

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

NOTICE OF PROPOSED RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 1. DEPARTMENT OF TRANSPORTATION ADMINISTRATION

Editor's Note: The following Notice of Proposed Rulemaking was reviewed per Laws 2009, 3rd Special Session, Ch. 7, § 28. (See the text of § 28 on page 537.) The Governor's Office authorized the notice to proceed through the rulemaking process on February 9, 2010.

[R10-32]

PREAMBLE

- 1. Sections Affected**

R17-1-201	<u>Rulemaking Action</u>
R17-1-203	Amend
	Amend
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statutes: A.R.S. §§ 28-366 and 28-372
Implementing statute: A.R.S. § 44-6852
- 3. A list of all previous notices appearing in the Register addressing the proposed rules:**

Notice of Rulemaking Docket Opening: 16 A.A.R. 446, March 19, 2010
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name:	Dora L. Vasquez
Address:	Administrative Rule Unit Department of Transportation, Motor Vehicle Division 1801 W. Jefferson St., Mail Drop 530M Phoenix, AZ 85007
Telephone:	(602) 712-8159
Fax:	(602) 712-3373
E-mail:	dvasquez@azdot.gov

Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters at www.azdot.gov/MVD/MVDrules.
- 5. An explanation of the rules, including the agency's reasons for initiating the rules:**

The Arizona Department of Transportation, Motor Vehicle Division, engages in this rulemaking to prescribe the service fee for each check, draft, order, or electronic payment dishonored because of insufficient monies, payments stopped, or closed accounts, as prescribed under A.R.S. § 28-372.
- 6. A reference to any study relevant to the rules that the agency reviewed and either proposes to rely on or not to rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

None

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7. **A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable
8. **The preliminary summary of the economic, small business, and consumer impact:**
The Division anticipates, as a result of this rulemaking, a minimal economic impact to persons assessed a service fee for a returned check or dishonored electronic payment. Costs include a service fee for each returned check or dishonored electronic payment as prescribed under A.R.S. §§ 28-372 and 44-6852.
9. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**
See item 4.
10. **The time, place, and nature of the proceedings for the making, amendment, or repeal of the rules, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:**
No oral proceeding is scheduled. Under A.R.S. § 41-1023(C), an oral proceeding will be scheduled if a written request is submitted to the person identified in item 4 within 30 days after publication of this notice.
11. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**
Not applicable
12. **Incorporations by reference and their location in the rules:**
Not applicable
13. **The full text of the rules follows:**

TITLE 17. TRANSPORTATION

CHAPTER 1. DEPARTMENT OF TRANSPORTATION
ADMINISTRATION

ARTICLE 2. FEES

Section

R17-1-201. Definitions

R17-1-203. Returned Check ~~Service Charge~~; Dishonored Electronic Payment; Fees; Penalty

ARTICLE 2. FEES

R17-1-201. Definitions

~~A. Definitions. In addition to the definitions prescribed under A.R.S. § 28-440, the following definitions apply to R17-1-202 made by exempt rulemaking as prescribed under A.R.S. § 41-1005(A)(5)~~ In addition to the definitions prescribed under A.R.S. §§ 28-440 and 44-6851, the following terms apply to this Article:

“Automated clearing house” has the same meaning as provided under R17-1-401.

“Batch” means a query-command method that initiates simultaneous production of an electronic file or series of requests that may have delayed results.

“Certified record” means a copy of a document designated as a true copy by the agency officer entrusted with custody of the original to be used for purposes prescribed under A.R.S. § 28-442.

“Electronic payment” means money which is exchanged electronically, including credit card payments, credit transfer, electronic checks, direct debit, and person to person payments.

“Interactive” means an electronic query-command method individually initiated by a person that produces immediate results.

“Reasonable costs” means 10 cents for each page of standard reproduction of documents and the actual costs for reproduction of documents which require special processing plus the reasonable clerical costs incurred in locating and making the documents available billed at the rate of 10 dollars per hour per person.

“Special MVR” means a motor vehicle record that is comprised of the least possible subset of information necessary to respond to the type of request received.

“Stale-dated” means a check presented at the paying bank a certain period of time after its payment date, usually six months. A stale-dated check is not an invalid check, but it may be deemed by the paying bank as an irregular bill of exchange and returned unpaid.

“Support document” means any customer record maintained by the agency in a file storage format as follows:

- Electronic;
- Hardcopy; or
- Microfilm.

~~B. The following definitions apply to Sections in this Article made by regular rulemaking: There are no definitions in this subsection.~~

R17-1-203. Returned Check ~~Service Charge~~; Dishonored Electronic Payment; Fees; Penalty

A. Service ~~charge~~ fee assessment.

1. The Department shall assess a service ~~charge~~ fee as specified under A.R.S. § 28-372 for each returned check, draft, or order ~~returned because of~~ and for each dishonored electronic payment that is the result of:
 - a. Insufficient monies, such as:
 - i. Check ~~amount~~ amounts less than minimum,
 - ii. Check ~~Checks~~ drawn against uncollected funds,
 - iii. Credit ~~limit exceeded~~; Credit card charge backs,
 - iv. Post-dated; Credit limits exceeded.
 - v. Stale-dated, or E-check or other electronic payment failures.
 - vi. Uncollected funds; Inaccurate automated clearing house transactions,
 - vii. Post-dated checks,
 - viii. Stale-dated checks, or
 - ix. Uncollected funds;
 - b. Stop ~~payment~~ Stopped payments, such as refer to maker; or
 - c. Closed ~~account~~ accounts, such as unable to locate account.
2. A service charge under this subsection includes:
 - a. A \$25 returned check, draft, or order service charge, and
 - b. Any applicable financial institution charge prescribed under A.R.S. § 44-6852.
2. The service fee for each returned check and each dishonored electronic payment is established as specified under A.R.S. § 44-6852.

B. Remedial remittance: In addition to the service fee charged by the Department under subsection (A), the Department shall collect the following:

1. The Department shall require that payment of a service charge for a returned check, draft, or order be made by:
 - a. Cash, or
 - b. Other certified means.
2. A remittance under this subsection includes:
 - a. The original remittance amount, and
 - b. Any charge assessed under subsection (A)(2).
1. Any applicable financial institution charge as prescribed under A.R.S. § 44-6852k, and
2. Collection costs prescribed under A.R.S. § 28-372.

C. Acceptable Payment Methods:

1. The Department shall require that payment for each returned check, draft, or order be made by:
 - a. Cash,
 - b. Credit card, or
 - c. Other certified means.
2. The Department shall require that payment for each dishonored electronic payment be made by:
 - a. Cash, or
 - b. Other certified means.
3. Payment under this subsection includes:
 - a. The original payment amount, and
 - b. Any charge assessed under subsections (A) and (B).

~~C.D.~~ **Penalty.**

1. A person who does not make ~~remittance~~ payment under subsection ~~(B)~~ (C) on or before the vehicle’s registration expiration date is subject to a late title and registration penalty as prescribed under A.R.S. § 28-2162.
2. A person who does not make ~~remittance~~ payment under subsection ~~(B)~~ (C) within 45 days after the date of the Department’s written notice of a returned check, draft, ~~or~~ or dishonored electronic payment is subject to the following actions on the person’s license, permit, or registration that was insufficiently funded:
 - a. For a driver license or permit, as prescribed under A.R.S. § 28-3301(A);
 - b. For a nonoperating identification license, as prescribed under A.R.S. § 28-3301(F); or
 - c. For a vehicle registration, as prescribed under A.R.S. § 28-2161(A)(2).