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R10-4-204 ~~R10-4-206~~. Services

- A.** Funding may be provided to a qualified program for any of the following kinds of services:
1. Crisis intervention services ~~for that meet~~ the urgent emotional or physical needs of a victim, which may include a 24-hour hotline ~~for providing around the clock~~ counseling or referrals for a crime victims.
 2. Emergency services ~~including that~~:
 - a. ~~Temporary~~ Provide temporary shelter for a victim who cannot safely remain in their current lodgings;
 - b. Petty ~~Provide petty~~ cash for ~~meeting~~ immediate needs related to transportation, food, shelter, and other necessities; or
 - c. ~~Temporary~~ Offer such measures as the temporary repairs ~~such as~~ of locks and windows ~~damaged as a result of a crime~~ to prevent the immediate reburglarization of a home or apartment.
 3. Support services, including:
 - a. Follow-up counseling ~~dealing with for resolving practical problems created by~~ the victimization experience;
 - b. ~~Assistance Acting on the victim's behalf~~ dealing with other social services and criminal justice agencies;
 - c. Assistance in obtaining the return of property being kept as evidence, ~~as soon as practicable~~;
 - d. ~~Assistance Acting on the victim's behalf~~ in dealing with the victim's ~~landlord~~ landlords or ~~employer~~ employers; and
 - e. Referral to other sources of assistance as needed.
 4. Court-related services, including:
 - a. Direct services or petty cash payments that help assist victims ~~participate in participating~~ in criminal justice proceedings, including transportation to court, child care, meals, and parking expenses;
 - b. Advocate services including escorting victims to criminal justice-related interviews, ~~or court~~ Court proceedings, and assistance in accessing temporary protection services;
 5. Notification services, including:
 - a. Notification ~~to the victim~~ of significant developments in the investigation ~~or and~~ adjudication of the case, ~~that facilitates victim input and cooperation~~.
 - b. Notification that a court proceeding, ~~for to~~ which the ~~such~~ victim has been subpoenaed, ~~has been canceled or rescheduled will not go on as schedule, in order to save the victim an unnecessary trip to court,~~ and
 - c. Notification of the final disposition of the case.
 6. Training for ~~those persons~~, salaried or volunteer ~~staff of criminal justice, social services, mental health, or related agencies~~, who provide direct services ~~and/or advocate services~~ to victims, ~~which may include personnel employed by criminal justice, social services, mental health, or related agencies~~.
 7. Printing and distribution of brochures ~~or and~~ similar announcements describing the direct services available, ~~and how to obtain program a program's assistance, and volunteer opportunities. similar public notification efforts intended to recruit volunteers.~~
- B.** The qualified program shall not use Crime Victim Assistance funds ~~Fund monies~~ for the following activities:
1. Crime prevention efforts, other than those aimed at providing specific emergency help after a victimization ~~incident~~;
 2. General public relations programs;
 3. Advocacy for a particular legislative or administrative reforms;
 4. General criminal justice agency improvements;
 5. ~~Programs~~ A program in which ~~where~~ victims are not the primary beneficiaries; ~~or~~
 6. Management training and training for persons who do not provide direct services to a victim; ~~or~~
 7. Victim Compensation as provided ~~under pursuant to~~ R10-4-101 et seq.

R10-4-207. Subrogation Agreement

- A.** As a condition to receipt of victim assistance exceeding \$100 in direct financial aid, the victim shall sign a subrogation agreement. The subrogation agreement which provides that the state and the qualified program, to the extent that the qualified program used financial support from other sources, are entitled to the victim's rights to receive or recover benefits for which a service was provided, except when services are provided directly by the qualified program, provided that neither the state nor the qualified program shall be entitled to receive benefits in excess of the benefits provided to the victim by the state or the qualified program. The victim may still sue the offender for any damages or injuries caused by the offender's criminally injurious conduct for which services were not provided. The victim may also join with the Attorney General, or the qualified program, or both as co-plaintiff in any action against the offender.
- B.** A subrogation agreement shall also be required if payment from the Fund is to be made to the provider of the services. The state and qualified program are subrogated to all of the payee's rights to receive or recover benefits or advantages for services which were provided.
- C.** The agreement shall provide that the state shall have first right of subrogation in any matters arising under this Section. All monies that are collected by the state, pursuant to this right of subrogation as provided in this Section, shall be deposited in the Fund.

NOTICE OF FINAL RULEMAKING

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS;
SECURITIES REGULATION

CHAPTER 4. CORPORATION COMMISSION - SECURITIES

PREAMBLE

1. Sections Affected

R14-4-136
R14-4-136

Rulemaking Action

Repeal
New Section

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rule is implementing (specific):

Authorizing statutes: A.R.S. §§ 44-1821 and 44-1845
Implementing statutes: A.R.S. §§ 44-1844 and 44-1845
Constitutional authority: Arizona Constitution Article XV §§ 4, 6, and 13

3. The effective dates of the rule (if different from the date the rule is filed with the Office):

November 22, 2000

4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening: 5 A.A.R. 2180, July 9, 1999
Notice of Proposed Rulemaking: 5 A.A.R. 2910, August 27, 1999

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Cheryl T. Farson, General Counsel
Address: Arizona Corporation Commission
Securities Division
1300 West Washington, Third Floor
Phoenix, Arizona 85007-2996
Telephone: (602) 542-4242
Fax: (602) 594-7470

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

The Arizona Corporation Commission (the "Commission") repeals and replaces Section R14-4-136 ("rule 136") to provide an exemption from registration of securities consistent with federal law.

Rule 136 provides an exemption from registration for offers and sales of securities pursuant to certain compensatory benefit plans and compensation contracts. The exemption covers securities offered or sold under a plan or agreement between a private company and the company's employees, officers, directors, partners, trustees, consultants, and advisors.

The repealed rule was substantially similar to federal rule 701, promulgated pursuant to the Securities Act of 1933. In Release No. 33-7645, the Securities and Exchange Commission amended federal rule 701 effective April 7, 1999. The changes to rule 136 are in response to and conform with the changes in federal rule 701.

The primary changes to federal rule 701 reflected in rule 136 are:

1. The \$5 million aggregate offering price ceiling was removed and the maximum amount of securities that may be sold in a 12-month period is a flexible limit related to the size of the issuer.
2. More specific disclosure is required from issuers that sell more than \$5 million worth of securities in a 12-month period.
3. The definition of consultant and advisor are revised to harmonize with the definition contained in Form S-8, the federal short-form registration statement for the offer and sale of employee benefit plan securities.

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

The proposed rule will not diminish a previous grant of authority of any political subdivision of this state.

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

Pursuant to A.R.S. § 41-1055(D)(3), the Commission is exempt from providing an economic, small business, and consumer impact statement.

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

Three changes have been made to Rule A.A.C. R14-4-136 since the publication of the Notice of Rulemaking filed with the Secretary of State to conform with requirements of the Office of the Attorney General.

1. The following sentence has been added to the end of subsection (A): Copies of rule 701 are available from the Commission and from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.
2. Subsection (B)(1) has been revised to read as follows: Has been convicted of offenses listed in A.R.S. § 13-2301(D)(4) or of a misdemeanor or felony involving racketeering or a transaction in securities or of which fraud is an essential element.
3. Subsection (C) has been revised to read as follows: ~~The Commission may, at its discretion, waive any disqualification caused by subsection (B).~~ A disqualification under subsection (B) ceases to exist if any one of the following occurs.

10. A summary of the principal comments and the agency response to them:

The Commission did not receive written comments to the rule.

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

None

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

17 CFR 230.701(1999) Subsection (A)

13. Whether the rule was previously adopted as an emergency rule and, if so, whether the text was changed between adoption as an emergency rule and the adoption of the final rule.

Not applicable

14. The full text of the rule follows:

**TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS;
SECURITIES REGULATION**

CHAPTER 4. CORPORATION COMMISSION - SECURITIES

ARTICLE 1. IN GENERAL RELATING TO THE ARIZONA SECURITIES ACT

~~R14-4-136. Exempt Transactions—Offers and Sales of Securities Pursuant to Certain Compensatory Benefit Plans and Contracts Relating to Compensation Repealed~~

R14-4-136. Exempt Offerings Pursuant to Compensatory Arrangements

ARTICLE 1. IN GENERAL RELATING TO THE ARIZONA SECURITIES ACT

~~**R14-4-136. Exempt Transactions—Offers and Sales of Securities Pursuant to Certain Compensatory Benefit Plans and Contracts Relating to Compensation Repealed**~~

A. Exemption. Offers and sales of securities that satisfy the provisions of subsection (B) by an issuer that satisfies the requirements of A.R.S. § 44-1902(B)(4) and (5) shall be added to the class of transactions exempt under the provisions of A.R.S. § 44-1844.

B. Conditions to be met:

1. An exemption under this rule applies only to offers and sales of an issuer's securities pursuant to:
 - a. A written compensatory benefit plan and interests in such plan established by that issuer, its parents, or majority-owned subsidiaries for the participation of their employees, directors, general partners, trustees (where the issuer is a business trust), officers, or consultants or advisers provided that bona fide services shall be rendered by consultants or advisers and such services must not in connection with the offer and sale of securities in a capital-raising transaction; or
 - b. A written contract relating to the compensation of the persons specified in subparagraph (B)(1)(a).
2. For purposes of this rule, a compensatory benefit plan means any purchase, savings, option, bonus, stock appreciation, profit sharing, thrift, incentive, pension, or similar plan.
3. The issuer, its parent, or majority-owned subsidiary shall provide each participant in a compensatory benefit plan with a copy of such plan. A copy of a written contract relating to compensation shall be provided to the parties.

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4. a. ~~Aggregate offering price means the sum of all cash, property, notes, cancellation of debt, or other consideration to be received by the issuer for the issuance of the securities. Noneash consideration should be valued in reference to bona fide sales of that consideration made within a reasonable time or, in the absence of sales, on the fair value as determined by generally accepted accounting principles.~~
- b. ~~No adjustment of the aggregate offering price described in this rule shall be made for other offerings made in reliance upon other rules adopted pursuant to the Arizona Securities Act. The aggregate offering price under other rules adopted pursuant to the Arizona Securities Act shall not be reduced by offerings made under this rule.~~
- c. ~~The number of shares permitted to be offered and sold under subparagraph (B)(5)(b) shall not be reduced by the number of shares offered or sold in reliance upon other rules adopted pursuant to the Arizona Securities Act or vice versa.~~
5. ~~The amount of securities offered and sold in reliance on this rule shall not exceed the greater of \$500,000 or the amount determined pursuant to subparagraph (B)(5)(a) or (b); provided, however, that the aggregate offering price of securities of the issuer subject to outstanding offers made in reliance on this rule plus securities of the issuer sold in the preceding 12 months in reliance on this rule shall in no event exceed \$5,000,000.~~
 - a. ~~The aggregate offering price of securities of the issuer subject to outstanding offers in reliance on this rule plus securities of the issuer sold in the preceding 12 months in reliance on this rule shall not exceed 15% of the total assets of the issuer, measured at the end of its last fiscal year; or~~
 - b. ~~The number of securities of the issuer subject to outstanding offers in reliance on this rule plus securities of the issuer sold in the preceding 12 months in reliance on this rule shall not exceed 15% of the outstanding securities of that class. The outstanding securities of a class shall include securities of that class issuable pursuant to the exercise of outstanding options, warrants, rights, or conversion of convertible securities, unless such options, warrants, rights, or convertible securities were issued under this rule. If the securities offered or sold under this rule are convertible securities, the number of securities subject to outstanding offers and sold under this subsection shall be deemed to be the shares of the securities into which such securities may be converted.~~
6. ~~Offers and sales exempt pursuant to this rule are deemed to be a part of a single, discrete offering and are not subject to integration with any other offering or sale whether registered under the Arizona Securities Act or otherwise exempt from the registration requirements of the Arizona Securities Act.~~
- C.** ~~Except as provided in subsection (D), an exemption pursuant to this rule is not available for the securities of an issuer if the issuer or any of its predecessors, affiliates, directors, officers, general partners, or beneficial owners of ten percent or more of any class of its equity securities:~~
 1. ~~Has been convicted of a felony involving racketeering or a transaction in securities or of which fraud is an essential element or offenses listed in A.R.S. § 13-2301(D)(4).~~
 2. ~~Has been convicted within the ten years before any issuance of securities under this rule, or at any time thereafter, of a misdemeanor involving racketeering or a transaction in securities or of which fraud or dishonesty is an essential element.~~
 3. ~~Is subject to an order, judgment, or decree of a court of competent jurisdiction entered within ten years of the date of any issuance of securities under this rule enjoining or restraining him from engaging in or continuing any conduct or practice in connection with the sale or purchase of securities or involving fraud, deceit, racketeering, or consumer protection laws.~~
 4. ~~Has been subject to any state or federal administrative order or judgment in connection with the purchase or sale of securities entered within five years before any issuance of securities under this rule or at any time thereafter.~~
 5. ~~Is subject to an order of the Securities and Exchange Commission denying or revoking registration as a broker or dealer in securities under the Securities Exchange Act of 1934, is subject to an order denying or revoking membership in a national securities association registered under the Securities Exchange Act of 1934, or has been suspended for a period exceeding six months or expelled from membership in a national securities exchange registered under the Securities Exchange Act of 1934.~~
- D.** ~~The Commission may, at its discretion, waive any disqualification caused by subsection (C). A disqualification under subsection (C) ceases to exist if:~~
 1. ~~The basis for the disqualification has been removed by the jurisdiction creating it,~~
 2. ~~The jurisdiction in which the disqualifying event occurred issues a written waiver of the disqualification, or~~
 3. ~~The jurisdiction in which the disqualifying event occurred declines in writing to enforce the disqualification.~~
- E.** ~~In view of the primary purpose of this rule, which is to provide an exemption from the registration requirements of the Arizona Securities Act for securities issued in compensatory circumstances, this rule is not available to any issuer for any transaction which, while in technical compliance with this rule, is part of a plan or scheme to circumvent this purpose, such as to raise capital or to evade the registration provisions of the Arizona Securities Act. In such cases, registration or some other exemption from registration under the Arizona Securities Act is required.~~

R14-4-136. Exempt Offerings Pursuant to Compensatory Arrangements

- A.** Offers and sales of securities that satisfy the requirements and provisions of rule 701 promulgated under the Securities Act of 1933, 17 CFR 230.701 (1999), (“rule 701”) and this Section shall be added to the class of transactions exempt under the provisions of A.R.S. § 44-1844. Rule 701 is incorporated by reference and on file with the Office of the Secretary of State. The incorporated material contains no later editions or amendments. Copies of rule 701 are available from the Commission and from the Superintendent of Document, Government Printing Office, Washington, D.C. 20402.
- B.** Except as provided in subsection (C), an exemption pursuant to this Section is not available for the securities of an issuer if the issuer or any of its predecessors, affiliates, directors, officers, general partners, or beneficial owners of 10% or more of any class of its equity securities:
1. Has been convicted of a misdemeanor or felony involving racketeering or a transaction in securities or of which fraud is an essential element.
 2. Has been convicted within the 10 years before any issuance of securities under this Section, or at any time thereafter, of a misdemeanor involving racketeering or a transaction in securities or of which fraud or dishonesty is an essential element.
 3. Is subject to an order, judgment, or decree of a court of competent jurisdiction entered within 10 years of the date of any issuance of securities under this Section enjoining or restraining it from engaging in or continuing any conduct or practice in connection with the sale or purchase of securities or involving fraud, deceit, racketeering, or consumer protection laws.
 4. Has been subject to any state or federal administrative order or judgment in connection with the purchase or sale of securities entered within 5 years before any issuance of securities under this Section or at any time thereafter.
 5. Is subject to an order of an administrative tribunal, self-regulatory organization, or the Securities and Exchange Commission denying, suspending, or revoking membership or registration as a broker or dealer in securities or as an investment adviser or investment adviser representative for a period of 6 months or more.
- C.** A disqualification under subsection (B) ceases to exist if any one of the following occurs.
1. The basis for the disqualification has been removed by the jurisdiction creating it.
 2. The jurisdiction in which the disqualifying event occurred issues a written waiver of the disqualification.
 3. The jurisdiction in which the disqualifying event occurred declines in writing to enforce the disqualification.
- D.** This Section provides an exemption from the registration requirements of the Arizona Securities Act for securities issued in compensatory circumstances. The Section is not available to any issuer for any transaction that, while in technical compliance with this Section, is part of a plan or scheme to circumvent this purpose.

NOTICE OF FINAL RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION - MOTOR VEHICLE DIVISION

PREAMBLE

- | <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
|------------------------------------|---------------------------------|
| R17-4-707 | Amend |
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
- Authorizing statute: A.R.S. § 28-366
- Implementing statutes: A.R.S. §§ 28-372, 28-2162, and 44-6852
- 3. The effective date of the rules:**
- November 13, 2000
- 4. A list of all previous notices appearing in the Register addressing the final rule:**
- Notice of Rulemaking Docket Opening: 6 A.A.R. 2597, July 7, 2000
- Notice of Proposed Rulemaking: 6 A.A.R. 2924, August 11, 2000
- Notice of Public Information: 6 A.A.R. 3482, September 8, 2000

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5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: George R. Pavia, Department Rules Supervisor
Address: Arizona Department of Transportation
Administrative Rules Unit, Mail Drop 507M
3737 North Seventh Street, Suite 160
Phoenix, Arizona 85014-5017
Telephone: (602) 712-8446
Fax: (602) 241-1624
E-Mail: gpavia@dot.state.az.us

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

The second regular session of Arizona's 44th Legislature enacted a revision to A.R.S. § 28-372 to bring service charges for dishonored payment instruments in line with provisions in A.R.S. § 44-6852. This rulemaking will amend the rule to increase returned check charges to the full amount authorized by the statutory revision, \$25 per dishonored instrument. The service charge amount for a dishonored payment instrument plus actual financial institution charges also coincides with industry standard at the time of rulemaking.

7. A reference to any study that the agency relied on its evaluation or justification for the rule, and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:

None

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

Not applicable

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

The returned check charge under statute and rule prior to amendment has been \$10 per instrument. Current industry standard is \$25 per instrument. Raising the amount to industry standard allows banking industry business and ADOT to equalize cost and benefit in processing returned checks. The agency receives approximately 7,200 bad checks per year with a collection rate of 77%. At \$10 per returned check, the collected service charges have averaged \$72,000. With the service charge increase to \$25 per returned check, the agency anticipates recouped processing revenues of approximately \$138,870. To individual bad check writers, the cost of check service charges would most likely be minimal. Collectively, the processing costs recouped by the banking industry and ADOT are substantial.

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

Upon recommendations by GRRC staff, global non-substantial changes were made in grammar, word choice, and stylistics.

11. A summary of the principal comments and the agency response to them:

The agency received no comments on the proposed rule.

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

None

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

None

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

No

15. The full text of the rules follows:

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION - MOTOR VEHICLE DIVISION

ARTICLE 7. MISCELLANEOUS RULES

R17-4-707. ~~Fee for returned checks~~ Returned Check Service Charge

ARTICLE 7. MISCELLANEOUS RULES

R17-4-707. ~~Fee for returned checks~~ Returned Check Service Charge

A. Any person who issues a check which is subsequently returned to the Department because of insufficient funds, payments stopped or closed accounts shall be assessed a fee of \$10.00 and any statutory penalties for each check.

Service charge assessment.

1. The Department shall assess a service charge for each check, draft, or order returned because of:

- a. Insufficient monies,
- b. Stop payment, or
- c. Closed account.

2. A service charge under this subsection shall include:

- a. A \$25 returned check, draft, or order service charge,
- b. Any applicable financial institution charge prescribed under A.R.S. § 44-6852, and
- c. Any applicable late title and registration penalty prescribed under A.R.S. § 28-2162.

B. For each check returned for the reasons set forth in subsection (A) of this rule, the Department shall require payment by means of certified funds or cash, of both the original amount of the returned check and the fee described in subsection (A) of this rule.

Remedial remittance.

1. The Department shall require service charge payment for a returned check, draft, or order by:

- a. Cash, or
- b. Other certified means.

2. A remittance under this subsection shall include:

- a. The original remittance amount, and
- b. Any charge assessed under subsection (A)(2).

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 4. BANKING DEPARTMENT

PREAMBLE

1. Sections Affected

R20-4-103
R20-4-104
R20-4-105

Rulemaking Action

Amend
Amend
Amend

2. The specific authority for the rulemaking, including both the authorizing statute (general), and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 6-123(2)

Implementing statute: A.R.S. § 6-123(4)

3. The effective date of the rules:

November 13, 2000

4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening: 6 A.A.R. 924, March 3, 2000

Notice of Proposed Rulemaking: 6 A.A.R. 2943, August 11, 2000

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: John P. Hudock
Address: 2910 North 44th Street, Suite 310
Phoenix, Arizona 85018
Telephone: (602) 255-4421, Ext. 167
Fax: (602) 381-1225
E-Mail: jhudock@azbanking.com

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

The rules in Article 1 of the Administrative Code have general application to all activities of the Superintendent and to the interpretation of all Arizona statutes and rules administered by the Superintendent. In particular, the rules listed in paragraph 1 of this notice concern fingerprints (R20-4-103), the use of other regulators' forms (R20-4-104), and procedures for making a claim against a deposit in lieu of a bond (R20-4-105).

The proposed amendments are to fulfill work scheduled in the Department's Five-Year-Rule-Review Report approved by the Governor's Regulatory Review Council in November, 1998. Regarding each of the amended rules, the revisions will remove passive constructions, improve the rules' clarity of expression, make them more readable, and bring them into conformity with modern rule writing standards. No change in the substantive requirements of these rules is intended by these revisions.

7. A reference to any study that the agency relied on in its evaluation of or justification for the rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study, and other supporting material:

The Department did not rely on any study as an evaluator or justification for the rules.

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

Not applicable

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

A. The Banking Department

Income and expenses to this Agency are negligible. The Department will bear normal costs of the rulemaking process, as well as the cost of monitoring compliance. The Department will benefit from the ease of communication that results from a concise, modern set of rules.

B. Other Public Agencies

The state will incur normal publishing costs incident to rulemaking.

C. Private Persons and Businesses Directly Affected

Costs of services will not, as a result of this proceeding, increase to any measurable degree.

D. Consumers

No measurable effect on consumers is expected.

E. Private and Public Employment

There is no measurable effect on private and public employment expected.

F. State Revenues

This rulemaking will not change state revenues.

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

There have been no changes in the proposed rules since publication of the Notice of Proposed Rulemaking.

11. A summary of the principal comments and the agency response to them:

The agency invited, but has not received, comment from either the regulated community or from the general public.

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

Not applicable

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

There is no material incorporated by reference in these final rules.

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

No

15. The full text of the rules follows:

TITLE 20. COMMERCE, BANKING AND INSURANCE

CHAPTER 4. BANKING DEPARTMENT

ARTICLE 1. GENERAL

- R20-4-103. Fingerprints
- R20-4-104. Acceptance of Other Forms
- R20-4-105. Claims Against a Deposit in Place Lieu of Bond

ARTICLE 1. GENERAL

R20-4-103. Fingerprints

~~Whenever fingerprints are requested or required by the Superintendent, they shall be taken, signed and dated by a municipal police department, sheriff's office, or other law enforcement authority recognized by the Superintendent, on fingerprint cards provided by the Superintendent. The Superintendent shall not be responsible for any costs incurred in obtaining or submitting fingerprints.~~

- A. A licensee or applicant shall deliver fingerprints requested or required by the Superintendent on fingerprint cards provided by the Superintendent.
- B. A licensee or applicant shall bear any costs incurred in obtaining or submitting fingerprints.
- C. A licensee or applicant shall arrange to have fingerprints taken, signed, and dated by:
 - 1. A municipal police department.
 - 2. A local sheriff's office, or
 - 3. Another law enforcement authority recognized by the Superintendent.

R20-4-104. Acceptance of Other Forms

~~Notwithstanding any other rule, the Superintendent may accept application and other forms prescribed by federal or state financial institution or enterprise regulators in lieu of the Superintendent's forms, provided, however, that the foregoing shall not limit the Superintendent's power to require additional information concerning any application.~~

If another entity's applications and forms provide all the information required by Arizona law, the Superintendent has the discretion to accept them, even if another provision of this Chapter requires use of a specific banking department form. The Superintendent's exercise of the discretion to accept alternative forms does not limit the Superintendent's power to require additional information necessary to complete an application or other form.

R20-4-105. Claims Against a Deposit in Place Lieu of Bond

- A. As used in this Section rule:
 - 1. "Deposit" means cash or alternatives to cash deposited by a licensee with the Superintendent in place lieu of a bond.
 - 2. "Depositor" means a licensee or an employee of the licensee who makes ~~has made~~ a deposit with the Superintendent ~~and any employee of the licensee.~~
 - 3. "Verified claim" means a claim filed with the Superintendent under pursuant to subsection (C).
 - 4. "Award" means an amount of money granted under subsection (F).
- B. If a person is awarded a valid judgment in any court of competent jurisdiction against a depositor for injury caused by the wrongful act, default, fraud or misrepresentation of said depositor, such person may file a verified claim for recovery against the deposit with the Superintendent. Such verified claim shall include the following:
 - 1. A certified copy of the complaint in the action;
 - 2. A certified copy of the judgment in the action;
 - 3. A statement that execution of the judgment has not been stayed, or an explanation of the terms and basis for any stay;
 - 4. A statement of any amounts recovered on the judgment; and
 - 5. A notarized statement under oath that the claim is true and correct to the best knowledge and belief of the claimant.
- B. A person may file a claim against a deposit by delivering documentation of the claim to the Superintendent. The claim shall be based on a final judgment in favor of the claimant, entered by a court of competent jurisdiction. To support a claim, the judgment shall be:
 - 1. Against a depositor;
 - 2. For injury caused by the depositor's wrongful act, default, fraud, or misrepresentation committed in the course of the depositor's licensed business activity; and
 - 3. Documented by:
 - a. A certified copy of the complaint in the action;
 - b. A certified copy of the judgment in the action;
 - c. A statement that execution of the judgment has not been stayed, or an explanation of the terms and reason for any stay;
 - d. A statement of any amounts recovered on the judgment; and

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- e. A sworn and notarized statement that the claim is true and correct to the best of the claimant's knowledge and belief.
- ~~C. A verified claim shall be considered a request for hearing under R20-4-1208. A verified claim shall be filed within six months following the entry of judgment or the lifting of any stay of execution of judgment, whichever is later.~~
- ~~C. A claimant shall file a claim with the Superintendent, and all required supporting documentation, not more than 6 months after entry of the judgment asserted in the claim. However, if execution of the asserted judgment is stayed during the first 6 months after its entry, the claimant may file a verified claim only during the 6 months after the stay is lifted. The Department shall process a timely-filed verified claim as a request for hearing under R20-4-1208.~~
- ~~D. The depositor shall be notified of, and made a party to, any proceeding commenced under this rule. Such a proceeding shall be deemed to be a contested case and shall be governed by the rules regarding proceedings in R20-4-1202 et seq.~~
- ~~D. The claimant shall notify the depositor of the filing of a verified claim under this Section, and make the depositor a party to all proceedings on the claim. To do so, the claimant shall send the depositor a copy of all documents filed under subsection (B). The claimant shall make this delivery no more than 10 days after the original filing with the Superintendent under subsection (B). The Department considers a proceeding on a verified claim to be a contested case, governed by the provisions of 20 A.A.C. 4, Article 12.~~
- ~~E. A verified claim shall be denied by the Superintendent after a hearing if the Superintendent finds any of the following:-~~
- ~~1. The judgment is not based upon an injury caused by the wrongful act, default, fraud or misrepresentation of the depositor that made the deposit on which the claim is made. If the judgment was awarded by default, stipulation or consent, the judgment shall not be deemed to be based upon such an injury unless it is proven to the Superintendent that the injury was so caused.~~
 - ~~2. Execution of the judgment is stayed for any reason.~~
 - ~~3. The judgment was procured through fraud or collusion.~~
 - ~~4. The judgment has been satisfied from other sources.~~
 - ~~5. The action in which the judgment was rendered was commenced after the expiration of the time period limitations in the applicable statute.~~
- ~~E. The Superintendent shall, after a hearing, deny a verified claim if the hearing produces evidence of any of the following circumstances:~~
- ~~1. The judgment is not for an injury caused by the depositor and described in subsection (B) (2);~~
 - ~~2. The judgment was awarded by default, stipulation, or consent, and no showing is made in the hearing of an injury caused by the depositor and described in subsection (B) (2);~~
 - ~~3. The judgment's execution has been stayed for any reason;~~
 - ~~4. The judgment was procured through fraud or collusion;~~
 - ~~5. The judgment has been satisfied from other sources; or~~
 - ~~6. The action that produced the judgment was barred by the applicable statute of limitations at the time it was commenced.~~
- ~~F. If the Superintendent does not deny the verified claim, the Superintendent shall grant the verified claim in an amount equal to the amount of compensatory damages, exclusive of attorney's fees, awarded against the depositor for injury caused by the wrongful act, default, fraud or misrepresentation of the depositor, less any amount of satisfaction previously paid upon the judgment from other sources.~~
- ~~E. If the Superintendent grants a verified claim, the Superintendent shall do so in the amount of the compensatory damages awarded against the depositor in the judgment, exclusive of:~~
- ~~1. Attorney's fees, and~~
 - ~~2. Amounts previously paid on the judgment.~~
- ~~G. If an injured person commences an action for a judgment for which a verified claim could be made under this rule, the injured person shall notify the Superintendent of the action in writing at the time of the commencement of the action, including a statement of the amount of compensatory damages sought from the depositor, and shall provide further information relating to the action to the Superintendent on request.~~
- ~~G. A person injured by a depositor shall give the Superintendent written notice at the time of filing a civil action if the claims alleged could be made as a verified claim under this Section. The written notice shall include a statement of the amount of compensatory damages sought against the depositor. The injured person shall provide further information about the civil action to the Superintendent upon request.~~
- ~~H. If the Superintendent decides that a verified claim shall be granted and has not received notice of any other actions against the same depositor, the Superintendent shall authorize the State Treasurer, in writing, to release the deposit in an amount equal to the verified claim as granted.~~
- ~~H. If the Superintendent grants a verified claim under subsection (F), the Superintendent shall authorize the State Treasurer, in writing, to release the deposit to the claimant in the amount stated in subsection (F) if the Superintendent has not received notice of another pending civil action under subsection (G).~~

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- ~~I.~~ If the Superintendent decides that a verified claim shall be granted and has received notice of any other action against the same depositor, the Superintendent shall determine whether the deposit is sufficient to satisfy the claim as granted plus the compensatory damages sought in all actions against the same depositor of which the Superintendent has received notice. If the deposit is sufficient, the Superintendent shall authorize its release as set forth in subsection (H) above. If the deposit is insufficient, the Superintendent shall determine the pro rata portion of the deposit payable on the verified claim in the ratio that the verified claim as granted bears to the aggregate of the verified claim as granted plus the compensatory damages sought in all actions against the same depositor of which the Superintendent has received notice. The Superintendent shall then authorize the State Treasurer to release the deposit in an amount equal to the pro rata portion of the deposit payable on the verified claim.
- I. If given notice under subsection (G), the Superintendent shall determine whether the deposit is sufficient to satisfy all claims under subsection (F). The Superintendent shall determine award amounts for each claim of which the Superintendent has notice, and authorize payment, as follows:
1. If the deposit is sufficient to satisfy all claims under subsection (F), the Superintendent shall authorize its release as described in subsection (H).
 2. If the deposit is not sufficient to satisfy all claims under subsection (F), the Superintendent shall calculate the award on each claim as follows:
 - a. Each granted claim shall receive a *pro rata* share of the total deposit.
 - b. Each *pro rata* share shall be a dollar amount calculated by multiplying the total deposit by a fraction.
 - i. The numerator of the fraction is the amount of the Superintendent's award for the verified claim.
 - ii. The denominator of the fraction is the sum of the amount of the Superintendent's award for the verified claim plus the total compensatory damages sought in all other civil actions against the same depositor disclosed to the Superintendent under subsection (G).
 - c. The Superintendent shall authorize the State Treasurer to release the *pro rata* portion of the deposit calculated for each verified claim.
- ~~J.~~ Prior to the release of a deposit or any portion thereof to a depositor or former licensee under A.R.S. § 6-903(J), the Superintendent shall first determine whether there are any claims granted against said deposit under this rule which have not been fully satisfied due to an apportionment under subsection (I). If there are any such claims, the unpaid portion thereof shall be satisfied from the deposit of the depositor or former licensee. If insufficient funds remain to satisfy all claims granted under this rule, the remaining deposit shall be released to each claimant in the ratio which his verified claim as granted bears to the aggregate of all claims as granted.
- J. A depositor or former licensee may request return of its deposit if it substitutes a bond for the deposit, or if its license is surrendered, revoked, or expired, and if all statutory conditions for release of the deposit have been satisfied. The Superintendent shall not release any part of a deposit to a depositor or former licensee until the Superintendent determines whether there are any awards on verified claims unsatisfied because of an apportionment under subsection (I). The Superintendent shall use the deposit amount to pay any unsatisfied portion of those awards. If the deposit amount is not sufficient to pay in full all unsatisfied awards, the Superintendent shall pay the remaining amount of the deposit to claimants in the ratio their awards bear to the total of all awards granted against the deposit.
- ~~K.~~ If a depositor is placed into receivership, and the court supervising the receivership orders the release of the deposit to the receiver for distribution in the course of the receivership to persons injured by the wrongful act, default, fraud or misrepresentation of said depositor, the receiver shall deliver a copy of such order to the Superintendent. If the receiver is any person other than the Superintendent or other officer or agency of the state of Arizona, such copy of the order to release the deposit shall be certified. Upon receipt of such copy of an order to release the deposit, the Superintendent shall authorize the State Treasurer, in writing, to release the deposit to the receiver. After the deposit is released to the receiver, it shall be distributed according to the receivership, and not in accordance with these rules.
- K. The court supervising a licensee in receivership may order the release of a deposit to persons injured by conduct described in subsection (B). In that event, the receiver shall deliver a certified copy of the court's order to the Superintendent. The copy may be uncertified if the receiver is the Superintendent or any other officer or agency of the state of Arizona. The Superintendent shall then authorize the State Treasurer, in writing, to release the deposit to the receiver. The receiver shall distribute the deposit as ordered by the receivership court, rather than under this Section.