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SESSION LAWS

STATE OF ARIZONA

THIRTY-FIRST LEGISLATURE

FIRST REGULAR SESSION

WESLEY BOLIN

Secretary of State

1973

STATE OF ARIZONA

1973–1974

UNITED STATES ELECTIVE OFFICIALS

Office	Name and Party	Address
SENATORS:		
	Paul Fannin (R)	Phoenix
	Barry Goldwater (R)	Scottsdale
REPRESENTATIVES:		
	Dist. 1–John J. Rhodes (R)	Mesa
	Dist. 2–Morris K. Udall (D)	Tucson
	Dist. 3–Sam Steiger (R)	Prescott
	Dist. 4–John B. Conlan (R)	Phoenix

STATE ELECTIVE OFFICIALS

GOVERNOR–Jack Williams (R)	Capitol Building
SECRETARY OF STATE–Wesley Bolin (D)	Capitol Building
ATTORNEY GENERAL–Gary K. Nelson (R)	Capitol Building
STATE TREASURER–Ernest Garfield (R)	Capitol Building
SUPT. OF PUBLIC INSTRUCTION– Weldon P. Shofstall (R)	Capitol Building
MINE INSPECTOR–Verne C. McCutchan (R)	Capitol Building
TAX COMMISSION:	
L. Waldo DeWitt (R)	House Wing
John M. Hazelett (R)	House Wing
Bob Kennedy (D)	House Wing
CORPORATION COMMISSION:	
Charles H. Garland (R)	Capitol Annex
Russell Williams (R)	Capitol Annex
Al Faron (R)	Capitol Annex

SUPREME COURT	Name	Address
Chief Justice	Jack D. H. Hays (R)	Capitol Building
Vice Chief Justice	James Duke Cameron (R)	Capitol Building
Justice	Fred C. Struckmeyer, Jr. (D)	Capitol Building
Justice	Lorna E. Lockwood (D)	Capitol Building
Justice	William A. Holohan (R)	Capitol Building

COURT OF APPEALS

DIVISION 1. Dept. A
Presiding Judge—Francis J. Donofrio (D) ..... Capitol Building
Acting Presiding Judge—Jack L. Ogg (D) ..... Capitol Building
Judge—Henry S. Stevens (R) ..... Capitol Building

DIVISION 1. Dept. B
Presiding Judge—William E. Eubank (R) ..... Capitol Building
Acting Presiding Judge—Levi Ray Haire (R) ..... Capitol Building
Judge—Eino M. Jacobson (R) ..... Capitol Building

DIVISION 2
Chief Judge—James D. Hathaway (D) ..... State Office Bldg., Tucson
Judge—Herbert F. Krucker (R) ..... State Office Bldg., Tucson
Judge—Lawrence Howard (R) ..... State Office Bldg., Tucson

ARIZONA COURTS
1973
SUPREME COURT OF ARIZONA

SUPREME COURT NAME
Jack D. H. Hays, Chief Justice ..... State House, Phoenix
James Duke Cameron, Vice Chief Justice ..... State House, Phoenix
Fred C. Struckmeyer, Jr., Justice ..... State House, Phoenix
Lorna E. Lockwood, Justice ..... State House, Phoenix
William A. Holohan, Justice ..... State House, Phoenix
Marvin Linner, Administrative Director (Indefinite) . State House, Phoenix
Clifford H. Ward, Clerk (Indefinite) ..... State House, Phoenix

COURT OF APPEALS

Division 1
Eino M. Jacobson, Chief Judge
Henry S. Stevens, Vice Chief Judge

Department A
Francis J. Donofrio, Presiding Judge ..... State House, Phoenix
Jack L. Ogg, Acting Presiding Judge ..... State House, Phoenix
Henry S. Stevens, Judge ..... State House, Phoenix

Department B
William E. Eubank, Presiding Judge ..... State House, Phoenix
Levi Ray Haire, Acting Presiding Judge ..... State House, Phoenix
Eino M. Jacobson, Judge (Apptd.) ..... State House, Phoenix
Mrs. Classie Gantt, Clerk (Indefinite) ..... State House, Phoenix

Division 2

James D. Hathaway, Chief Judge ..... State Office Bldg., Tucson
Herbert F. Krucker, Judge ..... State Office Bldg., Tucson
Lawrence Howard, Judge ..... State Office Bldg., Tucson
Mrs. Elizabeth Urwin Fritz, Clerk (Indefinite)State Office Bldg., Tucson

SUPERIOR COURT OF ARIZONA

Judge	County–Division	County Seat
D. L. Greer	Apache	St. Johns
Anthony T. Deddens, Presiding	Cochise, Div. 1	Bisbee
Lloyd C. Helm	Cochise, Div. 2	Bisbee
Laurance T. Wren, Presiding	Coconino, Div. 1	Flagstaff
William J. Meyers	Coconino, Div. 2	Flagstaff
Robert E. McGhee	Gila	Globe
Ruskin Lines	Graham	Safford
Lloyd Fernandez	Greenlee	Clifton
Warren L. McCarthy	Maricopa, Div. 1	Phoenix
Fred J. Hyder	Maricopa, Div. 2	Phoenix
Yale McFate	Maricopa, Div. 3	Phoenix
Laurens L. Henderson	Maricopa, Div. 4	Phoenix
Robert L. Myers	Maricopa, Div. 5	Phoenix
Kenneth C. Chatwin	Maricopa, Div. 6	Phoenix
Irwin Cantor	Maricopa, Div. 7	Phoenix
Edwin Thurston	Maricopa, Div. 8	Phoenix
Howard Thompson	Maricopa, Div. 9	Phoenix
Charles L. Hardy	Maricopa, Div. 10	Phoenix
Howard V. Peterson	Maricopa, Div. 11	Phoenix
Morris Rozar	Maricopa, Div. 12	Phoenix
Jerry H. Glenn	Maricopa, Div. 13	Phoenix
Roger G. Strand	Maricopa, Div. 14	Phoenix
Donald F. Froeb,Presiding	Maricopa, Div. 15	Phoenix
Paul W. LaPrade	Maricopa, Div. 16	Phoenix
Ed W. Hughes	Maricopa, Div. 17	Phoenix
Harold D. Martin	Maricopa, Div. 18	Phoenix
Marilyn A. Riddel	Maricopa, Div. 19	Phoenix
Frederic W. Heineman	Maricopa, Div. 20	Phoenix
Robert C. Broomfield	Maricopa, Div. 21	Phoenix
Philip W. Marquardt	Maricopa, Div. 22	Phoenix
Gerald J. Strick	Maricopa, Div. 23	Phoenix
Rufus C. Coulter, Jr.	Maricopa, Div. 24	Phoenix
Charles D. Roush	Maricopa, Div. 25	Phoenix
Lawrence H. Doyle, Jr.	Maricopa, Div. 26	Phoenix
C. Kimball Rose	Maricopa, Div. 27	Phoenix
David M. Lurie	Maricopa, Div. 28 (Appointed)	Phoenix
Williby E. Case, Jr.	Maricopa, Div. 29 (Appointed)	Phoenix
Frank X. Gordon, Jr.	Mohave	Kingman
Melvyn T. Shelley	Navajo	Holbrook
John P. Collins	Pima, Div. 1	Tucson

Lee Garrett–Pima, Div. 2 ..... Tucson
Robert O. Roylston–Pima, Div. 3 ..... Tucson
Lawrence W. Galligan–Pima, Div. 4 ..... Tucson
Mary Anne Richey–Pima, Div. 5 ..... Tucson
Alice Truman–Pima, Div. 6 ..... Tucson
Richard N. Roylston–Pima, Div. 7 ..... Tucson
Jack G. Marks–Pima, Div. 8 ..... Tucson
Ben C. Birdsall, Presiding–Pima, Div. 9 ..... Tucson
Norman S. Fenton–Pima, Div. 10 ..... Tucson
Joe Jacobson–Pima, Div. 11 ..... Tucson
J. Richard Hannah–Pima, Div. 12 ..... Tucson
E. D. McBryde–Pinal, Div. 1 ..... Florence
T. J. Mahoney, Presiding–Pinal, Div. 2 ..... Florence
Gordon Farley–Santa Cruz ..... Nogales
Paul G. Rosenblatt, Presiding–Yavapai, Div. 1 (Appointed) ... Prescott
James Hancock–Yavapai, Div. 2 (Appointed) ..... Prescott
William W. Nabours, Presiding–Yuma, Div. 1 ..... Yuma
John A. McGuire–Yuma, Div. 2 ..... Yuma

CLERKS OF THE SUPERIOR COURT

Clerk	County	Location
John T. Crosby	Apache	Courthouse, St. Johns
W. A. Nowlin	Cochise	Courthouse, Bisbee
Billie Yost (Mrs.)	Coconino	Courthouse, Flagstaff
Arnold M. Ambos	Gila	Courthouse, Globe
Lena H. Garcia (Mrs.)	Graham	Courthouse, Safford
Harriet Sweeting (Miss)	Greenlee	Courthouse, Clifton
W. Don Palmer	Maricopa	Courthouse, Phoenix
Mary Jane Wienke (Mrs.)	Mohave	Courthouse, Kingman
Ed J. Ferguson	Navajo	Courthouse, Holbrook
Frances C. Gibbons (Mrs.)	Pima	Courthouse, Tucson
Alma Jennings Haught (Mrs.)	Pinal	Courthouse, Florence
Hazel Wise (Mrs.)	Santa Cruz	Courthouse, Nogales
Barbara Boyle (Mrs.)	Yavapai	Courthouse, Prescott
C. C. Newman	Yuma	Courthouse, Yuma

ELECTIVE COUNTY OFFICIALS FOR ARIZONA

1973 – 1976

COUNTY	COUNTY SEAT	ASSESSOR	ATTORNEY
Apache	St. Johns	Ben B. (Son) Slade (D)	J. Kendall Hansen (D)
Cochise	Bisbee	Sam R. Clark (D)	Richard J. Riley (D)
Coconino	Flagstaff	R. F. "Dick" Hillman (D)	J. Michael Flournoy (R)
Gila	Globe	Miriam Vuksanovich (D)	Edward L. Dawson (D)

COUNTY	COUNTY SEAT	ASSESSOR	ATTORNEY
Graham	Safford	Gordon Hoopes (D)	Ronald J. Greenhalgh (D)
Greenlee	Clifton	Jerald "Butch" Randall (D)	William W. Coffeen (D)
Maricopa	Phoenix	Kenneth R. Kunes (R)	Moise Berger (R)
Mohave	Kingman	Robert Hess (D)	Leonard C. "Bill" Langford (R)
Navajo	Holbrook	Cecil R. Tuley (D)	John F. Taylor (D)
Pima	Tucson	A. E. (Jack) Bade (D)	Dennis DeConcini (D)
Pinal	Florence	C. E. "Ed" McKee (D)	Robert R. Bean (D)
Santa Cruz	Nogales	Robert R. (Bob) Hathaway (D)	E. Leigh Larson (D)
Yavapai	Prescott	William D. (Bill) Lyman (R)	G. Eugene Neil (R)
Yuma	Yuma	Otis Shipp (D)	Wm. Michael Smith (D)

COUNTY	COUNTY SEAT	RECORDER	SCHOOL SUPERINTENDENT
Apache	St. Johns	Virgie Heap (D)	Avard B. Hall (D)
Cochise	Bisbee	Christine E. Macnab (D)	Patricia (Pat) Goren (D)
Coconino	Flagstaff	Pat Fabritz (D)	Betty Jo Anderson (D)
Gila	Globe	Doris Parkin (D)	Nolan Blake (D)
Graham	Safford	H. Lyle Grant (D)	Farrell Dan Hinton (D)
Greenlee	Clifton	Elizabeth "Liz" Tea (D)	Thomas Wright (D)
Maricopa	Phoenix	Paul N. Marston (R)	Richard L. Harris (R)
Mohave	Kingman	Joan McCall (R)	Gary Pope (R)
Navajo	Holbrook	Jay H. Turley (D)	Margaret Porter (D)
Pima	Tucson	Ida Mae Smyth (D)	Anita Barker Lohr (R)
Pinal	Florence	Wm. S. "Bill" Truman (D)	Mary C. O'Brien (D)
Santa Cruz	Nogales	G. (Lupita) Espinosa Moreno (D)	Acencion (Chon) Canchola (D)
Yavapai	Prescott	Patsy C. Jenney (R)	Warner B. Dixon (D)
Yuma	Yuma	Cara N. Betts (D)	Leon H. Maehling (D)

COUNTY	COUNTY SEAT	TREASURER	SHERIFF
Apache	St. Johns	LaVere O. Connolly (D)	C. Arthur Lee (D)
Cochise	Bisbee	Louise E. Peters (D)	T. J. "Jim" Willson (D)
Coconino	Flagstaff	Rose Stacy (D)	Joe Richards (D)
Gila	Globe	William V. Cunningham (D)	Lyman Peace (D)
Graham	Safford	Evelyn Hughes (D)	Harold O. Stevens (D)
Greenlee	Clifton	Kittie Potter (D)	Forrest Wilkerson (D)
Maricopa	Phoenix	Glenn O. Stapley (R)	Paul E. Blubaum (R)
Mohave	Kingman	Grace Marlow (R)	Walter P. (Phil) Jordan (R)
Navajo	Holbrook	Raymond H. Randall (D)	Lyle E. Jenkins (D)

COUNTY	COUNTY SEAT	TREASURER	SHERIFF
Pima	Tucson	James Lee "Jim" Kirk (R)	William Coy Cox (D)
Pinal	Florence	Jim L. Turnbull (D)	Coy K. DeArman (D)
Santa Cruz	Nogales	Oscar H. Islas (D)	Esequiel (Zeke) Bejarano (D)
Yavapai	Prescott	Paul J. Wedepohl (D)	G. A. (Al) Ayars (R)
Yuma	Yuma	Billy F. Walker (D)	Travis (Bud) Yancey (D)

COUNTY BOARDS OF SUPERVISORS OF ARIZONA

1973 – 1976

APACHE COUNTY–St. Johns

Dist. No. 1	Larry Stradling	(D)	St. Johns
Dist. No. 2	Arthur N. Lee	(D)	Springerville
*Dist. No. 3	James A. McDonald	(D)	Chambers

Clerk: Margaret W. Lee

COCHISE COUNTY–Bisbee

Dist. No. 1	Sam S. Balich	(D)	Warren
Dist. No. 2	John F. Glass	(R)	Douglas
Dist. No. 3	V. L. (Tommy) Thompson	(D)	Benson

Clerk: Mrs. Madeline Corrin

COCONINO COUNTY–Flagstaff

Dist. No. 1	Dr. Peter J. Lindemann	(D)	Flagstaff
Dist. No. 2	Tio A. Tachias	(D)	Flagstaff
Dist. No. 3	E. H. (Eddie) Weigel	(D)	Williams

Clerk: Jack Smith

GILA COUNTY–Globe

Dist. No. 1	Lynn Sheppard	(D)	Globe
Dist. No. 2	Adolph "Fito" Trujillo	(D)	Miami
Dist. No. 3	James H. Dawdy	(D)	Miami

Clerk: Mrs. Judy Rasmussen

GRAHAM COUNTY–Safford

Dist. No. 1	Dr. Hugh Hamman	(D)	Safford
Dist. No. 2	Delbert Householder	(D)	Thatcher
Dist. No. 3	Dale H. Olsen	(D)	Safford

Clerk: Beverly Davis

GREENLEE COUNTY–Clifton

Dist. No. 1	Angel R. Cueto	(D)	Clifton

*Pending Court Decision

Dist. No. 2	Jackie D. Cooper	(D)	Morenci
Dist. No. 3	Leslie A. Billingsley	(D)	Duncan

Clerk: Nelda Ford

MARICOPA COUNTY–Phoenix

Dist. No. 1	Henry H. Haws	(R)	Tempe
Dist. No. 2	Eldon Rudd	(R)	Scottsdale
Dist. No. 3	Bob Corbin	(R)	Phoenix
Dist. No. 4	Bob Stark	(R)	Litchfield Park
Dist. No. 5	Joe Eddie Lopez	(D)	Phoenix

Clerk: Rhea Woodall

MOHAVE COUNTY–Kingman

Dist. No. 1	Donald Aldridge	(R)	Lake Havasu City
Dist. No. 2	James Howell	(R)	Bullhead City
Dist. No. 3	Wayne B. Kitchner	(R)	Kingman

Clerk: Gail Kesler

NAVAJO COUNTY–Holbrook

Dist. No. 1	Wm. M. (Bill) Smith	(D)	Holbrook
Dist. No. 2	M. J. (Mike) O'Haco	(D)	Winslow
Dist. No. 3	Roy Palmer	(R)	Taylor

Clerk: Dorothy Leavitt

PIMA COUNTY–Tucson

Dist. No. 1	Ron Asta	(D)	Tucson
Dist. No. 2	James J. Murphy, Jr.	(D)	Tucson
Dist. No. 3	E. S. "Bud" Walker	(D)	Ajo
Dist. No. 4	Conrad F. Joyner	(R)	Tucson
Dist. No. 5	Joe Castillo	(D)	Tucson

Clerk: Elsa Hanna

PINAL COUNTY–Florence

Dist. No. 1	Jay Bateman	(D)	Oracle
Dist. No. 2	A. D. (Tude) Herron	(D)	Superior
Dist. No. 3	James Kortsen, Jr.	(D)	Coolidge

Clerk: Mercy W. Tucker

SANTA CRUZ COUNTY–Nogales

Dist. No. 1	Marcelino Varona	(D)	Nogales
Dist. No. 2	William G. Baffert	(D)	Nogales
Dist. No. 3	K. W. (Bill) Holbrook	(R)	Patagonia

Clerk: Lillian Rainery

YAVAPAI COUNTY–Prescott

Dist. No. 1	R. Bruce Evans	(R)	Prescott
Dist. No. 2	Marvin E. Rohrer	(R)	Prescott

Dist. No. 3	C. (Brad) Stewart	(R)	Camp Verde
	Clerk: Mrs. Lucile Johnson		

YUMA COUNTY–Yuma

Dist. No. 1	Ramon (Ray) Avila	(D)	Yuma
Dist. No. 2	Glen H. Strohm	(D)	Yuma
Dist. No. 3	Marion Beaver	(D)	Parker
	Clerk: Bob Odom		

JUSTICES OF PEACE AND CONSTABLES OF ARIZONA

APACHE COUNTY

DISTRICT	JUSTICE OF PEACE	CONSTABLE
Ft. Defiance, St. Michaels, Ganado	Lynn Milton (R) Window Rock, Arizona 86515	
McNary	Lloyd Johnson (D) McNary, Arizona 85930	
Round Valley, Springerville, Eagar, Greer, Alpine, Nutrioso	Leo Gibbons (D) Springerville, Arizona 85938	G. L. Maxwell (D) Springerville, Arizona 85938
St. Johns & Concho	Herman Mineer (D) St. Johns, Arizona 85936	Libor Garcia (D) Concho, Arizona 85936
Puerco, Wide Ruins, Sanders, Chambers, Navajo	Mrs. Lavine Porter (D) Sanders, Arizona 86512	Norman E. Crosby (D) Sanders, Arizona 86512
Houck, Lupton	D. J. McConnell (D) Lupton, Arizona 86508	
Teec Nos Pos, Chinle, Dennehotso, Lukachukai	Mrs. Lucy Hilgendorf (D) Chinle, Arizona 86503	

COCHISE COUNTY

DISTRICT	JUSTICE OF PEACE	CONSTABLE
Precinct No. 1 Bisbee & Tombstone	John S. Sharpe (D) Box 3157 Lowell, Arizona 85603	Bob Lee (D) Miramonte Acres Bisbee, Arizona 85603
Precinct No. 2 Douglas	George W. Martin (D) 412 10th St. Douglas, Arizona 85607	Calvin Gray (D) Box 11 Douglas, Arizona 85607

Precinct No. 3 Benson, St. David, Pomerene	Jimmy V. Judd (D) Box 333 Benson, Arizona 85602	Bert Goodman (D) Box 64 St. David, Arizona 85630
Precinct No. 4 Willcox	Howard F. Atwood (D) Willcox, Arizona 85643	
Precinct No. 5 Sierra Vista, Huachuca City	John Parker (D) Box 237 Sierra Vista, Arizona 85635	
Precinct No. 6 Bowie & San Simon	Wallace E. Lundquist (D) Box 317 Bowie, Arizona 85605	Clifton Ames (D) Box 276 Bowie, Arizona 85605

COCONINO COUNTY

DISTRICT	JUSTICE OF PEACE	CONSTABLE
Flagstaff Precinct—All Flagstaff Precincts, Cameron, Happy Jack, Leupp, Bellemont, Tuba City, and Canyon Diablo	Joseph C. Garcia (D) c/o Courthouse Flagstaff, Arizona 86001	Paul Black (D) c/o Courthouse Flagstaff, Arizona 86001
Williams Precinct—All Williams Precincts and Parks & Supai	Thomas E. Way (R) 113 South 1st Williams, Arizona 86046	
Sedona Precinct	Harold H. Longfellow (R) Box 161 Sedona, Arizona 86336	
Grand Canyon Precinct	Morrell F. Roberts (R) Grand Canyon, Ariz. 86023	Buford B. Belgard (R) Grand Canyon, Ariz. 86023
Fredonia Precinct Marble Canyon	Erma Sue Jensen (D) Box 72 Fredonia, Arizona 86022	
Page Precinct	Elsie M. Ferrando (D) Box 667 Page, Arizona 86040	

GILA COUNTY

DISTRICT	JUSTICE OF PEACE	CONSTABLE
Globe Precinct Roosevelt, Young	*Don Haines (D) Box 370 Globe, Arizona 85501	Mrs. Mary Trojanovich (D) Box 1309 Globe, Arizona 85501

*Appointed

Hayden Precinct Winkelman & Christmas	Mrs. Olive Parker (D) Box 305 Winkelman, Arizona 85292	Raul C. Trevizo (D) Box 964 Hayden, Arizona 85235
Miami Precinct Claypool, Central Heights	Martin Henderson (D) 506 Sullivan Street Miami, Arizona 85539	E. C. "Smokey" Richardson (D) Rt. 1 Box 616 Miami, Arizona 85539
Payson Precinct Gisela and Tonto Basin	Ezra Peace (D) Payson, Arizona 85541	Howard Childers (D) Payson, Arizona 85541
Pine Precinct	Isaac Hunt (D) Box 74 Pine, Arizona 85544	Raymond K. Ricks (D) Box 67 Pine, Arizona 85544

GRAHAM COUNTY

DISTRICT	**JUSTICE OF PEACE**	**CONSTABLE**
Precinct No. 1 Safford	Fred Hancock (D) Court House Safford, Arizona 85546	LaMar Cluff (D) Court House Safford, Arizona 85546
Precinct No. 2	R. Grant Woods (D) Thatcher, Arizona 85552	
Precinct No. 3 Pima	Kenneth Redd (R) Pima, Arizona 85543	
Precinct No. 4 Ft. Thomas	Lyman D. Holyoak (D) Ft. Thomas, Arizona 85536	

GREENLEE COUNTY

DISTRICT	**JUSTICE OF PEACE**	**CONSTABLE**
Clifton 1	Henry G. Marquez (D) Box 1173 Clifton, Arizona 85533	George L. Duran (D) Box 1266 Clifton, Arizona 85533
Morenci 2	C. A. Lafferty (D) 18 Cedar Morenci, Arizona 85540	Donald W. Montgomery (D) Morenci, Arizona 85540
Duncan 3	J. E. (Cullard) George (D) Duncan, Arizona 85534	James Sanders (D) Rt. 2 Box 67 Duncan, Arizona 85534

Note: Constables are non-salaried and do not serve any legal papers. Legal papers should be forwarded to Greenlee County Sheriff's Office at Clifton, Arizona.

MARICOPA COUNTY

DISTRICT	JUSTICE OF PEACE	CONSTABLE
Buckeye 1	Taylor J. Gibson (R) 508 W. Monroe Buckeye, Arizona 85326	Joe Johnson (D) Buckeye, Arizona 85326
Chandler 2	Coy B. Beasley (D) 190 S. Arizona Ave. Chandler, Arizona 85224	Abe C. Jones (D) Chandler, Arizona 85224
Gila Bend 3	Mulford Winsor (R) 303 Pima St. Gila Bend, Arizona 85337	Mrs. Edna Mae Mullenax (D) Gila Bend, Arizona 85337
Glendale 5	Jesse C. "Cliff" Burton (D) 7115 N. 57th Drive Glendale, Arizona 85301	A. R. "Skipper" Ray (R) 7115 N. 57th Drive Glendale, Arizona 85301
East Mesa No. 17	Leo S. Coombs (R) 336 N. Stapley Mesa, Arizona 85201	Francis A. (Joe) True (R) 336 N. Stapley Mesa, Arizona 85201
West Mesa No. 6	Lawrence B. Mulleneaux (D) 112 West 1st St. Mesa, Arizona 85201	Wm. W. Chesley, Jr. (R) 112 W. 1st St. Mesa, Arizona 85201
Peoria No. 7	John J. Snure (R) 33 West Washington Peoria, Arizona 85345	Don Curry (R) 33 West Washington Peoria, Arizona 85345
East Phoenix No. 8 No. 1	Renz D. Jennings (D) 125 West Washington Phoenix, Arizona 85003	Wm. E. Harris (D) 125 West Washington Phoenix, Arizona 85003
East Phoenix No. 4 No. 2	John J. Murphy (R) 125 West Washington Phoenix, Arizona 85003	C. T. "Scotty" Powers (R) 125 West Washington Phoenix, Arizona 85003
Northeast Phoenix No. 14	Harold Lee (R) 125 West Washington Phoenix, Arizona 85003	Michael A. Jarko (R) 125 West Washington Phoenix, Arizona 85003
Northwest Phoenix No. 15	Marion R. Reno (R) 125 West Washington Phoenix, Arizona 85003	Dick Parrish (R) 125 West Washington Phoenix, Arizona 85003

West Phoenix No. 9	Al J. Flood (D) 125 West Washington Phoenix, Arizona 85003	George E. Campbell, Sr. 125 West Washington Phoenix, Arizona 85003
South Phoenix No. 16	Walter E. Bloom (R) 5036-5038 S. 2nd St. Phoenix, Arizona 85040	Joe B. Trejo (D) 5036-5038 S. 2nd St. Phoenix, Arizona 85040
Scottsdale No. 10	Robert D. Roth (R) 7236 E. First Street Scottsdale, Arizona 85251	Harry E. Walker (R) 7236 E. First Street Scottsdale, Arizona 85251
Tempe No. 11	George A. Boyd (D) 31 E. 5th St. Tempe, Arizona 85281	Worth Farley (D) 31 E. 5th St. Tempe, Arizona 85281
Tolleson No. 12	Alfred Stump (D) 9555 West Van Buren Tolleson, Arizona 85353	J. Frank Chilcoat (D) 9555 West Van Buren Tolleson, Arizona 85353
Wickenburg No. 13	Les J. Skrumbellos (D) 74 West Center Wickenburg, Arizona 85358	Ted North (R) 74 West Center Wickenburg, Arizona 85358

MOHAVE COUNTY

DISTRICT	JUSTICE OF PEACE	CONSTABLE
Kingman	Clyde A. McCune (D) Box 29 Kingman, Arizona 86401	Todd Long (D) Box 274 Kingman, Arizona 86401
Bullhead	Boyd Hinton (D) Bullhead City, Ariz. 86430	Herrick Roche (D) Bullhead City, Ariz. 86430
Cane Beds Mt. Trumbull	Lorenzo Brown (R) Cane Beds, Arizona	Dan Barlow (D) Cane Beds, Arizona
Littlefield	Harold Heddings (D) Littlefield, Arizona 86432	
Lake Havasu City	*Everett E. Milan (D) Box 362 Lake Havasu City, Ariz. 86403	David K. Brown (D) Lake Havasu City, Ariz. 86403

*Resigned to be effective February 1st.

NAVAJO COUNTY

DISTRICT	JUSTICE OF PEACE	CONSTABLE
Precinct No. 1—Holbrook, Indian Wells, Keams Canyon, Pinon, Woodruff, Joseph City	Derrel T. Brinkerhoff (D) 532 N. 7th St. Holbrook, Arizona 86025	Nick Apodaca (D) 113 West Erie Holbrook, Arizona 86025

Precinct No. 2 Winslow, Oraibi, Polacca, Tees To, Toreva	M. L. Culbertson (D) Box 808 Winslow, Arizona 86047	Robert Pennington (R) Winslow, Arizona 86047
Precinct No. 3 Snowflake, Taylor Heber, Overgaard	Rex J. Hunt (D) Box 173 Snowflake, Arizona 85937	
Precinct No. 4	None	
Precinct No. 5 Show Low, Cibecue, Clay Springs, Pinedale & Linden	Harry DeLong (D) Show Low, Arizona 85901	Elwood Petersen (D) Snowflake, Arizona 85937 (Part time)
Precinct No. 7 Lakeside, Pinetop, Whiteriver	F. E. Thomas (D) Box 247 Lakeside, Arizona 85929	Guy Kuykendall (D) Pinetop, Arizona 85935
Kayenta	Rex I. Linville (D) Box 95 Kayenta, Arizona 86033	

PIMA COUNTY

DISTRICT	JUSTICE OF PEACE	CONSTABLE
Precinct No. 1	Toby LaVetter (D) 2708 E. 5th St. Tucson, Arizona 85716	Mac Marshall (R) 2803 North Craycroft Tucson, Arizona 85716
Precinct No. 2	Manuel Avalos (D) 55 West Congress St. Tucson, Arizona 85701	William R. Molina (D) 55 West Congress St. Tucson, Arizona 85701
Precinct No. 3	M. F. "Andy" Anderson (D) Box 125 Ajo, Arizona 85321	T. O. Dollar (D) Ajo, Arizona 85321
Precinct No. 4	Eleanor D. Schorr (D) 55 West Congress Tucson, Arizona 85701	Byron Stucky (R) 55 West Congress Tucson, Arizona 85701
Precinct No. 5	A. Bates Butler (D) 55 West Congress Tucson, Arizona 85701	Thomas G. Dorgan (D) 55 West Congress Tucson, Arizona 85701

PINAL COUNTY

DISTRICT	JUSTICE OF PEACE	CONSTABLE
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Precinct No. 2 Casa Grande, Sacaton	George D. Pickerel (D) 540 E. Manor Drive Casa Grande, Arizona 85222	Gerald Crisler (D) 1213 E. Avila Casa Grande, Arizona 85222
Precinct No. 3 Eloy, Red Rock, Picacho	Mary Jo Dixson (D) Box 332 Eloy, Arizona 85231	Johnny C. Lopez (D) Box 896 Eloy, Arizona 85231
Precinct No. 4 Stanfield	W. Ray Taylor (D) Box 523 Stanfield, Arizona 85272	Don Hakes (D) Box 81 Stanfield, Arizona 85272
Precinct No. 8 Coolidge	Ben Arnold (D) 188 S. Main Coolidge, Arizona 85228	Grant T. Adams (D) 649 W. Wilson Place Coolidge, Arizona 85228
Precinct No. 9 Ray, Kearny	Kelly Haddad (D) Box 457 Kearny, Arizona 85237	Theodore Everett (D) 344 Hartford Road Kearny, Arizona 85237
Precinct No. 10 Superior	Amparo Gomez (D) Box 845 Superior, Arizona 85273	Nick Besich (D) County Adm. Bldg. Superior, Arizona 85273
Precinct No. 11 Apache Junction, Queen Creek	Norman L. Teason (D) Box 89 Apache Jct., Ariz. 85220	William C. Eakin (D) Rt. 2 Box 391 Apache Jct., Ariz. 85220
Precinct No. 12 Maricopa	Charles E. Chance (D) Rt. 1 Box 27 Maricopa, Arizona 85239	Hubert Ashby (D) Maricopa, Arizona 85239
Precinct No. 13 Mammoth, Oracle, Hayden Jct., San Manuel	Mrs. Mary E. Swink (D) Box 117 Mammoth, Arizona 85618	Guy I. Hill (D) Box 523 Mammoth, Arizona 85618

SANTA CRUZ COUNTY

DISTRICT	**JUSTICE OF PEACE**	**CONSTABLE**
Precinct No. 1	Gilbert C. Soto (D) Beatus Estates Nogales, Arizona 85621	Manuel B. Moreno (D) 152 Sonoita Ave. Nogales, Arizona 85621
Precinct No. 2	Oliver J. Rothrock (D) Patagonia, Arizona 85624	Michael J. Costello (D) Patagonia, Arizona 85624

YAVAPAI COUNTY

DISTRICT	JUSTICE OF PEACE	CONSTABLE
Bagdad	Edgar Kellis (D) Box 243 Bagdad, Arizona 86321	
Camp Verde, Beaver Creek, Cherry Creek, Childs	Ernest L. Burton (D) Camp Verde, Arizona 86322	Robert E. Mann (R) Camp Verde, Arizona 86322
Congress-Yarnell Justice Precinct, Castle Hot Springs, Congress, Rincon, Yarnell, Constellation	Milo Whitlatch (R) Box 85 Yarnell, Arizona 85362	Richard P. McCarthy (R) Yarnell, Arizona 85362
Mayer Justice Precinct Bumble Bee, Cleator, (Black Canyon City) Crown King, Humboldt, Mayer	Henry G. Hellman (D) Box 97 Humboldt, Arizona 86329	
Prescott Justice Precinct Camp Wood, Chino Valley, Groom Creek, Hillside, Kirkland, City of Prescott, Skull Valley, Wagoner, Walnut Creek, Walnut Grove	Lee Waggoner (R) Box 1383 Prescott, Arizona 86301	L. B. Gilpin (R) Prescott, Arizona 86301
Seligman & Ashfork	Henry Blanchard (D) Box 54 Seligman, Arizona 86337	
Upper Verde Precinct Clarkdale, Cottonwood, Jerome, Oak Creek (Cornville and area) Red Rock (Sedona and area)	Donald Smyth (R) Box 44 Cottonwood, Arizona 86326	

YUMA COUNTY

DISTRICT	JUSTICE OF PEACE	CONSTABLE
Precinct No. 1 Yuma, Dome, Laguna, Rood, Crane	William R. Steen (D) Yuma, Arizona 85364	W. N. Meador (D) 2572 Mary Ave. Yuma, Arizona 85364
Precinct No. 2 Somerton, Gadsden	Herman Frauenfelder (D) Box 456 Somerton, Arizona 85350	John Pool (D) Box 453 Somerton, Arizona 85350

Precinct No. 3 Wellton, Roll, Tacna, Mohawk, Aztec, Hyder	Norman Underdown (D) Box 384 Wellton, Arizona 85356	None Wellton, Arizona 85356
Precinct No. 4 Quartzsite, Cibola, Ehrenberg	George Hagely (D) Box 5 Quartzsite, Arizona 85346	Hugh F. Wright (D) Quartzsite, Arizona 85346
Precinct No. 5 Salome, Wenden, Vicksburg	John C. McCaw (D) Box 387 Salome, Arizona 85551	
Precinct No. 6 Parker, Bouse	J. G. Fuqua (D) Box 2617 Parker, Arizona 85344	

ACTS

MEMORIALS AND RESOLUTIONS

of the

FIRST REGULAR SESSION

of the

THIRTY-FIRST LEGISLATURE

of the

STATE OF ARIZONA

1 9 7 3

FIRST REGULAR SESSION CONVENED

January 8, 1973

FIRST REGULAR SESSION ADJOURNED SINE DIE

May 9, 1973 at 5:10 A.M.

PUBLICATION AUTHORIZED

Paragraph 9a, Section 41-121

ARIZONA REVISED STATUTES as amended by

Chapter 81, Laws of 1957

Twenty-third Legislature

First Regular Session

Chapter 184, Laws of 1973

Thirty-first Legislature, First Regular Session

NOTICE: There are a few misspellings, other error and punctuation mistakes in the body of this volume, which originated in the original copies, and had to be duplicated herein so as to conform to such original copies.

AUTHENTICATION

STATE OF ARIZONA)
) ss.
Office of the Secretary of State)

THIS IS TO CERTIFY—That the Acts, Memorials and Resolutions published in this volume are full, true and correct copies of the originals passed at the First Regular Session of the Thirty-first Legislature of the State of Arizona, as they appear in the file in the office of the Secretary of State of Arizona. The First Regular Session of the Thirty-first Legislature of the State of Arizona was convened at the Capitol in the City of Phoenix, January 8, 1973, and adjourned sine die on the 9th day of May, 1973.

IN TESTIMONY WHEREOF, I have hereunto set my hand as Secretary of State of the State of Arizona, this 25th day of May, 1973.

WESLEY BOLIN
Secretary of State

ARIZONA STATE LEGISLATURE

1973 – 1974

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President of the Senate: William C. Jacquin
Speaker of the House: Stan Akers

GOVERNOR'S MESSAGES

Message of Governor Williams
Opening of the First Regular Session of the
31st Arizona Legislature
Monday Noon, January 8, 1973

Today each of you embarks on a new adventure. For some the road ahead is familiar, because you have been this way before. But, a goodly number are new to these halls and to this purpose for which we are assembled.

Preceding legislatures have faced the crises of our times and risen to their demands with fortitude and understanding. Six years ago I stood before the members of the 28th Legislature and outlined the priority items for their consideration.

I called for air pollution control, asking for a bill that protects the individual from arbitrary or vindictive exercise of government might or muscle; yet, one that at the same time guarantees our citizens and visitors guidelines for relief.

We all know continual vigilance is essential for the protection of the quality of life in our land. Last year I called for car inspections. A measure was passed attacking the greatest polluter of all—the motor car.

Today, I shall ask for still more legislation directed toward keeping Arizona an attractive area in which to live and to raise children. The time is at hand to consider **land use planning.** This is a most complicated problem. In our eagerness to develop guidelines, we must avoid the temptation to adopt too restrictive and possibly confiscatory policies.

New tools and techniques are now available through our Department of Economic Planning and Development. We have the Arizona Trade Off Model which is in the final stages of completion and will enable us to better evaluate the impact of industry and growth. The NASA-developed over-flights have photographed our land from 60,000 feet and give us an added tool for land planning. Based on what we have already developed, Arizona is ready to move ahead boldly to solve land use and environmental problems. Perhaps an Ad Hoc Committee should be created to recommend realistic guidelines for legislation.

Experience in other states warns against too precipitous action and yet we must be on our way. The pressure of unplanned, and unavoidable growth is upon us. The commission I envision would have bi-partisan legislative membership, with representatives of the vital interest involved, and members of the public.

When we consider the future of Arizona we must consider **education.** Our citizens have never been niggardly in support of this largest and most important area of government. In the ten years between 1957 and 1967

our state spending for education increased 260 percent while our population increased only 47 percent.

In recent years, more emphasis than ever has been placed upon studies to determine whether or not we are meeting the educational needs of today. These studies have resulted in increasing emphasis upon career-type education, which in some instances is even more expensive than the purely intellectual disciplines.

Everybody is concerned about the cost of education and how it is to be financed. Court cases are pending which may resolve some of these quandries, but in Arizona we cannot wait. Five years ago, a massive shift was made from the local school district tax to the state and some $67 million was applied to provide property tax relief at the local level. That relief has now been absorbed by increased costs. Something must be done. Yet, it is essential that what is done, be carefully considered in its relationship to local control. Local control and local responsibility should not be eroded by unwise tax legislation.

Our citizens are concerned about **taxes**, and justly so. Since 75 percent of our taxes go to support education, we must better evaluate what the educational tax dollar buys. At the same time we should provide relief from too much dependance on the property tax.

What is called for might seem an impossibility; but in our lexicon the impossible takes only a little longer. We have been facing this problem long enough. We are fortunate that current studies provide some encouragement. Until cost accounting programs, inaugurated last year, are applied to every institution, there may be gaps in the information needed, but that should not delay over-all tax equalization and reform.

Of almost equal importance to education today is the **medical care** of our people. Medical costs have been on a run-away course. Medical services are not equally available to all our people. Rural areas are simply without proper medical services. Catastrophic illness can wipe out individuals and families financially.

Last year, certain legislative steps were taken to provide emergency medical services to areas outside population centers. But, more remains to be done.

On the federal level all sorts of schemes, including socialized medicine, are being considered. Most of these would be disastrous.

Either we continue our efforts in the medical health field or we abdicate to the federal government and in the end lose, what with all its criticism, the finest medical service in the world today.

We are a querulous nation where human welfare is concerned. We are never satisfied and are continually criticizing. Out of such criticism comes reform and improvement. But, now and then we must be realistic in our complaints and comparisons.

Prison reform is currently one of today's most popular concerns. Yet, Arizona started its prison reform six years ago. Until that time Arizona had functioned under a territorial plan which provided a prison at Florence, industrial school at Fort Grant and a probation and parole system that never materially changed. Virtually nothing was being done in the field of rehabilitation and job training was belatedly introduced at Fort Grant.

Today we have the Arizona Girls' School; we have diagnostic centers at the state prison; at the Arizona Youth Center and at the girls' school. We have two correctional conservation centers—one at Alpine, for boys; and one at Safford, for men.

Community treatment centers have been established: in Phoenix there's Highland House for men; Portland House for boys and Diamond House for girls. In Tucson we have Wilson House for girls. Vocational training is available through the division of the State Vocational Education and Vocational Rehabilitation at the state prison. Also, Eastern Arizona Community College, and the Central Community College assist.

Results are already noticeable. More inmates and wards are trained for and placed in jobs. Closer and realistic parole supervision is provided offenders upon release. Fewer repeaters return to prison.

For the calendar year 1971 more than 81 percent of those committed to Arizona State Prison had never been there before! In fact, the inmate populations in the two basic institutions have been reduced—at the state prison, from 1789 to approximately 1390. At the state industrial school, from 450 to 290.

Those who widely and often wildly criticize the prison system as a failure, should be asked, "compared to where?" On that basis our laws are a failure, they do not prevent crime. We might say our schools are a failure, they had the prisoners first, as students.

Actually, Arizona has shown remarkable improvement. Our programs should be continued. That is why I recommend to you approval of the intermediate institution for less hardened criminals. This will enable us to greatly reduce the over-crowded condition at Florence. It will also separate the youthful offenders from other inmates.

There will be other requests from the Department of Corrections, and I hope you will give them thoughtful consideration. While public interest is high in this field, we will find greater sympathy for improved services.

We also are embarking upon a comprehensive **revision of the criminal code.** Keep in mind many of the new programs in the correctional field are tied to and dependent upon refinement and up dating of the law.

However, public protection must come first. At our current state of civilization the hardened criminal must be incarcerated to provide that protection.

Some years ago members of the Arizona Academy discussed **governmental reorganization.** This was not the first time. In fact, Arizona's first governor, George W. P. Hunt, called for reorganization less than a year after the Arizona Constitution was ratified and Arizona became a state.

The Academy debated calling a constitutional convention to update antiquated portions of our government. The Academy expressed concern that such a convention become a captive of those whose enthusiasm might warp their judgment and instead recommend that reforms be undertaken gradually by the Legislature.

Over the past six years much has been accomplished in an attempt to streamline and modernize our executive structure. We can point to our Department of Public Safety, Department of Corrections, Department of Economic Planning and Development, Finance Department, Personnel Department, Department of Valuation and Appraisals, the new Department of Economic Security, and the Administration Department, soon to be activated.

The most dramatic reforms in reorganization since statehood have been accomplished. Reorganization, if properly undertaken, should result in the savings of tax dollars while providing better service to the people. This can be done not by simply creating new departments to incorporate existing ones, but by eliminating as many existing boards and commissions and agencies as possible, thus avoiding duplication of functions and personnel. In other words, we should seek to get the most for each tax dollar spent.

May I recommend the reorganization of the Health Department? Many new and controversial duties have been imposed upon it. The delivery of services is becoming more and more difficult with the Department hamstrung by out-dated organizational structures mandated by previous legislatures. The Department in the light of its grave new responsibilities, dealing so intimately with the protection of our citizens, and the environment, should be restructured along more rational, functional lines.

A department of natural resources is needed, bringing together the various agencies and departments which today operate at almost arm's length posture. The natural resource agencies of our state have been created as the need developed, but there has been no attempt to coordinate their efforts or their interests. I commend this effort to you.

A department of transportation should be created. Since more than highways are now inherent in the total transportation concept and public interests range from mass transit to aeronautics, it is time to create a more encompassing transportation agency.

You should consider the need for a department of commerce to bring together the many licensing agencies of the state which presently duplicate office functions and administrative costs.

Turning to other areas vital to Arizonans: we have a new and growing generation—the generation of **the elderly**. There are over 25 million in our nation. While most of them are self supporting, they need special consideration. Those who live on limited incomes deserve our greatest consideration. They lived during the period when great plans were brought to fruition for the protection of all—except them. Their taxes helped pay for the whiz kids who dreamed up the great society. But many of the elderly who paid for these reforms were left out. Today they try to exist on pensions fashioned for another day. The least we can do for them is provide some type of tax credit or property relief.

The 28th Legislature created a Department of Property Tax Valuation with a mandate to provide **equity for all taxpayers** through uniform valuation of all property for tax assessment purposes. I have discussed with you the indications that some counties have failed to keep all property appraised at 100 percent of cash value. The result is that a statewide computer printout shows great inequities and also almost catastrophic increases in some assessments. May I urge that you insist your program, which is becoming recognized as a model for the nation, be complied with. At the same time I urge you to watch for hardship cases affecting the less fortunate of our citizens which may be developing. For their relief you might consider the possibility of a homestead exemption law, or some other suitable alternative.

The 30th Legislature considered a **uniform probate code**. Such a code would modernize and improve the older probate laws. The wishes or probable intentions of those who die with or without wills would be followed more fully. The bill was studied last year, I recommend its passage this session.

Another subject of interest nationally as well as in Arizona is **no-fault motor vehicle insurance**. Congress has delayed action on this matter to give states time to experiment with different forms. Something is going to be done. Arizona, therefore, should take action with some form of no-fault motor vehicle insurance.

Legislation has already been prepared relating to the **re-institution of the death penalty** in Arizona. This will be the second time that Arizona has had this matter up for consideration. In 1914 our state did away with the

capital punishment. The appalling increase in crimes of violence so outraged our citizens, they insisted upon its re-instatement. I recommend consideration and approval of such legislation.

Flood control is of serious concern to many of our populated areas. Our citizens have suffered greviously in monetary loss and personal injury. Previous legislatures have been prompt in passage of suggested enabling legislation to help the areas menaced by floods. But, as these areas become more and more populated, the problem is compounded. I have talked about flood plain zoning in the past. Perhaps your work on land use planning will include this subject. You might also give consideration to some type of financial support based upon a formula of matching funds to encourage districts to stop talking about flood control and to do something. This is a local problem, but if the state can help localities on an equitable basis, it should consider doing so. We all recognize that when a disaster strikes, the state is called upon to provide relief. That cost might be avoided by flood control projects, financed locally with state assistance.

Despite our efforts, **highway deaths** continue to climb. It's not enough to say that with increased traffic, the percentage continues to improve. It is small comfort to the families of the victims to be told that we are not killing as many as we did in the past, percentage wise. Such substantial mortality from any other cause would bring violent public reaction. Should war, environmental problems, plague, drugs, or armed rebellion cause such a holocaust of death, we would declare martial law. I beg of you to continue giving this subject your consideration. It is true that we have good legislation. It is also true that we are trying our best. But our best obviously has not been good enough. I am of the opinion that motor vehicle safety inspections would bring to the public attention the danger of improperly maintained cars. Freeway speeds of 70 miles or higher demand that every part of a car be in first-class condition. Motor vehicle safety inspection would at least call attention to that.

With car pollution inspection laws now on the books, the addition of motor vehicle safety licensing should be of little extra cost, or inconvenience.

You are going to have many attractive proposals for additional spending. With federal revenue sharing this year providing what might seem to be additional funds, every area of need will be persuasively brought to your attention. It is hard to say no. It is doubly hard when you are dealing with public funds, which seem limitless, but are not.

Frugality is a virtue seldom appreciated. But it has been the cornerstone of this state's success in maintaining **solvency** and a relatively reasonable tax structure. This state is debt free and on a cash basis. Let us stay that way. Let us not be ashamed if we do not spend all of the money we can collect from the taxpayers. Let us remember that they too deserve consideration.

What are thoughtlessly referred to as surpluses are really potential windfalls of relief for the taxpayer whose voice is mute.

However, the cries of the spenders resound on all sides. Do not forget the power to tax is indeed the power to destroy.

Let us practice an ancinet and honorable virtue, almost unknown today. Let us practice thrift.

The first place to start on the subject of economy is with your time. I shall close my remarks now to enable you to go to work. By utilizing these first days thriftily, you should be able to complete your efforts in reasonable time and save the cost of an over-long session. There is much to do. But it can be done.

Let us commence.

Governor Jack Williams'
Executive Budget Message for the First Regular Session of
the 30th Arizona Legislature

Presented at 11:00 a.m., Monday, January 15, 1973

I am here today to bring you my recommendations for a **balanced budget.** Balanced, not only in the sense that the proposed expenditures are within the amounts presently estimated to be available without increase in the state tax rate, but balanced between the diversified needs of all segments of our population. It is a budget that will allow Arizona to move forward in a responsive and responsible manner.

Although I will be talking to you in terms of dollars, this budget really represents **services to our citizens.** It serves our children by providing a means for them to gain an education, whether this be a high school diploma, a college degree or the acquisition of a vocational skill. It serves those who cannot help themselves, either because they are mentally disturbed, too old or are physically handicapped. It also serves by providing funds to maintain and improve services and facilities that will improve the quality of life for all of us.

In order to provide a better understanding of these services, we have continued our efforts to present a budget based on the concepts of **program budgeting.** This year, all state agencies have attempted to identify and describe the goals and objectives of each of their programs. In addition, the funds necessary to operate these programs have been divided in two parts—first, the amount necessary to continue the current programs; and second, the amounts necessary to expand the current programs or add new programs.

After a thorough analysis of all state agencies' requests, the **General Fund** budget I am recommending totals $543 million. This is more than the current budget due to inflationary pressures, increases in the number of people to be served and needed improvements to our present services. It is also $80 million less than requested by the various state agencies. However, I can assure you that no essential service is reduced.

Calling this a state budget is in some ways misleading as more than 40 percent of the total amount will go directly to the state's school districts. The remainder will be used to operate state government which includes our university system, our health-oriented agencies, the welfare system and others.

Of the total budget I am recommending, over $370 million is for **Education.** Almost $204 million of this will provide direct assistance for our elementary and secondary schools. The sum of $22 million is for our Community Colleges. For our three great universities, I am recommending

approximately $130 million. Included in this amount is almost $14 million for construction and I suggest these construction funds be appropriated on a project-by-project basis. This is the method by which all other agencies receive appropriations for construction and it is the only reasonable means by which we can insure that the intent of the Legislature is carried out.

In the field of Health, I would like to take special note of the progress we have made in treating the mentally retarded. It is a particular source of satisfaction to me and I am sure to you who have served here in the past that our recently-completed Training Center at Tucson is the first facility in the United States to be accredited under the new standards administered by the Joint Commission on Facilities of the Mentally Retarded. In an effort to move the Coolidge facility closer to these standards, I am recommending 76 new positions to implement the first of four steps in reaching this goal. I am also recommending Phase II of the new training facility in Maricopa County.

For **general health**, I am continuing to support, through these recommendations, a variety of programs including alcohol and drug abuse, kidney treatment centers, waste water treatment facilities and community mental health services.

Included within the **correctional program** is one of the highest priority items I bring in today's message. This is a new correctional facility for 18-to-25-year-old male offenders. This facility is needed not only to relieve overcrowding at the present State Prison, but to segregate youthful offenders from hard-core prisoners. In addition, I am recommending more correctional officers for the Arizona State Prison to help insure the security of that facility.

Phase III of the construction program at the Girls School, scheduled to be completed next October, will provide room for an additional 120 residents. To provide for this expansion, I am recommending additional staff.

In the **Welfare** area, major changes have taken place on both the state and federal level. At the state level, we have reorganized our services into the Department of Economic Security. At the federal level, the passage and approval of the Social Security Amendment of 1972 and the Revenue Sharing Act will bring about major revisions in several of our present programs. As there is no information available at this time to translate all of the new changes into dollars, the budget recommendations are presently based on the old programs. As soon as it is possible to determine the dollar effort of these new changes, the information will be transmitted to you.

A new program which has been requested by the **Department of Public Safety** and which I am recommending, is to place ten public safety officers throughout the state. These officers are to be criminal investigators, with a

thorough working knowledge of all types of investigations, and will provide immediate assistance to local law enforcement agencies. Also, I am recommending additional highway patrolmen to cover properly the additional 115 miles of highway estimated to come into the state system during the coming fiscal year.

As you look around the Capitol area, you readily see the progress being made in the **Capitol Complex Development Program.** This program has enabled us to eliminate rental charges. It also has allowed us to consolidate services, thus providing more coordination among related state agencies and furnishing improved services to the public. We have not finished this program. For 1973-1974, I am recommending funds for two more buildings. One will centralize the services of the new Department of Economic Security, another will be for our Data Processing Services. I am also recommending one million dollars be appropriated for the purpose of restoring the original Statehouse. This project would be planned at the direction of the Arizona Historical Society and coordinated with the construction of the West Wing to the Capitol. Finally, I am recommending $500,000 to acquire land in Tucson for the site of a future state office building.

Although not part of the General Fund budget, the Highway Department is an important part of the state's operations. This year, the **Motor Vehicle Division** has exceptional needs as it is attempting to switch from a manual system to computer system for all vehicle registrations, titles and driver licenses. I am recommending additional people necessary to assist in this conversion process.

The **salary increases** I am recommending for state employees will allow the state to remain a competitive employer. This will help reduce the economic loss resulting from turnovers and at the same time insure better service to the public through retention of experienced, qualified personnel.

Budget messages are normally concerned with expenditures; however, this talk would not be complete without mentioning **Federal Revenue Sharing.** Our present estimates indicate the State of Arizona will receive $95 million over the five-year life of the program. Over $21 million will be available by the end of this fiscal year and an additional $19 million by the end of June 30, 1974. All expenditures from these Federal Revenue Sharing monies must be authorized by the Legislature. Because this is only a five-year program, I strongly urge that funds appropriated from Federal Revenue Sharing be for nonrecurring items only. I would recommend for your study such items as the new correctional facility or possibly matching amounts for flood control. I might add that the Urban Revenue Sharing approved by the voters in our last election will reduce our income tax revenue to the state by 15 percent. During the next five years, this will just about offset the funds coming in from Federal Revenue Sharing.

The budget which I recommend to you today will finance the operations of state government for 1973-1974 and still stay within the estimates of the total tax dollars that will be received during that time at the present state rate. This will allow state government to operate within its income and yet still make substantial progress toward the solution of our more pressing problems.

ORDER OF ACTS

LAWS OF ARIZONA

ORDER OF ACTS

THIRTY-FIRST LEGISLATURE

FIRST REGULAR SESSION

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SB 1005	138	degrees of murder; punishment Approved May 14, 1973 Filed May 14, 1973 Effective August 8, 1973	966
SB 1006	80	parolee supervision, out-of-state, hearings Approved April 27, 1973 Filed April 27, 1973 Effective August 8, 1973	550
SB 1007	139	marriage dissolution, child custody Approved May 14, 1973 Filed May 14, 1973 Effective August 8, 1973	973
SB 1010	140	mechanics' liens Approved May 14, 1973 Filed May 14, 1973 Effective August 8, 1973	995
SB 1012	136	workmen's compensation, agricultural workers Approved May 8, 1973 Filed May 8, 1973 Effective January 1, 1974	958
SB 1014	141	land use planning (Emergency) Approved May 14, 1973 Filed May 14, 1973 Effective May 14, 1973 Expiration, from and after June 30, 1975	1002
SB 1016	142	medical assistance for aged Approved May 14, 1973 Filed May 14, 1973 Effective August 8, 1973	1005

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SB 1019	123	revenue department Approved May 4, 1973 Filed May 4, 1973 Effective July 1, 1974	716
SB 1022	44	assessment change notice Approved April 11, 1973 Filed April 11, 1973 Effective from and after December 31, 1973	262
SB 1024	124	licensing of motor vehicle dealers Approved May 3, 1973 Filed May 4, 1973 Effective January 1, 1974	844
SB 1026	178	urban environment management Approved May 14, 1973 Filed May 14, 1973 Effective January 1, 1974	1764
SB 1029	1	state holidays Approved February 7, 1973 Filed February 8, 1973 Effective August 8, 1973	3
SB 1032	143	justice of peace fees Approved May 14, 1973 Filed May 14, 1973 Effective August 8, 1973	1010
SB 1034	81	investigation of county attorney's office Approved April 27, 1973 Filed April 27, 1973 Effective August 8, 1973	553
SB 1056	144	annual vehicle inspections Approved May 14, 1973 Filed May 14, 1973 Effective August 8, 1973	1011
SB 1059	6	abatement-certain unpaid income tax Approved March 2, 1973 Filed March 5, 1973 Effective from and after December 31, 1972	8

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SB 1060	29	real estate investment trusts-taxation Approved March 30, 1973 Filed March 30, 1973 Effective August 8, 1973	197
SB 1065	33	taxation-mobile home registration fees Approved April 4, 1973 Filed April 4, 1973 Effective from and after December 31, 1973	235
SB 1071	107	civil action fees Approved May 3, 1973 Filed May 4, 1973 Effective August 8, 1973	634
SB 1073	82	political subdivision arbitration Approved April 27, 1973 Filed April 27, 1973 Effective August 8, 1973	554
SB 1076	83	appropriation; model ex-offenders' program (Emergency) Approved April 27, 1973 Filed April 27, 1973 Effective April 27, 1973	555
SB 1084	21	retirement system—investment advisory council (Emergency) Approved March 26, 1973 Filed March 26, 1973 Effective March 26, 1973	185
SB 1085	108	county fair fund—appropriations Approved May 3, 1973 Filed May 4, 1973 Effective August 8, 1973	637
SB 1087	125	income tax deductions Approved May 4, 1973 Filed May 7, 1973 Effective August 8, 1973	862
SB 1089	34	installment sale—motor vehicles Approved April 4, 1973 Filed April 4, 1973 Effective August 8, 1973	239

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SB 1096	103	uniform landlord, tenant act Approved May 3, 1973 Filed May 3, 1973 Effective August 8, 1973	600
SB 1099	48	deaf–blind school minimum age (Emergency) Approved April 13, 1973 Filed April 16, 1973 Effective April 13, 1973	274
SB 1100	109	lighting regulation Approved May 3, 1973 Filed May 4, 1973 Effective August 8, 1973	639
SB 1102	19	aeronautics tax distribution Approved March 22, 1973 Filed March 22, 1973 Effective August 8, 1973	183
SB 1103	7	gross income deductions (Emergency) Approved March 6, 1973 Filed March 6, 1973 Effective March 6, 1973	10
SB 1104	40	flood control assistance (Emergency) Approved April 9, 1973 Filed April 10, 1973 Effective April 9, 1973	250
SB 1105	104	protection for governor (Emergency) Approved May 3, 1973 Filed May 3, 1973 Effective May 3, 1973	626
SB 1106	22	fiduciaries–geothermal leases (Emergency) Approved March 27, 1973 Filed March 28, 1973 Effective March 27, 1973	186
SB 1115	77	egg inspection fee increase Approved April 26, 1973 Filed April 26, 1973 Effective August 8, 1973	540

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SB 1117	95	filing income tax; time extension Approved May 2, 1973 Filed May 3, 1973 Effective December 31, 1973	584
SB 1118	45	income tax; penalty on balance Approved April 13, 1973 Filed April 13, 1973 Effective from and after December 31, 1973	265
SB 1120	46	income tax return; fractional dollar Approved April 13, 1973 Filed April 13, 1973 Effective from and after December 31, 1973	266
SB 1131	85	airport police appointment Approved April 30, 1973 Filed April 30, 1973 Effective August 8, 1973	557
SB 1133	110	motor vehicle odometers Approved May 3, 1973 Filed May 4, 1973 Effective August 8, 1973	646
SB 1140	47	highway department—public records Approved April 13, 1973 Filed April 13, 1973 Effective August 8, 1973	272
SB 1141	73	operation of tow trucks Approved April 24, 1973 Filed April 24, 1973 Effective August 8, 1973	335
SB 1143	146	department of transportation Approved May 14, 1973 Filed May 14, 1973 Effective July 1, 1974, except Section 88	1017
SB 1147	49	home solicitation sales—cancellation—non-waiver Approved April 13, 1973 Filed April 16, 1973 Effective August 8, 1973	275

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SB 1152	117	water commission—appropriation (Emergency) Approved May 3, 1973 Filed May 4, 1973 Effective May 3, 1973	708
SB 1154	96	pooled school purchasing Approved May 2, 1973 Filed May 3, 1973 Effective August 8, 1973	586
SB 1155	111	judges' retirement fund Approved May 3, 1973 Filed May 4, 1973 Effective August 8, 1973	647
SB 1156	147	court of appeals departments Approved May 14, 1973 Filed May 14, 1973 Effective August 8, 1973	1183
SB 1158	8	luxury tax stamps; discounted prices Approved March 8, 1973 Filed March 8, 1973 Effective July 1, 1973	162
SB 1170	145	state nursing board (Emergency) Approved May 14, 1973 Filed May 14, 1973 Effective May 14, 1973	1012
SB 1182	78	highway department records—computer storage Approved April 26, 1973 Filed April 26, 1973 Effective August 8, 1973	541
SB 1183	148	commercial vehicle weight fees Approved May 14, 1973 Filed May 14, 1973 Effective, Sections 1-22 and 24-27 from and after December 31, 1973 Section 23 from and after December 31, 1974	1187

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SB 1189	105	unclaimed property—publication of notice Approved May 3, 1973 Filed May 3, 1973 Effective August 8, 1973	626
SB 1194	112	cities—incorporation election—services Approved May 3, 1973 Filed May 4, 1973 Effective August 8, 1973	649
SB 1195	86	change from town to city Approved April 30, 1973 Filed April 30, 1973 Effective August 8, 1973	558
SB 1196	97	repealing employment limitation Approved May 2, 1973 Filed May 3, 1973 Effective August 8, 1973	588
SB 1201	126	crimes—expunging of records Approved May 7, 1973 Filed May 7, 1973 Effective August 8, 1973	864
SB 1203	76	drugs, alcohol, tobacco effects instruction Approved April 25, 1973 Filed April 25, 1973 Effective August 8, 1973	538
SB 1206	98	October third grade reading tests Approved May 2, 1973 Filed May 3, 1973 Effective August 8, 1973	593
SB 1212	113	retirement benefits; certain retired members Approved May 3, 1973 Filed May 4, 1973 Effective July 1, 1973	653

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SB 1219	149	contracts for consultant services; requirements Approved May 14, 1973 Filed May 14, 1973 Effective August 8, 1973	1220
SB 1224	84	return of stolen property Approved April 27, 1973 Filed April 27, 1973 Effective August 8, 1973	556
SB 1226	118	funeral processions—escort vehicles Approved May 3, 1973 Filed May 4, 1973 Effective August 8, 1973	709
SB 1238	99	Indian affairs commission Approved May 2, 1973 Filed May 3, 1973 Effective August 8, 1973	595
SB 1259	119	insolvent insurer—subrogation Approved May 4, 1973 Filed May 4, 1973 Effective August 8, 1973	711
SB 1260	100	theatrical license tax—determination Approved May 2, 1973 Filed May 3, 1973 Effective August 8, 1973	596
SB 1267	150	implied consent—license suspension Approved May 14, 1973 Filed May 14, 1973 Effective August 8, 1973	1224
SB 1271	79	waters—dams Approved April 26, 1973 Filed April 26, 1973 Effective August 8, 1973	545
SB 1294	120	firemen's retirement—additional benefits Approved May 4, 1973 Filed May 4, 1973 Effective August 8, 1973	712

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SB 1302	151	interest distribution; county held monies (Emergency) Approved May 14, 1973 Filed May 14, 1973 Effective May 14, 1973	1228
SB 1311	152	stipends for ex-offenders Approved May 14, 1973 Filed May 14, 1973 Effective August 8, 1973	1230
SB 1313	122	smoking in public areas Approved May 4, 1973 Filed May 4, 1973 Effective August 8, 1973	715
SB 1315	50	adoption consent Approved April 13, 1973 Filed April 16, 1973 Effective August 8, 1973	277
SB 1316	51	birth certificates; birthplace Approved April 13, 1973 Filed April 16, 1973 Effective August 8, 1973	278
SB 1317	179	animals—cruelty and abandonment Approved May 14, 1973 Filed May 14, 1973 Effective August 8, 1973	1799
SB 1320	153	welfare recipients—identification cards Approved May 14, 1973 Filed May 14, 1973 Effective August 8, 1973	1231
SB 1321	114	public health midwives Approved May 3, 1973 Filed May 4, 1973 Effective August 8, 1973	654
SB 1328	115	state board property tax appeals Approved May 3, 1973 Filed May 4, 1973 Effective August 8, 1973	655

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SB 1329	101	Pima county boundary Approved May 2, 1973 Filed May 3, 1973 Effective August 8, 1973	596
SB 1330	121	appropriation to legislature (Emergency) Approved May 4, 1973 Filed May 4, 1973 Effective May 4, 1973	714
SB 1331	154	land use policy guidelines–study (Emergency) Approved May 14, 1973 Filed May 14, 1973 Effective May 14, 1973	1233
SB 1333	155	abortion–refusal to act (Emergency) Approved May 14, 1973 Filed May 14, 1973 Effective May 14, 1973	1235
SB 1334	156	state insurance Approved May 14, 1973 Filed May 14, 1973 Effective August 8, 1973	1236
HB 2002	75	probate code revision Approved April 24, 1973 Filed April 24, 1973 Effective January 1, 1974	347
HB 2003	157	Arizona Revised Statutes; conforming changes Approved May 14, 1973 Filed May 14, 1973 Effective August 8, 1973	1238
HB 2004	158	department of health services Approved May 14, 1973 Filed May 14, 1973 Effective at such time as governor may order but no later than July 1, 1974; Director may be appointed after July 1, 1973 but no later than January 1, 1974; Section 318 as provided by law	1306

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HB 2008	127	health care institutions; financial records (Emergency) Approved May 7, 1973 Filed May 7, 1973 Effective May 7, 1973	866
HB 2010	106	water; floodplain management Approved May 3, 1973 Filed May 3, 1973 Effective August 8, 1973	627
HB 2012	16	limited partnership—formation requirements Approved March 20, 1973 Filed March 20, 1973 Effective August 8, 1973	178
HB 2016	68	income tax withholding percentage Approved April 18, 1973 Filed April 18, 1973 Effective from and after December 31, 1973	322
HB 2019	116	bank organization and regulation Approved May 3, 1973 Filed May 4, 1973 Effective August 8, 1973	658
HB 2020	159	initiative, referendum and recall Approved May 14, 1973 Filed May 14, 1973 Effective, Section 18 and section 19-212 subject to conditional enactment. Remainder of act on August 8, 1973	1559
HB 2022	30	state compensation fund—examination of Approved April 2, 1973 Filed April 3, 1973 Effective August 8, 1973	220
HB 2024	32	state banking department Approved April 2, 1973 Filed April 3, 1973 Effective August 8, 1973	225

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HB 2025	74	division of building codes Approved April 24, 1973 Filed April 24, 1973 Effective August 8, 1973	337
HB 2027	160	insurance—departmental deadline dates (Emergency) Approved May 14, 1973 Filed May 14, 1973 Effective May 14, 1973	1583
HB 2037	93	appropriation; capital outlay universities (Emergency) Approved May 1, 1973 Filed May 2, 1973 Effective May 1, 1973	579
HB 2039	12	appropriation; department of public safety (Emergency Approved March 20, 1973 Filed March 20, 1973 Effective March 20, 1973	174
HB 2040	2	appropriation; division of building codes (Emergency) Approved February 16, 1973 Filed February 16, 1973 Effective February 16, 1973	4
HB 2042	132	reports—bingo small game license (Emergency) Approved May 4, 1973 Filed May 7, 1973 Effective May 4, 1973	908
HB 2043	128	insurance—health maintenance organizations (Emergency) Approved May 7, 1973 Filed May 7, 1973 Effective May 7, 1973	873
HB 2045	52	public buildings—construction requirements Approved April 13, 1973 Filed April 16, 1973 Effective August 8, 1973	280

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HB 2055	183	elections--school trustees; general Approved May 14, 1973 Filed May 14, 1973 Effective August 8, 1973	1831
HB 2057	5	volunteer fire company funds--retention (Emergency) Approved February 20, 1973 Filed February 21, 1973 Effective February 20, 1973	6
HB 2061	129	sale of subdivided lands Approved May 7, 1973 Filed May 7, 1973 Effective August 8, 1973	886
HB 2063	53	workmen's compensation--occupational disease Approved April 13, 1973 Filed April 16, 1973 Effective August 8, 1973	283
HB 2064	10	mobile homes--highway movement of (Emergency) Approved March 14, 1973 Filed March 15, 1973 Effective March 14, 1973	171
HB 2065	23	county building code--fees Approved March 30, 1973 Filed March 30, 1973 Effective August 8, 1973	188
HB 2074	41	state lands; authorizing construction on Approved April 9, 1973 Filed April 10, 1973 Effective August 8, 1973	256
HB 2079	161	family counseling programs Approved May 14, 1973 Filed May 14, 1973 Effective August 8, 1973 Expiration June 30, 1977, unless renewed by Legislature	1594

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HB 2085	3	reallocation to state land commissioner (Emergency) Approved February 16, 1973 Filed February 16, 1973 Effective February 16, 1973	5
HB 2086	17	state parks board; lapsing appropriations (Emergency) Approved March 20, 1973 Filed March 20, 1973 Effective March 20, 1973	179
HB 2088	4	appropriation—agricultural employment relations board (Emergency) Approved February 16, 1973 Filed February 16, 1973 Effective February 16, 1973	6
HB 2089	9	transfer of sanatorium (Emergency) Approved March 8, 1973 Filed March 8, 1973 Effective March 8, 1973	165
HB 2093	20	amending department of health appropriation (Emergency) Approved March 23, 1973 Filed March 23, 1973 Effective March 23, 1973	184
HB 2096	162	children—corrections commitment and discharge Approved May 14, 1973 Filed May 14, 1973 Effective August 8, 1973	1598
HB 2098	133	workmen's compensation Approved May 7, 1973 Filed May 7, 1973 Effective August 8, 1973	924
HB 2100	94	water supply for subdivision lots (Emergency) Approved May 1, 1973 Filed May 2, 1973 Effective May 1, 1973	580

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HB 2104	24	brucellosis, tuberculosis control Approved March 30, 1973 Filed March 30, 1973 Effective August 8, 1973	189
HB 2106	18	use fuel tax—quarterly reports Approved March 20, 1973 Filed March 20, 1973 Effective August 8, 1973	180
HB 2107	54	school pay twelve months Approved April 13, 1973 Filed April 16, 1973 Effective August 8, 1973	292
HB 2112	130	certified public accountants Approved May 7, 1973 Filed May 7, 1973 Effective August 8, 1973	894
HB 2113	163	barber training, examinations, fees (Emergency) Approved May 14, 1973 Filed May 14, 1973 Effective May 14, 1973	1600
HB 2114	164	employment security Approved May 14, 1973 Filed May 14, 1973 Effective August 8, 1973	1609
HB 2115	69	motor vehicle—height limitation Approved April 19, 1973 Filed April 20, 1973 Effective August 8, 1973	328
HB 2117	87	public safety personnel—retirement benefits (Emergency) Approved May 1, 1973 Filed May 1, 1973 Effective May 1, 1973	560
HB 2118	11	appropriation; department of finance (Emergency) Approved March 16, 1973 Filed March 16, 1973 Effective March 16, 1973	173

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HB 2121	42	competency certificate—escalator repair Approved April 9, 1973 Filed April 10, 1973 Effective August 8, 1973	258
HB 2122	134	labor—election contribution Approved May 7, 1973 Filed May 7, 1973 Effective August 8, 1973	954
HB 2131	43	oil—gas—notice—fees—hearings Approved April 9, 1973 Filed April 10, 1973 Effective August 8, 1973	258
HB 2133	55	highway department hours Approved April 13, 1973 Filed April 16, 1973 Effective August 8, 1973	294
HB 2134	56	transfer of crippled children's hospital (Emergency) Approved April 13, 1973 Filed April 16, 1973 Effective April 13, 1973	295
HB 2135	39	appropriation—increase revolving fund—department economic security (Emergency) Approved April 6, 1973 Filed April 6, 1973 Effective April 6, 1973	249
HB 2137	13	appropriation—personnel commission insurance program (Emergency) Approved March 20, 1973 Filed March 20, 1973 Effective March 20, 1973	175
HB 2143	57	excavating in public utility easement Approved April 13, 1973 Filed April 16, 1973 Effective August 8, 1973	297

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HB 2146	14	supplemental appropriation; corporation commission (Emergency) Approved March 20, 1973 Filed March 20, 1973 Effective March 20, 1973	176
HB 2148	58	repealing nonlapsing provisions Approved April 13, 1973 Filed April 16, 1973 Effective August 8, 1973	301
HB 2151	88	department of state Approved May 1, 1973 Filed May 1, 1973 Effective July 1, 1974, unless Governor declares earlier date	561
HB 2152	89	mines–deputy inspectors Approved May 1, 1973 Filed May 1, 1973 Effective August 8, 1973	564
HB 2159	165	prisoner's release–funds; trust funds Approved May 14, 1973 Filed May 14, 1973 Effective August 8, 1973	1622
HB 2161	31	safety glazing materials Approved April 2, 1973 Filed April 3, 1973 Effective July 1, 1974	222
HB 2168	180	parcel carriers Approved May 14, 1973 Filed May 14, 1973 Effective August 8, 1973	1801
HB 2172	166	recording livestock earmark Approved May 14, 1973 Filed May 14, 1973 Effective August 8, 1973	1624
HB 2173	167	seed law amendments (Emergency) Approved May 14, 1973 Filed May 14, 1973 Effective May 14, 1973	1625

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HB 2181	25	appropriation; livestock sanitary board (Emergency) Approved March 30, 1973 Filed March 30, 1973 Effective March 30, 1973	193
HB 2182	35	atomic energy commission—compensation (Emergency) Approved April 6, 1973 Filed April 6, 1973 Effective April 6, 1973	244
HB 2183	26	appropriation; atomic energy commission (Emergency) Approved March 30, 1973 Filed March 30, 1973 Effective March 30, 1973	194
HB 2187	59	plates for undercover vehicles Approved April 13, 1973 Filed April 16, 1973 Effective August 8, 1973	302
HB 2191	168	airstrip length restriction Approved May 14, 1973 Filed May 14, 1973 Effective August 8, 1973	1634
HB 2193	60	state land commission fees Approved April 13, 1973 Filed April 16, 1973 Effective August 8, 1973	303
HB 2200	36	emergency medical services—personnel classification Approved April 6, 1973 Filed April 6, 1973 Effective August 8, 1973	246

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HB 2206	37	appropriation; auditor general (Emergency) Approved April 6, 1973 Filed April 6, 1973 Effective April 6, 1973	247
HB 2207	38	appropriation; department of finance (Emergency) Approved April 6, 1973 Filed April 6, 1973 Effective April 6, 1973	248
HB 2208	169	college integration; state community system Approved May 14, 1973 Filed May 14, 1973 Effective August 8, 1973	1636
HB 2209	70	community college districts—personal property Approved April 19, 1973 Filed April 20, 1973 Effective August 8, 1973	330
HB 2213	62	school board members—elect—expenses Approved April 13, 1973 Filed April 16, 1973 Effective August 8, 1973	314
HB 2237	135	insurance premium taxes Approved May 7, 1973 Filed May 7, 1973 Effective August 8, 1973	955
HB 2242	66	equal wages Approved April 18, 1973 Filed April 18, 1973 Effective August 8, 1973	319

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HB 2250	90	clearing corporations–definition–deposit authority Approved May 1, 1973 Filed May 1, 1973 Effective August 8, 1973	568
HB 2256	181	exceptional children; education plan; facilities Approved May 14, 1973 Filed May 14, 1973 Effective August 8, 1973	1804
HB 2269	91	public employees–tax deferred annuity Approved May 1, 1973 Filed May 1, 1973 Effective August 8, 1973	572
HB 2273	170	contractors Approved May 14, 1973 Filed May 14, 1973 Effective August 8, 1973	1642
HB 2275	171	real property securities Approved May 14, 1973 Filed May 14, 1973 Effective August 8, 1973	1645
HB 2279	102	superior courts–sessions Approved May 2, 1973 Filed May 3, 1973 Effective August 8, 1973	597
HB 2280	172	equal rights Approved May 14, 1973 Filed May 14, 1973 Effective August 8, 1973 Sections 17 and 18 on January 1, 1974	1655
HB 2285	67	community college establishments; removing authority Approved April 18, 1973 Filed April 18, 1973 Effective August 8, 1973	321

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HB 2289	173	establishing certain revolving funds (Emergency) Approved May 14, 1973 Filed May 14, 1973 Effective May 14, 1973	1725
HB 2290	71	finance; budget unit funds; transfer Approved April 19, 1973 Filed April 20, 1973 Effective August 8, 1973	332
HB 2291	72	appropriation; finance department—retirement contributions (Emergency) Approved April 19, 1973 Filed April 20, 1973 Effective April 19, 1973	334
HB 2292	131	school board association membership authorized Approved May 7, 1973 Filed May 7, 1973 Effective July 1, 1974	905
HB 2293	28	radiotherapy center—establishment time extended Approved March 30, 1973 Filed March 30, 1973 Effective August 8, 1973	196
HB 2297	92	county treasurers; back tax books Approved May 1, 1973 Filed May 1, 1973 Effective August 8, 1973	578
HB 2307	64	appropriation; department public buildings maintenance (Emergency) Approved April 13, 1973 Filed April 16, 1973 Effective April 13, 1973	317

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HB 2309	65	appropriation to the national guard (Emergency) Approved April 13, 1973 Filed April 16, 1973 Effective April 13, 1973	318
HB 2310	174	House and Senate wings; jurisdiction Approved May 14, 1973 Filed May 14, 1973 Effective August 8, 1973	1733
HB 2311	182	property tax relief for 1973 Approved May 14, 1973 Filed May 14, 1973 Effective, Section 6 from and after December 31, 1973; Section 13 on July 1, 1974; Section 15 beginning with property taxes accrued during 1974. Expiration, January 31, 1975 except for sections 3, 4, 5, 6, 13, 15 and 16.	1815
HB 2313	175	claims for relief (Emergency Approved May 14, 1973 Filed May 14, 1973 Effective May 14, 1973	1735
HB 2314	184	general appropriations Approved May 14, 1973 Filed May 16, 1973 Effective July 1, 1973	1864
HB 2315	176	capital outlay Approved May 14, 1973 Filed May 14, 1973 Effective July 1, 1973	1755
HB 2316	177	appropriation; crippled children's services (Emergency) Approved May 14, 1973 Filed May 14, 1973 Effective May 14, 1973	1763
HB 2317	137	appropriation; secretary of state (Emergency) Approved May 8, 1973 Filed May 8, 1973 Effective May 8, 1973	965

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SM 1001	veterans' day Adopted January 29, 1973 Approved January 29, 1973 Filed January 30, 1973	1919
SM 1002	Bayh handgun bill Adopted March 7, 1973 Approved March 7, 1973 Filed March 7, 1973	1920
SM 1003	establishing national cemetery Adopted February 5, 1973 Approved February 5, 1973 Filed February 6, 1973	1921
SM 1004	old age assistance offset Adopted February 9, 1973 Approved February 13, 1973 Filed February 13, 1973	1922
SCM 1002	prohibit compelled busing Passed Senate March 27, 1973 Passed House April 28, 1973 Approved May 2, 1973 Filed May 3, 1973	1923
HCM 2004	San Carlos mineral strip property Passed House April 30, 1973 Passed Senate April 27, 1973 Approved May 2, 1973 Filed May 3, 1973	1925

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SR 1002	death of Hon. William M. Huso Adopted unanimously February 28, 1973 Approved March 2, 1973 Filed March 2, 1973	1928

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HR 2000	death of Hon. Carl C. Andersen Adopted January 11, 1973 Approved January 11, 1973 Filed January 11, 1973	1929
HR 2001	death of Hon. William R. Ryan Adopted January 16, 1973 Approved January 16, 1973 Filed January 16, 1973	1930
HR 2002	death of Hon. Bernardo M. Cajero Adopted January 22, 1973 Approved January 22, 1973 Filed January 22, 1973	1931
HR 2003	death of Hon. Stephen A. Spear Adopted January 24, 1973 Approved January 29, 1973 Filed January 29, 1973	1932
HR 2004	death of Hon. Harry F. Sutherland Adopted January 30, 1973 Approved January 30, 1973 Filed January 30, 1973	1933
HR 2005	death of Hon. Nicholas Traficanti Adopted February 7, 1973 Approved February 7, 1973 Filed February 8, 1973	1934
HR 2006	death of Hon. Arthur Curlee Adopted February 13, 1973 Approved February 13, 1973 Filed February 15, 1973	1935
HR 2007	Arizona National Guard Adopted March 8, 1973 Approved March 8, 1973 Filed March 8, 1973	1936
HR 2008	death of Hon. Frank G. Robles Adopted March 6, 1973 Approved March 6, 1973 Filed March 7, 1973	1937

Bill No.	Short Title	Page
HR 2009	death of Hon. Edwin R. Pryor Adopted March 20, 1973 Approved March 20, 1973 Filed March 20, 1973	1938
HR 2010	death of Hon. Joseph F. Pomeroy Adopted April 25, 1973 Approved April 25, 1973 Filed April 25, 1973	1939
HR 2011	death of Hon. George J. Palé Adopted May 3, 1973 Approved May 3, 1973 Filed May 3, 1973	1940
SCR 1004	death of Hon. Charles S. Goff Adopted unanimously by Senate January 18, 1973 Adopted unanimously by House January 19, 1973 Approved January 22, 1973 Filed January 22, 1973	1941
SCR 1009	death of Pres. Lyndon B. Johnson Adopted unanimously by Senate January 25, 1973 Adopted unanimously by House January 25, 1973 Approved January 29, 1973 Filed January 29, 1973	1942
SCR 1010	death of Pres. Harry S. Truman Adopted unanimously by Senate January 26, 1973 Adopted unanimously by House January 29, 1973 Approved January 30, 1973 Filed January 30, 1973	1946
SCR 1012	death of Hon. David S. Wine Adopted unanimously by Senate February 2, 1973 Adopted unanimously by House February 6, 1973 Approved February 7, 1973 Filed February 8, 1973	1949

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SCR 1020	executive department Passed Senate March 21, 1973 Passed House April 28, 1973 Approved May 2, 1973 Filed May 3, 1973	1950
SCR 1021	death of Hon. Marvin E. Smith Adopted unanimously by Senate March 28, 1973 Adopted unanimously by House March 29, 1973 Approved March 29, 1973 Filed March 30, 1973	1952
SCR 1022	recall election Passed Senate April 12, 1973 Passed House April 28, 1973 Approved May 2, 1973 Filed May 3, 1973	1954
SCR 1023	death of Hon. Harold C. Giss Adopted unanimously by Senate April 18, 1973 Adopted unanimously by House April 18, 1973 Approved April 24, 1973 Filed April 24, 1973	1955
HCR 2007	approval Navajo community college plans Passed House April 18, 1973 Passed Senate April 13, 1973 Filed April 18, 1973	1958
HJR 2001	police reserve officers Passed House March 5, 1973 Passed Senate April 13, 1973 Approved April 16, 1973 Filed April 17, 1973	1958

ACTS

LAWS OF ARIZONA

CHAPTER 1

Senate Bill 1029

AN ACT

RELATING TO STATE HOLIDAYS; PRESCRIBING DATES OF MEMORIAL DAY AND VETERANS' DAY, AND AMENDING SECTION 1-301, ARIZONA REVISED STATUTES.

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

Section 1. **Purpose**

The purpose of this act is to provide that Veterans' Day and Memorial Day be observed on traditional days of November 11 and May 30 respectively.

Sec. 2. Section 1-301, Arizona Revised Statutes, is amended to read:

1-301. **Holidays enumerated**

A. The following days shall be holidays:

1. Sunday of each week.

2. January 1, "New Year's Day".

3. February 12, "Lincoln Day".

4. February 14, "Admission Day".

5. Third Monday in February, "Washington's Birthday".

6. Second Sunday in May, "Mothers' Day".

~~7. Last Monday in May, "Decoration Day".~~

7. MAY 30, "MEMORIAL DAY".

8. Third Sunday in June, "Fathers' Day".

9. July 4, "Independence Day".

10. First Monday in September, "Labor Day".

11. Second Monday in October, "Columbus Day".

12. "General Election Day".

13. ~~Fourth Monday in October~~ NOVEMBER 11, "Veterans' Day".

14. Fourth Thursday in November, "Thanksgiving Day".

15. December 25, "Christmas Day".

B. When any of the holidays enumerated in subsection A falls on a Sunday, the following Monday shall be observed as a holiday, with the exception of the holidays enumerated in paragraphs 1, 6 and 8.

Approved by the Governor–February 7, 1973

Filed in the Office of the Secretary of State–February 8, 1973

CHAPTER 2

House Bill 2040

AN ACT

MAKING A SUPPLEMENTAL APPROPRIATION TO THE DIVISION OF BUILDING CODES.

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

Section 1. **Appropriation; purpose**

In addition to the appropriation made by Laws 1972, chapter 143, section 2, the sum of forty-five thousand dollars is appropriated to the division of building codes to be immediately available for administering the provisions of title 44, chapter 11, article 7, Arizona Revised Statutes, relating to construction of factory built buildings, mobile housing and recreational vehicles, during the fiscal year ending June 30, 1973.

Sec. 2. **Emergency**

To preserve the public peace, health and safety it is necessary that this act

become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.

Approved by the Governor–February 16, 1973

Filed in the Office of the Secretary of State–February 16, 1973

CHAPTER 3

House Bill 2085

AN ACT

PROVIDING FOR REALLOCATION OF FUNDS OF THE STATE LAND COMMISSIONER.

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

Section 1. **Reallocation of funds**

From the appropriation made in the sum of ninety thousand dollars to the state land department–commissioner under the terms of chapter 216, section 1, subdivision 100, Laws of 1972, and allocated to "Soil conservation district election expenses", all of the remaining unexpended and unencumbered balance of such sum is reallocated to the state land department–commissioner to be available for the purposes specified in section 45-2014, Arizona Revised Statutes.

Sec. 2. **Emergency**

To preserve the public peace, health and safety it is necessary that this act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.

Approved by the Governor–February 16, 1973

Filed in the Office of the Secretary of State–February 16, 1973

LAWS OF ARIZONA

CHAPTER 4

House Bill 2088

AN ACT

MAKING A SUPPLEMENTAL APPROPRIATION TO THE AGRICULTURAL EMPLOYMENT RELATIONS BOARD.

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

Section 1. **Appropriation; purpose**

In addition to the appropriation made by Laws 1972, chapter 137, section 2, the sum of one hundred fifty thousand dollars is appropriated to the agricultural employment relations board to be immediately available for the purpose of administering the provisions of title 23, chapter 8, article 5, Arizona Revised Statutes, relating to agricultural employment relations.

Sec. 2. **Emergency**

To preserve the public peace, health and safety it is necessary that this act become immediately operative. It is therefore declared to be an emergency measure to take effect as provided by law.

Approved by the Governor–February 16, 1973

Filed in the Office of the Secretary of State–February 16, 1973

CHAPTER 5

House Bill 2057

AN ACT

RELATING TO CITIES AND TOWNS; PROVIDING THAT SURPLUS VOLUNTEER FIRE COMPANY FUND MONIES BE RETAINED AND NOT REVERT TO THE GENERAL FUND, AND AMENDING SECTION 9-1005, ARIZONA REVISED STATUTES.

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

Section 1. Section 9-1005, Arizona Revised Statutes, is amended to read:

9-1005. **County contribution to volunteer fire company fund; authority to obtain services; computation and levy of tax**

A. The board of supervisors may ascertain the value of all vehicles registered between January 1 and July 1 of each year from within the boundaries of the territory described in the order of the board authorizing the organization of a volunteer fire company, and on or before July 10 of each year may pay into the volunteer fire company fund of such territory an amount equal to one and two-tenths per cent of such value.

B. Not more than ten days after the perfection of the organization of a volunteer fire company, and thereafter not later than July 10 of each year, the chief and the secretary-treasurer of the company may submit to the board of supervisors an estimate, certified by items, of the amount of money required for the equipment and maintenance of the company for the ensuing year, less the amount derived from the county as provided by subsection A of this section. The estimate may also include amounts necessary to pay the reasonable value of organizational and legal services and expenses rendered or paid by others in the fiscal year immediately prior to the fiscal year for which the estimate is submitted, if the company has in advance expressly authorized or has after the fact expressly ratified such services or expenses, except the company may not pay more than a total of one thousand five hundred dollars for such services or expenses in any one fiscal year.

C. The board shall approve or modify the estimate, and shall levy a tax, not to exceed twelve mills on each dollar of taxable valuation, against all property situated within the boundaries of the territory described in the order of the board authorizing the organization of the company and appearing upon the last assessment roll. The levy shall be made and the taxes collected in the manner, at the time, and by the officers provided by law for the collection of state and county taxes.

D. The county treasurer shall keep the money received from such taxes in a separate fund known as the "Volunteer Fire Company Fund" of the town or settlement for which collected. Any surplus~~, not to exceed an amount equal to twenty-five per cent of the current fiscal year budget,~~ remaining in the fund at the end of the fiscal year shall be credited to the "Volunteer Fire Company Fund" of the town or settlement for which collected for the succeeding fiscal year. ~~All surplus remaining in the fund~~

~~at the end of the fiscal year in excess of twenty-five per cent of the current fiscal year budget shall revert to the county general fund.~~

Sec. 2. **Emergency**

To preserve the public peace, health and safety it is necessary that this act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.

Approved by the Governor–February 20, 1973

Filed in the Office of the Secretary of State–February 21, 1973

CHAPTER 6

Senate Bill 1059

AN ACT

RELATING TO TAXATION OF INCOME; AUTHORIZING INSTALLMENT PAYMENTS BY CORPORATIONS; AUTHORIZING ABATEMENT OF CERTAIN UNPAID PORTION OF INCOME TAX, AND AMENDING SECTION 43-146, ARIZONA REVISED STATUTES.

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

Section 1. Section 43-146, Arizona Revised Statutes, is amended to read:

43-146. **Payment of tax**

(a) **Tax, when payable.** The tax imposed under this title shall be paid on the fifteenth day of April following the close of the calendar year, or, if the return is made on the basis of a fiscal year, on the fifteenth day of the fourth month following the close of the fiscal year, but ~~in the case of~~ corporations subject to the tax imposed by this title MAY ELECT TO PAY THE TAX IN TWO INSTALLMENTS AND, IN SUCH EVENT, one-half of the amount of tax disclosed by the return shall be due and payable as a first installment of the tax on or before the fifteenth day of the fourth month following the close of the income year, and the balance

of the tax shall be due and payable as a second installment on or before the fifteenth day of the sixth month following the close of the taxable year.

(b) **Installment payments, election.** In the case of a taxpayer, other than a corporation, on or before the date prescribed for the payment of the tax the taxpayer may elect to pay the tax in three ~~equal~~ installments, THE FIRST OF WHICH MAY NOT BE LESS THAN ONE-THIRD AND THE SECOND NOT LESS THAN ONE-HALF OF THE REMAINING BALANCE. The first installment shall be paid on the date prescribed for the payment of the tax, the second installment shall be paid on the fifteenth day of the fourth month, and the third installment on the fifteenth day of the eighth month, after that date. Notwithstanding the provisions of this section, if the amount paid on or before the due date of the first installment is less than the tax as corrected in accordance with the provisions of section 43-177 (i), the taxpayer shall be deemed to have elected to pay the tax in three ~~equal~~ installments in the manner provided herein. If any installment is not paid on or before the date fixed for its payment, the whole amount of tax unpaid shall be paid upon notice and demand from the tax commission.

(c) **Payments, may be paid in advance.** Any taxpayer may elect to pay the tax or any installment prior to the date prescribed for its payment.

(d) **Remittances, payable to tax commission.** The tax, and any interest and penalties, shall be paid to the tax commission. Remittances may be in the form of a check, payable to the tax commission, during such time and under such regulations as the tax commission may prescribe. If a check is not paid by the bank on which it is drawn, the taxpayer tendering the check remains liable for the payment of the tax, and all interest and penalties, as if he had not tendered the check.

(e) **Husband and wife, liability for tax.** The spouse who controls the disposition of or who receives or spends community income as well as the spouse who is taxable on such income is liable for the payment of the taxes imposed by this title on such income. Where a joint return is filed by a husband and wife, the liability for the tax on the aggregate income is joint and several.

(f) **Extension of time.** Where an extension of time for filing returns has been granted by the tax commission, the first installment of the tax provided for in subsection (a) shall be paid prior to the expiration of such extension.

(g) **SMALL TAX BALANCES.** THE COMMISSION, WITH THE APPROVAL OF THE ATTORNEY GENERAL, IS AUTHORIZED TO ABATE ALL OR ANY PORTION OF THE UNPAID PORTION OF ANY INCOME TAX, IF THE COMMISSION DETERMINES THAT THE ADMINISTRATION AND COLLECTION COSTS INVOLVED WOULD EXCEED THE AMOUNT OF THE TAX DUE.

Sec. 2. **Effective date**

The provisions of this act shall become effective with the taxable year beginning from and after December 31, 1972.

Approved by the Governor–March 2, 1973

Filed in the Office of the Secretary of State–March 5, 1973

CHAPTER 7

Senate Bill 1103

AN ACT

RELATING TO INCOME TAXATION; DIVIDING GROSS INCOME DEDUCTIONS; REPEALING SECTION 43-123, ARIZONA REVISED STATUTES; AMENDING TITLE 43, CHAPTER 1, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 43-123.03 THROUGH 43-123.35, AND AMENDING SECTIONS 43-101, 43-102, 43-112, 43-123.01, 43-123.02, 43-125, 43-126, 43-135, 43-147, 43-149, 43-152, 43-153, 43-154, 43-157, 43-158, 43-159, 43-162, 43-167, 43-169, 43-171 AND 43-184, ARIZONA REVISED STATUTES.

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

Section 1. **Purpose**

The legislature intends to effect no substantive change in state income tax law, but intends merely to divide those provisions relating to gross income deductions into more concise, understandable and usable sections of law.

Sec. 2. **Repeal**

Section 43-123, Arizona Revised Statutes, is repealed.

Sec. 3. Title 43, chapter 1, article 1, Arizona Revised Statutes, is amended by adding sections 43-123.03 through 43-123.35, to read:

43-123.03. **Deductions for expenses**

A. IN COMPUTING NET INCOME THERE SHALL BE ALLOWED AS A DEDUCTION ALL THE ORDINARY AND NECESSARY EXPENSES PAID OR INCURRED DURING THE TAXABLE YEAR IN CARRYING ON ANY TRADE OR BUSINESS, INCLUDING A REASONABLE ALLOWANCE FOR SALARIES OR OTHER COMPENSATION FOR PERSONAL SERVICES ACTUALLY RENDERED; TRAVELING EXPENSES (INCLUDING THE ENTIRE AMOUNT EXPENDED FOR MEALS AND LODGING) WHILE AWAY FROM HOME IN THE PURSUIT OF A TRADE OR BUSINESS; AND RENTALS OR OTHER PAYMENTS REQUIRED TO BE MADE AS A CONDITION TO THE CONTINUED USE OR POSSESSION, FOR PURPOSES OF THE TRADE OR BUSINESS, OF PROPERTY TO WHICH THE TAXPAYER HAS NOT TAKEN OR IS NOT TAKING TITLE OR IN WHICH HE HAS NO EQUITY:

1. IN THE CASE OF A TAXPAYER ENGAGED IN THE BUSINESS OF FARMING, EXPENDITURES MADE FOR THE PURPOSE OF SOIL AND WATER CONSERVATION AND THE PREVENTION OF EROSION OF LAND USED IN FARMING SHALL BE ALLOWED AS DEDUCTIONS UNDER THIS SECTION. FOR THE PURPOSES OF THIS PARAGRAPH, THE TERM "EXPENDITURES MADE FOR THE PURPOSE OF SOIL AND WATER CONSERVATION AND THE PREVENTION OF EROSION" MEANS EXPENDITURES FOR THE TREATMENT, MOVING, OR CULTIVATION OF EARTH, INCLUDING (BUT NOT LIMITED TO) LEVELING, GRADING AND TERRACING, CONTOUR FURROWING, THE CONSTRUCTION OF DIVERSION CHANNELS AND DRAINAGE DITCHES, THE CONTROL AND PROTECTION OF WATER COURSES, OUTLETS AND PONDS, THE PLANTING AND CULTIVATION OF COVER AND PROTECTIVE CROPS OR WINDBREAKS, THE CONTROL OF WEEDS AND BRUSH AND OTHER SPECIAL OR EMERGENCY CULTIVATION AND TILLAGE; BUT SUCH TERM DOES NOT INCLUDE THE PURCHASE, CONSTRUCTION, INSTALLATION, OR IMPROVEMENT OF STRUCTURES, APPLIANCES, AND FACILITIES MADE OF MASONRY, CONCRETE, TILE, METAL, OR WOOD, SUCH AS TANKS, RESERVOIRS, PIPES, CONDUITS, CANALS, DAMS, WELLS, AND PUMPS, WHICH ARE SUBJECT TO THE ALLOWANCE FOR DEPRECIATION PROVIDED IN SECTION 43-123.14. FOR THE PURPOSES OF THIS PARAGRAPH

THE TERM "LAND USED IN FARMING" MEANS LAND USED (PRIOR TO THE EXPENDITURE FOR CONSERVATION MADE BY THE TAXPAYER) BY THE TAXPAYER OR HIS TENANT OR THE PREDECESSOR OWNER OR HIS TENANT FOR THE PRODUCTION OF CROPS, FRUITS, AND SIMILAR AGRICULTURAL PRODUCTS OR FOR THE SUSTENANCE OF LIVESTOCK.

2. NO DEDUCTION SHALL BE ALLOWABLE UNDER THIS SUBSECTION, TO A CORPORATION FOR ANY CONTRIBUTION OR GIFT WHICH WOULD BE ALLOWABLE AS A DEDUCTION UNDER SECTION 43-123.19, SUBSECTION A, WERE IT NOT FOR THE FIVE PER CENT LIMITATION THEREIN CONTAINED AND FOR THE REQUIREMENTS THEREIN THAT PAYMENT MUST BE MADE WITHIN THE INCOME YEAR.

B. IN COMPUTING NET INCOME THERE SHALL BE ALLOWED AS A DEDUCTION ALL THE ORDINARY AND NECESSARY EXPENSES PAID OR INCURRED DURING THE TAXABLE YEAR FOR THE PRODUCTION OR COLLECTION OF INCOME, OR FOR THE MANAGEMENT, CONSERVATION, OR MAINTENANCE OF PROPERTY HELD FOR THE PRODUCTION OF INCOME.

C. THE DEDUCTIONS PERMITTED BY SUBSECTION A OF THIS SECTION SHALL NOT BE ALLOWED TO THE EXTENT THAT THEY ARE CONNECTED WITH THE PRODUCTION OF INCOME NOT TAXABLE UNDER THIS TITLE. PROPER APPORTIONMENT AND ALLOCATION OF SUCH DEDUCTIONS WITH RESPECT TO TAXABLE AND NONTAXABLE INCOME SHALL BE DETERMINED UNDER RULES AND REGULATIONS PRESCRIBED BY THE TAX COMMISSION.

43-123.04. **Deductions for interest**

IN COMPUTING NET INCOME THERE SHALL BE ALLOWED AS A DEDUCTION ALL INTEREST PAID OR ACCRUED WITHIN THE TAXABLE YEAR ON INDEBTEDNESS OF THE TAXPAYER. HOWEVER, NO DEDUCTION SHALL BE ALLOWED TO THE EXTENT THAT IT IS CONNECTED WITH INCOME NOT TAXABLE UNDER THIS TITLE. THE PROPER APPORTIONMENT AND ALLOCATION OF THE DEDUCTION WITH RESPECT TO TAXABLE AND NONTAXABLE INCOME SHALL BE DETERMINED UNDER RULES AND REGULATIONS PRESCRIBED BY THE TAX COMMISSION.

43-123.05. **Deductions for taxes**

IN COMPUTING NET INCOME THERE SHALL BE ALLOWED AS A DEDUCTION TAXES OR LICENSES PAID OR ACCRUED DURING THE TAXABLE YEAR, EXCEPT:

1. TAXES ON OR ACCORDING TO OR MEASURED BY INCOME OR PROFITS PAID OR ACCRUED WITHIN THE TAXABLE YEAR IMPOSED BY THE AUTHORITY OF THE GOVERNMENT OF ANY FOREIGN COUNTRY, OR ANY STATE, OTHER THAN THE STATE OF ARIZONA, ANY TERRITORY, OR TAXING SUBDIVISION OF ANY SUCH STATE OR TERRITORY.

2. ESTATE, INHERITANCE, LEGACY, SUCCESSION, AND GIFT TAXES.

3. TAXES ASSESSED AGAINST LOCAL BENEFITS OF A KIND TENDING TO INCREASE THE VALUE OF THE PROPERTY ASSESSED.

THIS DOES NOT EXCLUDE THE ALLOWANCE AS A DEDUCTION OF SO MUCH OF THE TAXES ASSESSED AGAINST LOCAL BENEFITS AS IS PROPERLY ALLOCABLE TO MAINTENANCE OR INTEREST CHARGES, NOR DOES THIS EXCLUDE THE ALLOWANCE OF ANY IRRIGATION OR OTHER WATER DISTRICT TAXES OR ASSESSMENTS WHICH ARE LEVIED FOR THE PAYMENT OF THE PRINCIPAL OF ANY IMPROVEMENT OR OTHER BONDS FOR WHICH A GENERAL ASSESSMENT ON ALL LANDS WITHIN THE DISTRICT IS LEVIED AS DISTINGUISHED FROM A SPECIAL ASSESSMENT LEVIED ON PART OF THE AREA WITHIN THE DISTRICT.

4. TAXES IMPOSED AS EMPLOYEE CONTRIBUTIONS UNDER THE FEDERAL INSURANCE CONTRIBUTIONS ACT, THE RAILROAD RETIREMENT TAX ACT, AND TAXES IMPOSED ON SELF-EMPLOYMENT INCOME UNDER THE SELF-EMPLOYMENT CONTRIBUTIONS ACT OF 1954. TAXES IMPOSED FOR THIS PURPOSE INCLUDE AMOUNTS LEVIED FOR OLD AGE, SURVIVORS, DISABILITY INSURANCE, AND HOSPITAL INSURANCE UNDER THE SOCIAL SECURITY ACT OF THE UNITED STATES.

43-123.06. **Deductions for sales and other taxes separately stated**

IN COMPUTING NET INCOME THERE SHALL BE ALLOWED AS A DEDUCTION ANY TAX IMPOSED BY ANY STATE, TERRITORY, DISTRICT OR POSSESSION OF THE UNITED STATES, OR ANY POLITICAL SUBDIVISION THEREOF, UPON PERSONS:

1. ENGAGED IN SELLING TANGIBLE PERSONAL PROPERTY AT RETAIL, WHICH IS MEASURED BY THE GROSS SALES PRICE OR THE GROSS RECEIPTS FROM THE SALE, OR WHICH IS A STATED SUM PER UNIT OF SUCH PROPERTY SOLD; OR

2. ENGAGED IN FURNISHING SERVICES AT RETAIL, WHICH IS MEASURED BY THE GROSS RECEIPTS FOR FURNISHING SUCH SERVICES; OR

3. PURCHASING SERVICES OR TANGIBLE PERSONAL PROPERTY AT RETAIL WHICH IS MEASURED BY THE GROSS RECEIPTS OR GROSS SALES PRICE OR WHICH IS A STATED SUM PER UNIT OF VALUE SOLD, IF THE AMOUNT OF THE TAX IS SEPARATELY STATED, AND IF PURCHASED OTHERWISE THAN IN CONNECTION WITH THE CONSUMER'S TRADE OR BUSINESS. THE AMOUNT OF SUCH TAX PAID BY THE CONSUMER SUBJECT TO THE CONDITIONS IN THIS PARAGRAPH SHALL BE THE DEDUCTIONS ALLOWED. TO SUCH CONSUMER THE AMOUNT SHALL BE ALLOWED AS A DEDUCTION IN COMPUTING HIS NET INCOME AS IF THE AMOUNT CONSTITUTED A TAX IMPOSED UPON AND PAID BY HIM.

43-123.07. **Deductions for losses by individuals**

IN COMPUTING NET INCOME THERE SHALL BE ALLOWED AS A DEDUCTION IN THE CASE OF AN INDIVIDUAL LOSSES SUSTAINED DURING THE TAXABLE YEAR AND NOT COMPENSATED FOR BY INSURANCE OR OTHERWISE:

1. IF INCURRED IN TRADE OR BUSINESS; OR

2. IF INCURRED IN ANY TRANSACTION ENTERED INTO FOR PROFIT, THOUGH NOT CONNECTED WITH THE TRADE OR BUSINESS; OR

3. OF PROPERTY NOT CONNECTED WITH THE TRADE OR BUSINESS, IF THE LOSS ARISES FROM FIRES, STORMS, SHIPWRECK, OR OTHER CASUALTY, OR FROM THEFT; OR

4. IF INCURRED BY REASON OF THE DESTRUCTION OR SEIZURE OF PROPERTY, ON OR AFTER DECEMBER 7, 1941, IN THE COURSE OF MILITARY OR NAVAL OPERATIONS BY THE UNITED STATES OR ANY OTHER COUNTRY ENGAGED IN TIME OF WAR, SUBJECT TO THE RULES AND REGULATIONS PRESCRIBED BY THE TAX COMMISSION. THE BASIS FOR DETERMINING THE AMOUNT OF DEDUCTION FOR LOSSES SUSTAINED, TO BE

ALLOWED UNDER THIS SECTION, SHALL BE THE ADJUSTED BASIS PROVIDED IN SECTION 43-153(b) FOR DETERMINING THE LOSS FROM THE SALE OR OTHER DISPOSITION OF PROPERTY.

43-123.08. **Deductions for losses by corporations**

A. IN COMPUTING NET INCOME THERE SHALL BE ALLOWED AS A DEDUCTION IN THE CASE OF A CORPORATION, LOSSES SUSTAINED DURING THE INCOME YEAR AND NOT COMPENSATED FOR BY INSURANCE OR OTHERWISE.

B. THE BASIS FOR DETERMINING THE AMOUNT OF DEDUCTION FOR LOSSES SUSTAINED, TO BE ALLOWED UNDER THIS SECTION, SHALL BE THE ADJUSTED BASIS PROVIDED IN SECTION 43-153(b) FOR DETERMINING THE LOSS FROM THE SALE OR OTHER DISPOSITION OF PROPERTY.

43-123.09. **Deductions for capital assets, losses**

A. LOSSES FROM SALES OR EXCHANGES OF CAPITAL ASSETS SHALL BE ALLOWED ONLY TO THE EXTENT PROVIDED IN SECTION 43-157.

B. IF ANY SECURITIES BECOME WORTHLESS DURING THE TAXABLE YEAR AND ARE CAPITAL ASSETS, THE LOSS RESULTING THEREFROM SHALL, FOR THE PURPOSES OF THIS TITLE, BE CONSIDERED AS A LOSS FROM THE SALE OR EXCHANGE, ON THE LAST DAY OF THE TAXABLE YEAR, OF CAPITAL ASSETS.

C. "SECURITIES", AS USED IN THIS SECTION, MEANS SHARES OF STOCK IN A CORPORATION, AND RIGHTS TO SUBSCRIBE FOR OR TO RECEIVE SUCH SHARES.

43-123.10. **Deductions for wagering losses**

LOSSES FROM WAGERING TRANSACTIONS SHALL BE ALLOWED ONLY TO THE EXTENT OF THE GAINS FROM SUCH TRANSACTIONS.

43-123.11. **Deductions for sixty day sales**

IN THE CASE OF ANY LOSS CLAIMED TO HAVE BEEN SUSTAINED IN ANY SALE OR DISPOSITION OF PROPERTY WHERE IT APPEARS THAT WITHIN THIRTY DAYS BEFORE OR AFTER THE DATE OF SUCH SALE OR OTHER DISPOSITION THE TAXPAYER HAS

ACQUIRED (OTHERWISE THAN BY BEQUEST OR INHERITANCE) OR HAS ENTERED INTO A CONTRACT OR OPTION TO ACQUIRE SUBSTANTIALLY IDENTICAL PROPERTY AND THE PROPERTY ACQUIRED IS HELD BY THE TAXPAYER FOR ANY PERIOD AFTER SUCH SALE OR OTHER DISPOSITION, NO DEDUCTION FOR THE LOSS SHALL BE ALLOWED UNLESS THE CLAIM IS MADE BY A TAXPAYER, A DEALER IN SUCH PROPERTY, AND WITH RESPECT TO A TRANSACTION MADE IN THE ORDINARY COURSE OF HIS BUSINESS. IF SUCH ACQUISITION OR THE CONTRACT OR OPTION TO ACQUIRE IS TO THE EXTENT OF PART ONLY OF SUBSTANTIALLY IDENTICAL PROPERTY, THEN ONLY A PROPORTIONATE PART OF THE LOSS SHALL BE DISALLOWED. UPON THE SUBSEQUENT SALE OR DISPOSITION OF SUCH PROPERTY, IN RESPECT OF WHICH A LOSS HAS BEEN DISALLOWED, THE BASIS FOR MEASURING GAIN OR LOSS IN THE CASE OF PROPERTY SO ACQUIRED SHALL BE THE BASIS IN THE CASE OF THE PROPERTY SO SOLD OR DISPOSED OF, EXCEPT THAT IF THE REPURCHASE PRICE WAS IN EXCESS OF THE SALE PRICE SUCH BASIS SHALL BE INCREASED IN THE AMOUNT OF THE DIFFERENCE, OR IF THE REPURCHASE PRICE WAS LESS THAN THE SALE PRICE SUCH BASIS SHALL BE DECREASED IN THE AMOUNT OF THE DIFFERENCE.

43-123.12. **Deductions for wash sales**

A. IN THE CASE OF ANY LOSS CLAIMED TO HAVE BEEN SUSTAINED FROM ANY SALE OR OTHER DISPOSITION OF SHARES OF STOCK OR SECURITIES WHERE IT APPEARS THAT WITHIN A PERIOD BEGINNING THIRTY DAYS BEFORE THE DATE OF THE SALE OR DISPOSITION AND ENDING THIRTY DAYS AFTER THAT DATE, THE TAXPAYER HAS ACQUIRED (BY PURCHASE OR BY AN EXCHANGE UPON WHICH THE ENTIRE AMOUNT OF GAIN OR LOSS WAS RECOGNIZED BY LAW) OR HAS ENTERED INTO A CONTRACT OR OPTION SO TO ACQUIRE, SUBSTANTIALLY IDENTICAL STOCK OR SECURITIES, THEN NO DEDUCTION FOR THE LOSS SHALL BE ALLOWED UNDER SECTION 43-123.07, PARAGRAPH 2; NOR SHALL SUCH DEDUCTION BE ALLOWED UNDER SECTION 43-123.08 UNLESS THE CLAIM IS MADE BY A CORPORATION, A DEALER IN STOCKS OR SECURITIES AND WITH RESPECT TO A TRANSACTION MADE IN THE ORDINARY COURSE OF ITS BUSINESS.

B. IF THE AMOUNT OF STOCK OR SECURITIES ACQUIRED (OR COVERED BY THE CONTRACT OR OPTION TO ACQUIRE) IS LESS

THAN THE AMOUNT OF STOCK OR SECURITIES SOLD OR OTHERWISE DISPOSED OF, THEN THE PARTICULAR SHARES OF STOCK OR SECURITIES THE LOSS FROM THE SALE OR OTHER DISPOSITION OF WHICH IS NOT DEDUCTIBLE SHALL BE DETERMINED UNDER RULES AND REGULATIONS PRESCRIBED BY THE TAX COMMISSION.

C. IF THE AMOUNT OF STOCK OR SECURITIES ACQUIRED (OR COVERED BY THE CONTRACT OR OPTION TO ACQUIRE) IS NOT LESS THAN THE AMOUNT OF STOCK OR SECURITIES SOLD OR OTHERWISE DISPOSED OF, THEN THE PARTICULAR SHARES OF STOCK OR SECURITIES THE ACQUISITION OF WHICH (OR THE CONTRACT OR OPTION TO ACQUIRE WHICH) RESULTED IN THE NONDEDUCTIBILITY OF THE LOSS SHALL BE DETERMINED UNDER THE RULES AND REGULATIONS PRESCRIBED BY THE TAX COMMISSION. IF SUCH ACQUISITION OR THE CONTRACT OR OPTION TO ACQUIRE IS TO THE EXTENT OF PART ONLY OF SUBSTANTIALLY IDENTICAL PROPERTY, THEN ONLY A PROPORTIONATE PART OF THE LOSS SHALL BE DISALLOWED. UPON THE SUBSEQUENT SALE OR DISPOSITION OF SHARES OF STOCK OR SECURITIES, IN RESPECT OF WHICH A LOSS HAS BEEN DISALLOWED, THE BASIS FOR MEASURING GAIN OR LOSS IN THE CASE OF PROPERTY SO ACQUIRED SHALL BE THE BASIS IN THE CASE OF THE SHARES OR SECURITIES SO SOLD OR DISPOSED OF, EXCEPT THAT IF THE REPURCHASE PRICE WAS IN EXCESS OF THE SALE PRICE SUCH BASIS SHALL BE INCREASED IN THE AMOUNT OF THE DIFFERENCE, OR IF THE REPURCHASE PRICE WAS LESS THAN THE SALE PRICE SUCH BASIS SHALL BE DECREASED IN THE AMOUNT OF THE DIFFERENCE.

43-123.13. **Deductions for bad debts**

A. IN COMPUTING NET INCOME THERE SHALL BE ALLOWED AS A DEDUCTION DEBTS WHICH BECOME WORTHLESS WITHIN THE TAXABLE YEAR OR, IN THE DISCRETION OF THE TAX COMMISSION, A REASONABLE ADDITION TO A RESERVE FOR BAD DEBTS. WHEN SATISFIED THAT A DEBT IS RECOVERABLE ONLY IN PART, THE TAX COMMISSION MAY ALLOW THE DEBT AS A DEDUCTION IN AN AMOUNT NOT IN EXCESS OF THE PART CHARGED OFF WITHIN THE TAXABLE YEAR AS A DEDUCTION. IF A DEBT WAS ACTUALLY WORTHLESS PRIOR TO JANUARY 1, 1954, BUT WAS NOT ASCERTAINED TO BE WORTHLESS AND CHARGED OFF PRIOR TO THAT DATE, A DEDUCTION MAY BE TAKEN THEREFOR DURING THE FIRST TAXABLE YEAR ENDING

AFTER DECEMBER 31, 1953; IF A PORTION OF A DEBT IS CLAIMED AND ALLOWED AS A DEDUCTION IN ANY YEAR NO DEDUCTION SHALL BE ALLOWED IN ANY SUBSEQUENT YEAR FOR ANY PORTION OF THE DEBT WHICH WAS CHARGED OFF, REGARDLESS OF WHETHER OR NOT CLAIMED AS A DEDUCTION IN ANY PRIOR YEAR. THIS SUBSECTION DOES NOT APPLY TO A DEBT EVIDENCED BY A SECURITY AS DEFINED IN SUBSECTION C. IF A NONBUSINESS DEBT BECOMES WORTHLESS WITHIN THE TAXABLE YEAR, THE LOSS RESULTING THEREFROM SHALL BE CONSIDERED A LOSS FROM THE SALE OR EXCHANGE DURING THE TAXABLE YEAR OF A CAPITAL ASSET HELD FOR NOT MORE THAN SIX MONTHS. THE TERM "NONBUSINESS DEBT" MEANS A DEBT OTHER THAN A DEBT EVIDENCED BY A SECURITY AND OTHER THAN A DEBT THE LOSS FROM THE WORTHLESSNESS OF WHICH IS INCURRED IN THE TAXPAYER'S TRADE OR BUSINESS. THE BASIS FOR DETERMINING THE AMOUNT OF DEDUCTION ALLOWED UNDER THIS SUBSECTION SHALL BE THE ADJUSTED BASIS PROVIDED IN SECTION 43-153(b) FOR DETERMINING THE LOSS FROM THE SALE OR OTHER DISPOSITION OF PROPERTY.

B. IF ANY SECURITIES, AS DEFINED IN SUBSECTION C BECOME WORTHLESS WITHIN THE TAXABLE YEAR AND ARE CAPITAL ASSETS, THE LOSS RESULTING SHALL BE CONSIDERED AS A LOSS FROM THE SALE OR EXCHANGE, ON THE LAST DAY OF THE TAXABLE YEAR, OF CAPITAL ASSETS.

C. "SECURITIES", AS USED IN SUBSECTIONS A AND B MEANS BONDS, DEBENTURES, NOTES, OR CERTIFICATES, OR OTHER EVIDENCES OF INDEBTEDNESS, ISSUED BY ANY CORPORATION (INCLUDING THOSE ISSUED BY A GOVERNMENT OR POLITICAL SUBDIVISION THEREOF) WITH INTEREST COUPONS OR IN REGISTERED FORM.

D. THIS SECTION SHALL NOT APPLY IN THE CASE OF A TAXPAYER, OTHER THAN A BANK, AS DEFINED IN SECTION 104, OF THE INTERNAL REVENUE CODE, WITH RESPECT TO DEBTS OWED BY ANY POLITICAL PARTY, ANY NATIONAL, STATE OR LOCAL COMMITTEE OF ANY POLITICAL PARTY, OR ANY COMMITTEE, ASSOCIATION, OR ORGANIZATION WHICH ACCEPTS CONTRIBUTIONS OR MAKES EXPENDITURES FOR THE PURPOSE OF INFLUENCING OR ATTEMPTING TO INFLUENCE THE ELECTION OF PRESIDENTIAL OR VICE PRESIDENTIAL ELECTORS OR OF ANY INDIVIDUAL WHOSE NAME IS PRESENTED FOR ELECTION TO ANY FEDERAL, STATE, OR LOCAL ELECTIVE PUBLIC

OFFICE, WHETHER OR NOT SUCH INDIVIDUAL IS ELECTED. FOR THE PURPOSE OF THIS SUBSECTION, THE TERMS "CONTRIBUTIONS" AND "EXPENDITURES" SHALL HAVE THE MEANINGS PRESCRIBED FOR SUCH TERMS IN SECTION 591 OF TITLE 18 OF THE UNITED STATES CODE.

43-123.14. **Deductions for depreciation**

A. IN COMPUTING NET INCOME THERE SHALL BE ALLOWED AS A DEPRECIATION DEDUCTION A REASONABLE ALLOWANCE FOR THE EXHAUSTION, WEAR AND TEAR INCLUDING A REASONABLE ALLOWANCE FOR OBSOLESCENCE:

1. OF PROPERTY USED IN THE TRADE OR BUSINESS, OR

2. OF PROPERTY HELD FOR THE PRODUCTION OF INCOME.

B. FOR TAXABLE YEARS ENDING AFTER DECEMBER 31, 1969, THE TERM "REASONABLE ALLOWANCE" AS USED IN SUBSECTION A SHALL INCLUDE (BUT NOT BE LIMITED TO) AN ALLOWANCE COMPUTED IN ACCORDANCE WITH REGULATIONS PRESCRIBED BY THE TAX COMMISSION UNDER ANY OF THE FOLLOWING METHODS:

1. THE STRAIGHT LINE METHOD.

2. THE DECLINING BALANCE METHOD, USING A RATE NOT EXCEEDING TWICE THE RATE WHICH WOULD HAVE BEEN USED HAD THE ANNUAL ALLOWANCE BEEN COMPUTED UNDER THE METHOD DESCRIBED IN PARAGRAPH 1 OF THIS SUBSECTION.

3. THE SUM OF THE YEARS-DIGITS METHOD.

4. ANY OTHER CONSISTENT METHOD PRODUCTIVE OF AN ANNUAL ALLOWANCE WHICH, WHEN ADDED TO ALL ALLOWANCES FOR THE PERIOD COMMENCING WITH TAXPAYER'S USE OF THE PROPERTY AND INCLUDING THE TAXABLE YEAR, DOES NOT, DURING THE FIRST TWO-THIRDS OF THE USEFUL LIFE OF THE PROPERTY, EXCEED THE TOTAL OF SUCH ALLOWANCES WHICH WOULD HAVE BEEN USED HAD SUCH ALLOWANCES BEEN COMPUTED UNDER THE METHOD DESCRIBED IN PARAGRAPH 2 OF THIS SUBSECTION.

NOTHING IN THIS SUBSECTION SHALL BE CONSTRUED TO LIMIT

OR REDUCE AN ALLOWANCE OTHERWISE ALLOWABLE UNDER SUBSECTION A.

C. PARAGRAPHS 2, 3 AND 4 OF SUBSECTION B SHALL APPLY ONLY IN THE CASE OF PROPERTY (OTHER THAN INTANGIBLE PROPERTY) DESCRIBED IN SUBSECTION A WITH A USEFUL LIFE OF THREE YEARS OR MORE:

1. THE CONSTRUCTION, RECONSTRUCTION, OR ERECTION OF WHICH IS COMPLETED AFTER DECEMBER 31, 1969, AND THEN ONLY TO THAT PORTION OF THE BASIS WHICH IS ATTRIBUTABLE TO SUCH CONSTRUCTION, RECONSTRUCTION, OR ERECTION AFTER DECEMBER 31, 1969, OR

2. ACQUIRED AFTER DECEMBER 31, 1969, IF THE ORIGINAL USE OF SUCH PROPERTY COMMENCES WITH THE TAXPAYER AND COMMENCES AFTER SUCH DATE.

D. WHERE, UNDER REGULATIONS PRESCRIBED BY THE TAX COMMISSION, THE TAXPAYER AND THE TAX COMMISSION, AFTER THE DATE OF ENACTMENT OF THIS TITLE, ENTERED INTO AN AGREEMENT IN WRITING SPECIFICALLY DEALING WITH THE USEFUL LIFE AND RATE OF DEPRECIATION OF ANY PROPERTY, THE RATE SO AGREED UPON SHALL BE BINDING ON BOTH THE TAXPAYER AND THE TAX COMMISSION IN THE ABSENCE OF FACTS OR CIRCUMSTANCES NOT TAKEN INTO CONSIDERATION IN THE ADOPTION OF SUCH AGREEMENT. THE RESPONSIBILITY OF ESTABLISHING THE EXISTENCE OF SUCH FACTS AND CIRCUMSTANCES SHALL REST WITH THE PARTY INITIATING THE MODIFICATION. ANY CHANGE IN THE AGREED RATE AND USEFUL LIFE SPECIFIED IN THE AGREEMENT SHALL NOT BE EFFECTIVE FOR TAXABLE YEARS BEFORE THE TAXABLE YEAR IN WHICH NOTICE IN WRITING BY CERTIFIED MAIL OR REGISTERED MAIL IS SERVED BY THE PARTY TO THE AGREEMENT INITIATING SUCH CHANGE.

E. IN THE ABSENCE OF AN AGREEMENT UNDER SUBSECTION D CONTAINING A PROVISION TO THE CONTRARY, A TAXPAYER MAY AT ANY TIME ELECT IN ACCORDANCE WITH REGULATIONS PRESCRIBED BY THE TAX COMMISSION TO CHANGE FROM THE METHOD OF DEPRECIATION DESCRIBED IN SUBSECTION B, PARAGRAPH 2, TO THE METHOD DESCRIBED IN SUBSECTION B, PARAGRAPH 1.

F. A TAXPAYER MAY ON OR BEFORE THE LAST DAY PRESCRIBED BY LAW (INCLUDING EXTENSIONS THEREOF) FOR FILING HIS RETURN FOR HIS FIRST TAXABLE YEAR BEGINNING AFTER DECEMBER 31, 1969, AND IN SUCH MANNER AS THE TAX COMMISSION SHALL BY REGULATIONS PRESCRIBE, ELECT TO CHANGE HIS METHOD OF DEPRECIATION IN RESPECT OF SECTION 43-157(p) AND SECTION 43-157(q) PROPERTY (AS DEFINED IN SECTION 43-157(p) (1) (C) AND SECTION 43-157(q) (3)) FROM ANY DECLINING BALANCE OR SUM OF THE YEARS-DIGITS METHOD TO THE STRAIGHT LINE METHOD. AN ELECTION MAY BE MADE UNDER THIS SUBSECTION NOTWITHSTANDING ANY PROVISION TO THE CONTRARY IN AN AGREEMENT UNDER SUBSECTION D.

G. UNDER REGULATIONS PRESCRIBED BY THE TAX COMMISSION, A TAXPAYER MAY, FOR PURPOSES OF COMPUTING THE ALLOWANCE UNDER SUBSECTION A WITH RESPECT TO PERSONAL PROPERTY, REDUCE THE AMOUNT TAKEN INTO ACCOUNT AS SALVAGE VALUE BY AN AMOUNT WHICH DOES NOT EXCEED TEN PER CENT OF THE BASIS OF SUCH PROPERTY (AS DETERMINED UNDER SUBSECTION H AS OF THE TIME AS OF WHICH SUCH SALVAGE VALUE IS REQUIRED TO BE DETERMINED). FOR PURPOSES OF THIS SECTION, THE TERM "PERSONAL PROPERTY" MEANS DEPRECIABLE PERSONAL PROPERTY (OTHER THAN LIVESTOCK) WITH A USEFUL LIFE OF THREE YEARS OR MORE ACQUIRED AFTER DECEMBER 31, 1969.

H. FOR THE BASIS UPON WHICH EXHAUSTION, WEAR AND TEAR AND OBSOLESCENCE ARE TO BE ALLOWED, SEE SECTION 43-123.16.

I. IN THE CASE OF PROPERTY HELD BY ONE PERSON FOR LIFE WITH REMAINDER TO ANOTHER PERSON, THE DEDUCTION SHALL BE COMPUTED AS IF THE LIFE TENANT WERE THE ABSOLUTE OWNER OF THE PROPERTY AND SHALL BE ALLOWED TO THE LIFE TENANT. IN THE CASE OF PROPERTY HELD IN TRUST THE ALLOWABLE DEDUCTION SHALL BE APPORTIONED BETWEEN THE INCOME BENEFICIARIES AND THE TRUSTEE IN ACCORDANCE WITH THE PERTINENT PROVISIONS OF THE INSTRUMENT CREATING THE TRUST, OR, IN THE ABSENCE OF SUCH PROVISIONS, ON THE BASIS OF THE TRUST INCOME ALLOCABLE TO EACH.

J. FOR THE ADDITIONAL RULE APPLICABLE TO DEPRECIATION

OF IMPROVEMENTS IN THE CASE OF MINES, OIL AND GAS WELLS, OTHER NATURAL DEPOSITS, AND TIMBER, SEE SECTION 43-123.15.

K. A TAXPAYER MAY ELECT TO CLAIM A DEDUCTION FOR EMERGENCY FACILITIES, AS DEFINED UNDER SECTION 168 OF THE UNITED STATES INTERNAL REVENUE CODE. THE TAX COMMISSION IS AUTHORIZED TO PRESCRIBE REGULATIONS FOR THE IMPLEMENTATION OF THIS SECTION.

43-123.15. **Deductions for depletion**

A. IN COMPUTING NET INCOME THERE SHALL BE ALLOWED AS A DEDUCTION, IN THE CASE OF MINES, OIL AND GAS WELLS, OTHER NATURAL DEPOSITS, AND TIMBER, A REASONABLE ALLOWANCE FOR DEPLETION AND FOR DEPRECIATION OF IMPROVEMENTS, ACCORDING TO THE PECULIAR CONDITIONS IN EACH CASE; SUCH REASONABLE ALLOWANCE IN ALL CASES TO BE MADE UNDER RULES AND REGULATIONS PRESCRIBED BY THE TAX COMMISSION. IN ANY CASE IN WHICH IT IS ASCERTAINED AS A RESULT OF OPERATIONS OR OF DEVELOPMENT WORK THAT THE RECOVERABLE UNITS ARE GREATER OR LESS THAN THE PRIOR ESTIMATE THEREOF THE PRIOR ESTIMATE (BUT NOT THE BASIS FOR DEPLETION) SHALL BE REVISED AND THE ALLOWANCE UNDER THIS SECTION FOR SUBSEQUENT TAXABLE YEARS SHALL BE BASED UPON THE REVISED ESTIMATE. ANY MINE USING THE UNIT DEPLETION METHOD IN COMPUTING DEPLETION ALLOWANCE FOR ARIZONA STATE INCOME TAX PURPOSES IMMEDIATELY PRIOR TO JANUARY 1, 1954, SHALL CONTINUE TO USE THAT METHOD AND IN NO SUBSEQUENT YEAR SHALL THE UNIT RATE OF DEPLETION ALLOWANCE EXCEED THAT IN USE BY THE MINE FOR THE TAX YEAR OF 1949.

B. IN THE CASE OF LEASES THE DEDUCTIONS SHALL BE EQUITABLY APPORTIONED BETWEEN THE LESSOR AND THE LESSEE. IN THE CASE OF PROPERTY HELD BY ONE PERSON FOR LIFE WITH REMAINDER TO ANOTHER PERSON, THE DEDUCTION SHALL BE COMPUTED AS IF THE LIFE TENANT WERE THE ABSOLUTE OWNER OF THE PROPERTY AND SHALL BE ALLOWED TO THE LIFE TENANT. IN THE CASE OF PROPERTY HELD IN TRUST THE ALLOWABLE DEDUCTION SHALL BE APPORTIONED BETWEEN THE INCOME BENEFICIARIES AND THE TRUSTEE IN ACCORDANCE WITH THE PERTINENT PROVISIONS OF THE IN-

STRUMENT CREATING THE TRUST, OR, IN THE ABSENCE OF SUCH PROVISIONS, ON THE BASIS OF THE TRUST INCOME ALLOWABLE TO EACH.

C. THE PERCENTAGE OF DEPLETION ALLOWABLE UNDER THIS SECTION SHALL BE COMPUTED IN ACCORDANCE WITH THE PROVISIONS OF SECTION 43-154(b) (3) AND (4).

43-123.16. **Basis for depreciation and depletion**

THE BASIS UPON WHICH DEPLETION, EXHAUSTION, WEAR AND TEAR, AND OBSOLESCENCE ARE TO BE ALLOWED IN RESPECT TO ANY PROPERTY SHALL BE AS PROVIDED IN SECTION 43-154.

43-123.17. **Deductions for charitable and other contributions**

A. IN COMPUTING NET INCOME THERE SHALL BE ALLOWED AS A DEDUCTION, IN THE CASE OF AN INDIVIDUAL, CONTRIBUTIONS OR GIFTS PAYMENT OF WHICH IS MADE WITHIN THE TAXABLE YEAR TO OR FOR THE USE OF:

1. THE UNITED STATES, ANY STATE, TERRITORY, OR ANY POLITICAL SUBDIVISION THEREOF, OR THE DISTRICT OF COLUMBIA, FOR EXCLUSIVELY PUBLIC PURPOSES.

2. A CORPORATION, OR TRUST, OR COMMUNITY CHEST, FUND, OR FOUNDATION, ORGANIZED AND OPERATED EXCLUSIVELY FOR RELIGIOUS, CHARITABLE, SCIENTIFIC, LITERARY, OR EDUCATIONAL PURPOSES, OR FOR THE PREVENTION OF CRUELTY TO CHILDREN OR ANIMALS, NO PART OF THE NET EARNINGS OF WHICH INURES TO THE BENEFIT OF ANY PRIVATE SHAREHOLDER OR INDIVIDUAL, AND NO SUBSTANTIAL PART OF THE ACTIVITIES OF WHICH IS CARRYING ON PROPAGANDA, OR OTHERWISE ATTEMPTING TO INFLUENCE LEGISLATION.

3. POSTS OR ORGANIZATIONS OF WAR VETERANS, OR AUXILIARY UNITS OR SOCIETIES OF ANY SUCH POSTS OR ORGANIZATIONS, IF THE POSTS, ORGANIZATIONS, UNITS, OR SOCIETIES ARE ORGANIZED IN THE UNITED STATES AND IF NO PART OF THEIR NET EARNINGS INURES TO THE BENEFIT OF ANY PRIVATE SHAREHOLDER OR INDIVIDUAL.

4. A FRATERNAL SOCIETY, ORDER, OR ASSOCIATION, OPERATING UNDER THE LODGE SYSTEM, BUT ONLY IF THE CONTRI-

BUTIONS OR GIFTS ARE TO BE USED EXCLUSIVELY FOR RELIGIOUS, CHARITABLE, SCIENTIFIC, LITERARY, OR EDUCATIONAL PURPOSES OR FOR THE PREVENTION OF CRUELTY TO CHILDREN OR ANIMALS.

B. IN THE CASE OF AN INDIVIDUAL DEDUCTIONS FOR CONTRIBUTIONS OR GIFTS SHALL BE ALLOWED TO AN AMOUNT WHICH IN ALL CASES LISTED IN SUBSECTION A COMBINED DOES NOT EXCEED TWENTY PER CENT OF THE TAXPAYER'S ADJUSTED GROSS INCOME. THE CONTRIBUTIONS OR GIFTS SHALL BE ALLOWED AS DEDUCTIONS ONLY IF VERIFIED UNDER RULES AND REGULATIONS PRESCRIBED BY THE TAX COMMISSION.

43-123.18. **Deductions for contributions of an employer to an employee's trust or annuity plan and compensation under a deferred payment plan**

A. IF CONTRIBUTIONS ARE PAID BY AN EMPLOYER TO OR UNDER A STOCK BONUS, PENSION, PROFIT-SHARING, OR ANNUITY PLAN, OR IF COMPENSATION IS PAID OR ACCRUED ON ACCOUNT OF ANY EMPLOYEE UNDER A PLAN DEFERRING THE RECEIPT OF SUCH COMPENSATION, SUCH CONTRIBUTIONS OR COMPENSATION SHALL NOT BE DEDUCTIBLE UNDER SECTION 43-123.03 BUT SHALL BE DEDUCTIBLE, IF DEDUCTIBLE UNDER SECTION 43-123.03 WITHOUT REGARD TO THIS SECTION ONLY TO THE FOLLOWING EXTENT:

1. IN THE TAXABLE YEAR WHEN PAID, IF THE CONTRIBUTIONS ARE PAID INTO A PENSION TRUST, AND IF SUCH TAXABLE YEAR ENDS WITHIN OR WITH A TAXABLE YEAR OF THE TRUST FOR WHICH THE TRUST IS EXEMPT FROM SECTION 43-165(a) IN AN AMOUNT DETERMINED AS FOLLOWS:

(a) AN AMOUNT NOT IN EXCESS OF FIVE PER CENT OF THE COMPENSATION OTHERWISE PAID OR ACCRUED DURING THE INCOME YEAR TO ALL THE EMPLOYEES UNDER THE TRUST, BUT SUCH AMOUNT MAY BE REDUCED FOR FUTURE YEARS IF FOUND BY THE TAX COMMISSION UPON PERIODICAL EXAMINATIONS AT NOT LESS THAN FIVE-YEAR INTERVALS TO BE MORE THAN THE AMOUNT REASONABLY NECESSARY TO PROVIDE THE REMAINING UNFUNDED COST OF PAST AND CURRENT SERVICE CREDITS OF ALL EMPLOYEES UNDER THE PLAN, PLUS

(b) ANY EXCESS OVER THE AMOUNT ALLOWABLE UNDER

SUBDIVISION (a) NECESSARY TO PROVIDE WITH RESPECT TO ALL OF THE EMPLOYEES UNDER THE TRUST THE REMAINING UNFUNDED COST OF THEIR PAST AND CURRENT SERVICE CREDITS DISTRIBUTED AS A LEVEL AMOUNT, OR A LEVEL PERCENTAGE OF COMPENSATION, OVER THE REMAINING FUTURE SERVICE OF EACH SUCH EMPLOYEE, AS DETERMINED UNDER REGULATIONS PRESCRIBED BY THE TAX COMMISSION, BUT IF SUCH REMAINING UNFUNDED COST WITH RESPECT TO ANY THREE INDIVIDUALS IS MORE THAN FIFTY PER CENT OF SUCH REMAINING UNFUNDED COST, THE AMOUNT OF SUCH UNFUNDED COST ATTRIBUTABLE TO SUCH INDIVIDUALS SHALL BE DISTRIBUTED OVER A PERIOD OF AT LEAST FIVE INCOME YEARS, OR

(c) IN LIEU OF THE AMOUNTS ALLOWABLE UNDER SUBDIVISIONS (a) AND (b) OF THIS PARAGRAPH AN AMOUNT EQUAL TO THE NORMAL COST OF THE PLAN, AS DETERMINED UNDER REGULATIONS PRESCRIBED BY THE TAX COMMISSION, PLUS, IF PAST SERVICE OR OTHER SUPPLEMENTARY PENSION OR ANNUITY CREDITS AS PROVIDED BY THE PLAN, AN AMOUNT NOT IN EXCESS OF TEN PER CENT OF THE COST WHICH WOULD BE REQUIRED TO COMPLETELY FUND OR PURCHASE SUCH PENSION OR ANNUITY CREDITS AS OF THE DATE WHEN THEY ARE INCLUDED IN THE PLAN, AS DETERMINED UNDER REGULATIONS PRESCRIBED BY THE TAX COMMISSION, EXCEPT THAT IN NO CASE SHALL A DEDUCTION BE ALLOWED FOR ANY AMOUNT (OTHER THAN THE NORMAL COST) PAID IN AFTER SUCH PENSION OR ANNUITY CREDITS ARE COMPLETELY FUNDED OR PURCHASED.

(d) ANY AMOUNT PAID IN AN INCOME YEAR IN EXCESS OF THE AMOUNT DEDUCTIBLE IN SUCH YEAR UNDER THE FOREGOING LIMITATIONS SHALL BE DEDUCTIBLE IN THE SUCCEEDING TAXABLE YEARS IN ORDER OF TIME TO THE EXTENT OF THE DIFFERENCE BETWEEN THE AMOUNT PAID AND DEDUCTIBLE IN EACH SUCH SUCCEEDING YEAR AND THE MAXIMUM AMOUNT DEDUCTIBLE FOR SUCH YEAR IN ACCORDANCE WITH THE FOREGOING LIMITATIONS.

2. IN THE TAXABLE YEAR WHEN PAID, IN AN AMOUNT DETERMINED IN ACCORDANCE WITH PARAGRAPH 1 OF THIS SUBSECTION, IF THE CONTRIBUTIONS ARE PAID TOWARD THE PURCHASE OF RETIREMENT ANNUITIES AND SUCH PURCHASE IS A PART OF A PLAN WHICH MEETS THE REQUIREMENTS OF SECTION 43-165(a) (3), (4), (5), AND (6), AND IF REFUNDS OF

PREMIUMS, IF ANY, ARE APPLIED WITHIN THE CURRENT TAXABLE YEAR OR NEXT SUCCEEDING TAXABLE YEAR TOWARD THE PURCHASE OF SUCH RETIREMENT ANNUITIES.

3. IN THE TAXABLE YEAR WHEN PAID, IF THE CONTRIBUTIONS ARE PAID INTO A STOCK BONUS OR PROFIT-SHARING TRUST, AND IF SUCH TAXABLE YEAR ENDS WITHIN OR WITH A TAXABLE YEAR OF THE TRUST WITH RESPECT TO WHICH THE TRUST IS EXEMPT UNDER SECTION 43-165(a), AND IN AN AMOUNT NOT IN EXCESS OF FIFTEEN PER CENT OF THE COMPENSATION OTHERWISE PAID OR ACCRUED DURING THE INCOME YEAR TO ALL EMPLOYEES UNDER THE STOCK BONUS OR PROFIT-SHARING PLAN. IF IN ANY TAXABLE YEAR BEGINNING AFTER DECEMBER 31, 1953, THERE IS PAID INTO THE TRUST, OR A SIMILAR TRUST THEN IN EFFECT, AMOUNTS LESS THAN THE AMOUNTS DEDUCTIBLE UNDER THE PRECEDING SENTENCE, THE EXCESS, OR IF NO AMOUNT IS PAID, THE AMOUNTS DEDUCTIBLE SHALL BE CARRIED FORWARD AND BE DEDUCTIBLE WHEN PAID IN THE SUCCEEDING TAXABLE YEARS IN ORDER OF TIME, BUT THE AMOUNT SO DEDUCTIBLE UNDER THIS SENTENCE IN ANY SUCH SUCCEEDING TAXABLE YEAR SHALL NOT EXCEED FIFTEEN PER CENT OF THE COMPENSATION OTHERWISE PAID OR ACCRUED DURING SUCH SUCCEEDING TAXABLE YEAR TO THE BENEFICIARIES UNDER THE PLAN. IN ADDITION ANY AMOUNT PAID INTO THE TRUST IN A TAXABLE YEAR BEGINNING AFTER DECEMBER 31, 1953, IN EXCESS OF THE AMOUNT ALLOWABLE WITH RESPECT TO SUCH YEAR UNDER THE PRECEDING PROVISIONS OF THIS SUBSECTION SHALL BE DEDUCTIBLE IN THE SUCCEEDING TAXABLE YEARS IN ORDER OF TIME, BUT THE AMOUNT SO DEDUCTIBLE UNDER THIS SENTENCE IN ANY ONE SUCH SUCCEEDING TAXABLE YEAR TOGETHER WITH THE AMOUNT ALLOWABLE UNDER THE FIRST SENTENCE OF THIS PARAGRAPH SHALL NOT EXCEED FIFTEEN PER CENT OF THE COMPENSATION OTHERWISE PAID OR ACCRUED DURING SUCH TAXABLE YEAR TO THE BENEFICIARIES UNDER THE PLAN. "STOCK BONUS OR PROFIT-SHARING TRUST" SHALL NOT INCLUDE ANY TRUST DESIGNED TO PROVIDE BENEFITS UPON RETIREMENT AND COVERING A PERIOD OF YEARS, IF UNDER THE PLAN THE AMOUNTS TO BE CONTRIBUTED BY THE EMPLOYER CAN BE DETERMINED ACTUARIALLY AS PROVIDED IN PARAGRAPH 1. IF THE CONTRIBUTIONS ARE MADE TO TWO OR MORE STOCK BONUS OR PROFIT-SHARING TRUSTS, SUCH TRUSTS SHALL BE CONSIDERED A SINGLE TRUST FOR THE PURPOSE OF APPLYING THE LIMITATIONS IN THIS PARAGRAPH.

4. IN THE TAXABLE YEAR WHEN PAID, IF THE PLAN IS NOT ONE INCLUDED IN PARAGRAPH 1, 2 OR 3, IF THE EMPLOYEES' RIGHTS TO OR DERIVED FROM SUCH EMPLOYER'S CONTRIBUTION OR SUCH COMPENSATION ARE NONFORFEITABLE AT THE TIME THE CONTRIBUTION OR COMPENSATION IS PAID.

5. FOR THE PURPOSES OF PARAGRAPHS 1, 2 AND 3, A TAXPAYER ON THE ACCRUAL BASIS SHALL BE DEEMED TO HAVE MADE A PAYMENT ON THE LAST DAY OF THE YEAR OF ACCRUAL IF THE PAYMENT IS ON ACCOUNT OF SUCH INCOME YEAR AND IS MADE WITHIN SIXTY DAYS AFTER THE CLOSE OF THE TAXABLE YEAR OF ACCRUAL.

6. IF AMOUNTS ARE DEDUCTIBLE UNDER PARAGRAPHS 1 AND 3, OR 2 AND 3, OR 1, 2 AND 3, IN CONNECTION WITH TWO OR MORE TRUSTS, OR ONE OR MORE TRUSTS AND AN ANNUITY PLAN, THE TOTAL AMOUNT DEDUCTIBLE IN A TAXABLE YEAR UNDER SUCH TRUSTS AND PLANS SHALL NOT EXCEED TWENTY-FIVE PER CENT OF THE COMPENSATION OTHERWISE PAID OR ACCRUED DURING THE TAXABLE YEAR TO THE PERSONS WHO ARE THE BENEFICIARIES OF THE TRUSTS OR PLANS. IN ADDITION, ANY AMOUNT PAID INTO SUCH TRUST OR UNDER SUCH ANNUITY PLANS IN A TAXABLE YEAR BEGINNING AFTER DECEMBER 31, 1953, IN EXCESS OF THE AMOUNT ALLOWABLE WITH RESPECT TO SUCH YEAR UNDER THE PRECEDING PROVISIONS OF THIS PARAGRAPH SHALL BE DEDUCTIBLE IN THE SUCCEEDING TAXABLE YEARS IN ORDER OF TIME, BUT THE AMOUNT SO DEDUCTIBLE UNDER THIS SENTENCE IN ANY ONE SUCH SUCCEEDING TAXABLE YEAR TOGETHER WITH THE AMOUNT ALLOWABLE UNDER THE FIRST SENTENCE OF THIS PARAGRAPH SHALL NOT EXCEED THIRTY PER CENT OF THE COMPENSATION OTHERWISE PAID OR ACCRUED DURING SUCH TAXABLE YEARS TO THE BENEFICIARIES UNDER THE TRUSTS OR PLANS. THIS PARAGRAPH SHALL NOT HAVE THE EFFECT OF REDUCING THE AMOUNT OTHERWISE DEDUCTIBLE UNDER PARAGRAPHS 1, 2 AND 3, IF NO EMPLOYEE IS A BENEFICIARY UNDER MORE THAN ONE TRUST, OR A TRUST AND AN ANNUITY PLAN. IF THERE IS NO PLAN, BUT A METHOD OF EMPLOYER CONTRIBUTIONS OR COMPENSATION HAS THE EFFECT OF A STOCK BONUS, PENSION, PROFIT-SHARING, OR ANNUITY PLAN, OR SIMILAR PLAN DEFERRING THE RECEIPT OF COMPENSATION, THIS PARAGRAPH SHALL APPLY AS IF THERE WERE SUCH A PLAN.

B. IF THERE IS NO PLAN, BUT A METHOD OF EMPLOYER CONTRIBUTIONS OR COMPENSATION HAS THE EFFECT OF A STOCK BONUS, PENSION, PROFIT-SHARING, OR ANNUITY PLAN, OR SIMILAR PLAN DEFERRING THE RECEIPT OF COMPENSATION, THIS SUBSECTION SHALL APPLY AS IF THERE WERE A PLAN.

C. FOR THE PURPOSE OF APPLYING THE PROVISIONS OF SUBSECTION A, WITH RESPECT TO CONTRIBUTIONS TO OR UNDER A STOCK BONUS, PENSION, PROFIT-SHARING, OR ANNUITY PLAN, AND WITH RESPECT TO DISTRIBUTIONS UNDER SUCH A PLAN, OR BY A TRUST FORMING PART OF SUCH A PLAN, THE TERM "EMPLOYEE" SHALL INCLUDE A FULL TIME LIFE INSURANCE SALESMAN WHO IS CONSIDERED AN EMPLOYEE FOR THE PURPOSE OF SUBCHAPTER A OF CHAPTER 9 OF THE FEDERAL INTERNAL REVENUE CODE, OR IN THE CASE OF SERVICES PERFORMED BEFORE JANUARY 1, 1954, WHO WOULD BE CONSIDERED AN EMPLOYEE IF SERVICES WERE PERFORMED DURING 1954.

D. IN THE CASE OF A STOCK BONUS, PENSION, PROFIT-SHARING OR ANNUITY PLAN IN EFFECT ON OR BEFORE JANUARY 1, 1954:

1. SUCH A PLAN SHALL NOT BECOME SUBJECT TO THE REQUIREMENTS OF SECTION 43-165 UNTIL THE BEGINNING OF THE FIRST TAXABLE YEAR BEGINNING AFTER DECEMBER 31, 1953.

2. SUCH A PLAN SHALL BE CONSIDERED AS SATISFYING THE REQUIREMENTS OF SECTION 43-165 FOR THE PERIOD BEGINNING WITH THE BEGINNING OF THE FIRST TAXABLE YEAR FOLLOWING DECEMBER 31, 1953, AND ENDING ON DECEMBER 31, 1955, IF THE PROVISIONS OF THE PLAN SATISFY SUCH REQUIREMENTS BY DECEMBER 31, 1955, AND IF BY THAT TIME ALL PROVISIONS OF SUCH PLAN WHICH ARE NECESSARY TO SATISFY SUCH REQUIREMENTS ARE IN EFFECT AND HAVE BEEN MADE EFFECTIVE FOR ALL PURPOSES WITH RESPECT TO THE PORTION OF SUCH PERIOD AFTER DECEMBER 31, 1953.

3. IF THE CONTRIBUTION OF AN EMPLOYER TO SUCH A PLAN IN THE EMPLOYER'S INCOME YEAR BEGINNING IN 1954 EXCEEDS THE MAXIMUM AMOUNT DEDUCTIBLE FOR SUCH YEAR AND UNDER SUBSECTION A, THE AMOUNT DEDUCTIBLE IN SUCH YEAR SHALL NOT BE LESS THAN THE SUM OF:

(a) THE AMOUNT PAID IN SUCH TAXABLE YEAR PRIOR TO JANUARY 1, 1954, AND DEDUCTIBLE UNDER SECTION 43-123.03; AND

(b) WITH RESPECT TO THE AMOUNT PAID IN SUCH TAXABLE YEAR ON OR AFTER JANUARY 1, 1954, THAT PROPORTION OF THE AMOUNT DEDUCTIBLE FOR THE TAXABLE YEAR UNDER SUBSECTION A OF THIS SECTION, WHICH THE NUMBER OF MONTHS AFTER DECEMBER 31, 1953, IN THE TAXABLE YEAR BEARS TO TWELVE.

E. IN THE CASE OF A STOCK BONUS, PENSION, PROFIT-SHARING OR ANNUITY PLAN PUT INTO EFFECT AFTER DECEMBER 31, 1953, SUCH A PLAN SHALL BE CONSIDERED AS SATISFYING THE REQUIREMENTS OF SECTION 43-165 FOR THE PERIOD BEGINNING WITH THE DATE ON WHICH SUCH PLAN WAS PUT INTO EFFECT AND ENDING DECEMBER 31, 1955, IF ALL PROVISIONS OF THE PLAN WHICH ARE NECESSARY TO SATISFY SUCH REQUIREMENTS ARE IN EFFECT BY THE END OF SUCH PERIOD AND HAVE BEEN MADE EFFECTIVE FOR ALL PURPOSES WITH RESPECT TO THE PORTION OF SUCH PERIOD AFTER DECEMBER 31, 1953.

F. IN THE CASE OF A STOCK BONUS, PENSION, PROFIT-SHARING OR ANNUITY PLAN PUT INTO EFFECT AFTER DECEMBER 31, 1954, THE PLAN WILL BE CONSIDERED AS SATISFYING THE REQUIREMENTS OF SECTION 43-165 FOR THE PERIOD BEGINNING WITH THE DATE ON WHICH IT WAS PUT INTO EFFECT AND ENDING WITH THE FIFTEENTH DAY OF THE FOURTH MONTH FOLLOWING THE CLOSE OF THE TAXABLE YEAR OF THE EMPLOYER IN WHICH THE PLAN WAS PUT INTO EFFECT IF ALL PROVISIONS OF THE PLAN WHICH ARE NECESSARY TO SATISFY SUCH REQUIREMENTS ARE IN EFFECT BY THE END OF SUCH PERIOD AND HAVE BEEN EFFECTIVE FOR ALL PURPOSES WITH RESPECT TO THE WHOLE OF SUCH PERIOD.

43-123.19. **Deductions for charitable and other contributions by corporations**

A. IN COMPUTING NET INCOME THERE SHALL BE ALLOWED AS A DEDUCTION IN THE CASE OF A CORPORATION CONTRIBUTIONS OR GIFTS, PAYMENT OF WHICH IS MADE WITHIN THE TAXABLE YEAR TO OR FOR THE USE OF:

1. THE UNITED STATES, ANY STATE, TERRITORY, OR ANY POLITICAL SUBDIVISION THEREOF OR THE DISTRICT OF COLUMBIA, OR ANY POSSESSION OF THE UNITED STATES, FOR EXCLUSIVELY PUBLIC PURPOSES; OR

2. A CORPORATION, TRUST, OR COMMUNITY CHEST, FUND, OR FOUNDATION, CREATED OR ORGANIZED IN THE UNITED STATES OR IN ANY POSSESSION THEREOF OR UNDER THE LAW OF THE UNITED STATES OR OF ANY STATE OR TERRITORY, OR OF THE DISTRICT OF COLUMBIA, OR OF ANY POSSESSION OF THE UNITED STATES, ORGANIZED AND OPERATED EXCLUSIVELY FOR RELIGIOUS, CHARITABLE, SCIENTIFIC, VETERAN REHABILITATION SERVICE, LITERARY, OR EDUCATIONAL PURPOSES OR FOR THE PREVENTION OF CRUELTY TO CHILDREN OR ANIMALS (BUT ONLY IF SUCH CONTRIBUTIONS OR GIFTS ARE TO BE USED WITHIN THE UNITED STATES OR ANY OF ITS POSSESSIONS EXCLUSIVELY FOR SUCH PURPOSES), NO PART OF THE NET EARNINGS OF WHICH INURES TO THE BENEFIT OF ANY PRIVATE SHAREHOLDER OR INDIVIDUAL, AND NO SUBSTANTIAL PART OF THE ACTIVITIES OF WHICH IS CARRYING ON PROPAGANDA, OR OTHERWISE ATTEMPTING, TO INFLUENCE LEGISLATION. FOR DISALLOWANCE OF CERTAIN CHARITABLE, ETC., DEDUCTIONS, OTHERWISE ALLOWABLE UNDER THIS PARAGRAPH, THE PROVISIONS OF SECTION 43-162(g) (2) SHALL APPLY; OR

3. POSTS OR ORGANIZATIONS OF WAR VETERANS, OR AUXILIARY UNITS OF, OR TRUSTS OR FOUNDATIONS FOR, ANY SUCH POST OR ORGANIZATIONS, IF SUCH POSTS, ORGANIZATIONS, UNITS, TRUSTS OR FOUNDATIONS ARE ORGANIZED IN THE UNITED STATES OR ANY OF ITS POSSESSIONS, AND IF NO PART OF THEIR NET EARNINGS INURES TO THE BENEFIT OF ANY PRIVATE SHAREHOLDER OR INDIVIDUAL; OR

4. A CORPORATION OR ORGANIZATION WHICH IS ORGANIZED IN THE UNITED STATES OR ANY OF ITS POSSESSIONS BY OR FOR MEMBERS OF THE ARMED FORCES OF THE UNITED STATES FOR THE PURPOSE OF AIDING OR ASSISTING MEMBERS OF SUCH FORCES OR THEIR RELATIVES IF NO PART OF THE NET EARNINGS OF SUCH CORPORATION OR ORGANIZATION INURES TO THE BENEFIT OF ANY PRIVATE SHAREHOLDER OR INDIVIDUAL.

5. THE AMOUNT OF AGGREGATE DEDUCTIONS ALLOWABLE UNDER PARAGRAPHS 1, 2, 3 AND 4 OF THIS SUBSECTION, IS LIMITED TO THE EXTENT IT DOES NOT EXCEED FIVE PER CENT OF THE TAXPAYER'S NET INCOME AS COMPUTED WITHOUT THE BENEFITS OF THIS SECTION.

SUCH CONTRIBUTIONS OR GIFTS SHALL BE ALLOWABLE AS DEDUCTIONS ONLY IF VERIFIED UNDER RULES AND REGULATIONS PRESCRIBED BY THE TAX COMMISSION.

B. IN THE CASE OF A BANK OR CORPORATION REPORTING ITS NET INCOME ON THE ACCRUAL BASIS, AT THE ELECTION OF THE TAXPAYER ANY CONTRIBUTION OR GIFT, PAYMENT OF WHICH IS MADE AFTER THE CLOSE OF THE TAXABLE YEAR AND ON OR BEFORE THE FIFTEENTH DAY OF THE FOURTH MONTH FOLLOWING THE CLOSE OF SUCH YEAR SHALL, FOR THE PURPOSES OF SUBSECTION A OF THIS SECTION, BE CONSIDERED AS PAID DURING SUCH TAXABLE YEAR IF, DURING SUCH YEAR, THE BOARD OF DIRECTORS AUTHORIZED SUCH CONTRIBUTION OR GIFT. SUCH ELECTION SHALL BE MADE ONLY AT THE TIME OF THE FILING OF THE RETURN FOR THE TAXABLE YEAR AND SHALL BE SIGNIFIED IN SUCH MANNER AS THE TAX COMMISSION SHALL BY REGULATIONS PRESCRIBE.

43-123.20. **Savings banks, cooperative banks and building and loan associations–return paid or credited to withdrawable deposits**

IN COMPUTING NET INCOME THERE SHALL BE ALLOWED AS A DEDUCTION IN THE CASE OF A SAVINGS BANK, COOPERATIVE BANK OR BUILDING AND LOAN ASSOCIATION, ORGANIZED AND OPERATING WHOLLY OR PARTLY ON A MUTUAL PLAN, OR A SAVINGS AND LOAN ASSOCIATION, ORGANIZED AND OPERATING WHOLLY OR PARTLY ON A MUTUAL PLAN, THE RETURN PAID OR CREDITED ON OR APPORTIONED TO THEIR WITHDRAWABLE SHARES, ACCOUNT OR DEPOSITS.

43-123.21. **Net operating loss deduction**

A. IN COMPUTING NET INCOME THERE SHALL BE ALLOWED AS A DEDUCTION A NET OPERATING LOSS DEDUCTION COMPUTED UNDER THIS SECTION.

B. AS USED IN THIS SECTION, THE TERM "NET OPERATING

LOSS" MEANS THE EXCESS OF THE DEDUCTIONS ALLOWED BY THIS TITLE OVER THE GROSS INCOME, WITH THE EXCEPTIONS, ADDITIONS, AND LIMITATIONS PROVIDED IN SUBSECTION E OF THIS SECTION.

C. IF FOR ANY TAXABLE YEAR BEGINNING AFTER DECEMBER 31, 1969, THE TAXPAYER HAS A NET OPERATING LOSS, SUCH NET OPERATING LOSS SHALL BE A NET OPERATING LOSS CARRY-OVER FOR EACH OF THE FIVE SUCCEEDING TAXABLE YEARS, EXCEPT THAT THE CARRY-OVER IN THE CASE OF EACH SUCH SUCCEEDING TAXABLE YEAR (OTHER THAN THE FIRST SUCCEEDING TAXABLE YEAR) SHALL BE THE EXCESS, IF ANY, OF THE AMOUNT OF SUCH NET OPERATING LOSS OVER THE SUM OF THE NET INCOME FOR EACH OF THE INTERVENING YEARS COMPUTED:

1. WITH THE EXCEPTIONS, ADDITIONS, AND LIMITATIONS PROVIDED IN SUBSECTION E, PARAGRAPHS 1, 2 AND 4 OF THIS SECTION, AND

2. BY DETERMINING THE NET OPERATING LOSS DEDUCTION FOR EACH INTERVENING TAXABLE YEAR, WITHOUT REGARD TO SUCH NET OPERATING LOSS OR TO THE NET OPERATING LOSS FOR ANY SUCCEEDING TAXABLE YEAR AND WITHOUT REGARD TO ANY REDUCTION SPECIFIED IN SUBSECTION D OF THIS SECTION. FOR THE PURPOSE OF THE PRECEDING SENTENCE, THE NET OPERATING LOSS FOR ANY TAXABLE YEAR BEGINNING AFTER DECEMBER 31, 1969, SHALL BE REDUCED BY THE AMOUNT, IF ANY, OF THE NET INCOME FOR THE PRECEDING TAXABLE YEAR COMPUTED:

(a) WITH THE EXCEPTIONS, ADDITIONS, AND LIMITATIONS PROVIDED IN SUBSECTION E, PARAGRAPHS 1, 2, 3 AND 4 OF THIS SECTION, AND

(b) BY DETERMINING THE NET OPERATING LOSS DEDUCTION FOR SUCH PRECEDING TAXABLE YEAR WITHOUT REGARD TO SUCH NET OPERATING LOSS AND WITHOUT REGARD TO ANY REDUCTION SPECIFIED IN SUBSECTION D OF THIS SECTION.

D. THE AMOUNT OF THE NET OPERATING LOSS DEDUCTION SHALL BE THE AGGREGATE OF THE NET OPERATING LOSS CARRY-OVERS TO THE TAXABLE YEAR REDUCED BY THE AMOUNT, IF ANY, BY WHICH THE NET INCOME COMPUTED WITH

THE EXCEPTIONS AND LIMITATIONS PROVIDED IN SUBSECTION E, PARAGRAPHS 1, 2, 3 AND 4 OF THIS SECTION EXCEEDS THE NET INCOME COMPUTED WITHOUT SUCH DEDUCTION.

E. THE EXCEPTIONS, ADDITIONS, AND LIMITATIONS REFERRED TO IN SUBSECTIONS B, C AND D OF THIS SECTION SHALL BE AS FOLLOWS:

1. THE DEDUCTION FOR DEPLETION SHALL NOT EXCEED THE AMOUNT WHICH WOULD BE ALLOWABLE IF COMPUTED WITHOUT REFERENCE TO DISCOVERY VALUE OR TO PERCENTAGE DEPLETION;

2. THERE SHALL BE INCLUDED IN COMPUTING GROSS INCOME THE AMOUNT OF INTEREST RECEIVED WHICH IS WHOLLY EXEMPT FROM THE TAXES IMPOSED BY THIS TITLE, DECREASED BY THE AMOUNT OF INTEREST PAID OR ACCRUED WHICH IS NOT ALLOWED AS A DEDUCTION BY SECTION 43-123.04, RELATING TO INTEREST ON INDEBTEDNESS INCURRED OR CONTINUED TO PURCHASE OR CARRY CERTAIN TAX-EXEMPT OBLIGATIONS;

3. NO NET OPERATING LOSS DEDUCTION SHALL BE ALLOWED;

4. GAINS AND LOSSES FROM SALES OR EXCHANGES OF CAPITAL ASSETS SHALL BE TAKEN INTO ACCOUNT WITHOUT REGARD TO THE PROVISIONS OF SECTION 43-157(b). THE AMOUNT DEDUCTIBLE ON ACCOUNT OF LOSSES FROM SALES OR EXCHANGES OF CAPITAL ASSETS SHALL NOT EXCEED THE AMOUNT INCLUDIBLE ON ACCOUNT OF GAINS FROM SUCH SALES OR EXCHANGES.

5. DEDUCTIONS, INCLUDING FEDERAL INCOME TAXES, OTHERWISE ALLOWED BY LAW NOT ATTRIBUTABLE TO THE OPERATION OF A TRADE OR BUSINESS REGULARLY CARRIED ON BY THE TAXPAYER SHALL (IN THE CASE OF A TAXPAYER OTHER THAN A CORPORATION) BE ALLOWED ONLY TO THE EXTENT OF THE AMOUNT OF THE GROSS INCOME NOT DERIVED FROM SUCH TRADE OR BUSINESS. FOR THE PURPOSES OF THIS PARAGRAPH DEDUCTIONS AND GROSS INCOME SHALL BE COMPUTED WITH THE EXCEPTIONS, ADDITIONS, AND LIMITATIONS SPECIFIED IN PARAGRAPHS 1 AND 4 OF THIS SUBSECTION. THIS SUBSECTION SHALL NOT APPLY WITH RESPECT TO DEDUCTIONS ALLOWABLE FOR LOSSES SUSTAINED IN RESPECT OF PROPERTY, IF THE LOSSES ARISE FROM FIRE, STORM, SHIPWRECK, OR OTHER CASUALTY, OR FROM THEFT. FOR THE PURPOSES OF THIS

PARAGRAPH ANY GAIN OR LOSS FROM THE SALE OR OTHER DISPOSITION OF:

(a) PROPERTY, USED IN THE TRADE OR BUSINESS, OF A CHARACTER WHICH IS SUBJECT TO THE ALLOWANCE FOR DEPRECIATION PROVIDED IN SECTION 43-123.14, OR

(b) REAL PROPERTY USED IN THE TRADE OR BUSINESS SHALL BE TREATED AS ATTRIBUTABLE TO THE TRADE OR BUSINESS.

43-123.22. **Deductions for adoption expenses**

A. IN COMPUTING NET INCOME, THERE SHALL BE ALLOWED AS A DEDUCTION, EXCEPT AS LIMITED UNDER SUBSECTIONS B AND C, ANY EXPENSES PAID OR INCURRED BY THE TAXPAYER OR HIS SPOUSE IN CONNECTION WITH THE ADOPTION OF A CHILD BY THEM. SUCH EXPENSES INCLUDE ANY MEDICAL AND HOSPITAL EXPENSES OF THE NATURAL MOTHER OF AN ADOPTED CHILD WHICH ARE INCIDENT TO THE CHILD'S BIRTH, AND ANY WELFARE AGENCY, LEGAL AND OTHER FEES OR COSTS RELATING TO THE ADOPTION.

B. A HUSBAND AND WIFE WHO FILE A JOINT RETURN MAY DEDUCT ONLY THOSE ADOPTION EXPENSES WHICH EXCEED FIVE PER CENT OF THE AGGREGATE ADJUSTED GROSS INCOME OF THE HUSBAND AND WIFE, AND THE MAXIMUM DEDUCTION IN ANY SUCH RETURN FOR ANY SUCH EXPENSES SHALL NOT EXCEED TWO THOUSAND FIVE HUNDRED DOLLARS.

C. A HUSBAND OR WIFE WHO FILES A SEPARATE RETURN MAY DEDUCT ONLY THOSE ADOPTION EXPENSES WHICH EXCEED FIVE PER CENT OF THE ADJUSTED GROSS INCOME OF THE TAXPAYER, AND THE MAXIMUM DEDUCTION IN ANY SUCH RETURN FOR ANY SUCH EXPENSE SHALL NOT EXCEED ONE THOUSAND TWO HUNDRED FIFTY DOLLARS.

D. A HUSBAND AND WIFE WHO HAVE PAID OR INCURRED BOTH MEDICAL EXPENSES AND ADOPTION EXPENSES WHICH IN THE AGGREGATE EXCEED FIVE PER CENT OF THE AGGREGATE ADJUSTED GROSS INCOME OF THE HUSBAND AND WIFE SHALL BE ALLOWED A DEDUCTION IN THE AMOUNT OF SUCH EXCESS, SUBJECT TO THE USUAL APPLICABLE LIMITATIONS, NOTWITH-

STANDING THAT THE AMOUNT PAID OR INCURRED FOR EACH SUCH TYPE OF EXPENSES DOES NOT EXCEED FIVE PER CENT OF THE AGGREGATE ADJUSTED GROSS INCOME.

E. A HUSBAND AND WIFE FILING SEPARATE RETURNS WHO HAS PAID OR INCURRED BOTH MEDICAL EXPENSES AND ADOPTION EXPENSES WHICH IN THE AGGREGATE EXCEED FIVE PER CENT OF HIS OR HER ADJUSTED GROSS INCOME SHALL BE ALLOWED A DEDUCTION IN THE AMOUNT OF SUCH EXCESS, SUBJECT TO THE USUAL APPLICABLE LIMITATIONS, NOTWITHSTANDING THAT THE AMOUNT PAID OR INCURRED FOR EACH SUCH TYPE OF EXPENSES DOES NOT EXCEED FIVE PER CENT OF THE ADJUSTED GROSS INCOME.

43-123.23. **Deductions for alimony**

IN COMPUTING NET INCOME THERE SHALL BE ALLOWED A DEDUCTION IN THE CASE OF A HUSBAND DESCRIBED IN SECTION 43-112(e) (1), (2), AND (4), AMOUNTS INCLUDIBLE UNDER THOSE SECTIONS IN THE GROSS INCOME OF HIS WIFE, PAYMENT OF WHICH IS MADE WITHIN THE HUSBAND'S TAXABLE YEAR. IF THE AMOUNT OF ANY PAYMENT IS, UNDER SECTION 43-112(e) (1), (2) AND (4) OR UNDER SECTION 43-164 STATED NOT TO BE INCLUDIBLE IN THE HUSBAND'S GROSS INCOME, NO DEDUCTION SHALL BE ALLOWED WITH RESPECT TO THAT PAYMENT UNDER THIS SECTION.

43-123.24. **Bond premium deduction**

A. THERE SHALL BE ALLOWED AS A DEDUCTION IN THE CASE OF A BONDHOLDER, WHO MAKES THE ELECTION IN THE METHOD AND UNDER THE CONDITIONS PRESCRIBED IN SUBSECTION G OF THIS SECTION, THE DEDUCTION FOR AMORTIZABLE BOND PREMIUM PROVIDED IN THIS SECTION.

B. IN THE CASE OF ANY BOND, AS DEFINED IN SUBSECTION F, THE FOLLOWING RULES SHALL APPLY TO THE AMORTIZABLE BOND PREMIUM (DETERMINED UNDER SUBSECTION C OF THIS SECTION) ON THE BOND FOR ANY TAXABLE YEAR BEGINNING AFTER DECEMBER 31, 1953:

1. IN THE CASE OF A BOND (OTHER THAN A BOND THE INTEREST ON WHICH IS EXCLUDIBLE FROM GROSS INCOME), THE AMOUNT OF THE AMORTIZABLE BOND PREMIUM FOR THE

TAXABLE YEAR SHALL BE ALLOWED AS A DEDUCTION.

2. IN THE CASE OF ANY BOND THE INTEREST ON WHICH IS EXCLUDIBLE FROM GROSS INCOME, NO DEDUCTION SHALL BE ALLOWED FOR THE AMORTIZABLE BOND PREMIUM FOR THE TAXABLE YEAR.

C. FOR THE PURPOSES OF SUBSECTION D OF THIS SECTION, THE AMOUNT OF BOND PREMIUM, IN THE CASE OF THE HOLDER OF ANY BOND, SHALL BE DETERMINED WITH REFERENCE TO THE AMOUNT OF THE BASIS (FOR DETERMINING LOSS ON SALE OR EXCHANGE) OF SUCH BOND, AND WITH REFERENCE TO THE AMOUNT PAYABLE ON MATURITY OR ON EARLIER CALL DATE, WITH ADJUSTMENTS PROPER TO REFLECT UNAMORTIZED BOND PREMIUM WITH RESPECT TO THE BOND, FOR THE PERIOD PRIOR TO THE DATE AS OF WHICH SUBSECTION B OF THIS SECTION BECOMES APPLICABLE WITH RESPECT TO THE TAXPAYER WITH RESPECT TO SUCH BOND. IN NO CASE SHALL THE AMOUNT OF BOND PREMIUM ON A CONVERTIBLE BOND INCLUDE ANY AMOUNT ATTRIBUTABLE TO THE CONVERSION FEATURES OF THE BOND.

D. THE AMORTIZABLE BOND PREMIUM OF THE TAXABLE YEAR SHALL BE THE AMOUNT OF THE BOND PREMIUM ATTRIBUTABLE TO SUCH YEAR.

E. THE DETERMINATIONS REQUIRED UNDER SUBSECTIONS C AND D OF THIS SECTION SHALL BE MADE:

1. IN ACCORDANCE WITH THE METHOD OF AMORTIZING BOND PREMIUM REGULARLY EMPLOYED BY THE HOLDER OF THE BOND, IF SUCH METHOD IS REASONABLE;

2. IN ALL OTHER CASES, IN ACCORDANCE WITH REGULATIONS PRESCRIBING REASONABLE METHODS OF AMORTIZING BOND PREMIUM, PRESCRIBED BY THE TAX COMMISSION.

F. AS USED IN THIS SECTION, "BOND" MEANS ANY BOND, DEBENTURE, NOTE, OR CERTIFICATE OR OTHER EVIDENCE OF INDEBTEDNESS, ISSUED BY ANY CORPORATION AND BEARING INTEREST (INCLUDING ANY LIKE OBLIGATIONS ISSUED BY A GOVERNMENT OR POLITICAL SUBDIVISION THEREOF), WITH INTEREST COUPONS OR IN REGISTERED FORM, BUT DOES NOT INCLUDE ANY SUCH OBLIGATION WHICH CONSTITUTES STOCK

IN TRADE OF THE TAXPAYER OR ANY SUCH OBLIGATION OF A KIND WHICH WOULD PROPERLY BE INCLUDED IN THE INVENTORY OF THE TAXPAYER IF ON HAND AT THE CLOSE OF THE TAXABLE YEAR, OR ANY SUCH OBLIGATION HELD BY THE TAXPAYER PRIMARILY FOR SALE TO CUSTOMERS IN THE ORDINARY COURSE OF HIS TRADE OR BUSINESS.

G. THE AMOUNT OF THE AMORTIZABLE BOND PREMIUM FOR THE TAXABLE YEAR SHALL BE ALLOWED AS A DEDUCTION ONLY IF A TAXPAYER HAS ELECTED TO CLAIM SUCH DEDUCTION. SUCH ELECTION SHALL BE MADE IN ACCORDANCE WITH SUCH REGULATIONS AS THE TAX COMMISSION SHALL PRESCRIBE. IF SUCH ELECTION IS MADE WITH RESPECT TO ANY BOND, IT SHALL ALSO APPLY TO ALL SUCH BONDS HELD BY THE TAXPAYER AT THE BEGINNING OF THE FIRST TAXABLE YEAR TO WHICH THE ELECTION APPLIES AND TO ALL SUCH BONDS THEREAFTER ACQUIRED BY HIM, AND SHALL BE BINDING FOR ALL SUBSEQUENT TAXABLE YEARS WITH RESPECT TO ALL SUCH BONDS OF THE TAXPAYER, UNLESS, UPON APPLICATION BY THE TAXPAYER, THE TAX COMMISSION PERMITS HIM, SUBJECT TO SUCH CONDITIONS AS THE TAX COMMISSION DEEMS NECESSARY, TO REVOKE SUCH ELECTION.

H. FOR SPECIAL RULES APPLICABLE, IN THE CASE OF DEALERS IN SECURITIES WITH RESPECT TO PREMIUM ATTRIBUTABLE TO CERTAIN "SHORT-TERM MUNICIPAL BONDS", SEE SECTION 43-112(g) (1) AND (2).

43-123.25. **Deductions in respect of decedent**

A. IN COMPUTING NET INCOME, THERE SHALL BE ALLOWED AS A DEDUCTION IN THE CASE OF A PERSON DESCRIBED IN SECTION 43-158(b), THE AMOUNT OF THE DEDUCTIONS IN RESPECT OF A DECEDENT TO THE EXTENT ALLOWED BY THAT SUBSECTION.

B. IN COMPUTING NET INCOME, THERE SHALL BE ALLOWED AS A DEDUCTION IN THE CASE OF A PERSON DESCRIBED IN SECTION 43-158(a), THE AMOUNT OF THE DEDUCTIONS IN RESPECT OF A DECEDENT TO THE EXTENT ALLOWED BY SECTION 43-158(c).

43-123.26. **Deductions; medical expenses**

A. IN COMPUTING NET INCOME, THERE SHALL BE ALLOWED AS A DEDUCTION, EXCEPT AS LIMITED UNDER SUBSECTIONS B AND C OF THIS SECTION, EXPENSES PAID DURING THE TAXABLE YEAR, NOT COMPENSATED FOR BY INSURANCE OR OTHERWISE, FOR MEDICAL CARE OF THE TAXPAYER, HIS SPOUSE, OR A DEPENDENT OF THE TAXPAYER SPECIFIED IN SECTION 43-127(b). THE TERM "MEDICAL CARE", SHALL INCLUDE AMOUNTS PAID FOR THE DIAGNOSIS, CURE, MITIGATION, TREATMENT, OR PREVENTION OF DISEASE, OR FOR THE PURPOSE OF AFFECTING ANY STRUCTURE OR FUNCTION OF THE BODY (INCLUDING AMOUNTS PAID FOR ACCIDENT OR HEALTH INSURANCE), ONLY WHEN SUBSTANTIATED BY A SCHEDULE SHOWING TO WHOM SUCH AMOUNTS HAVE BEEN PAID.

B. A HUSBAND AND WIFE WHO FILE A JOINT RETURN MAY DEDUCT EXPENSES PAID FOR MEDICAL CARE, HOWEVER THE MAXIMUM DEDUCTION FOR THE TAXABLE YEAR SHALL NOT EXCEED FIVE THOUSAND DOLLARS.

C. AN INDIVIDUAL WHO FILES A SEPARATE RETURN MAY DEDUCT EXPENSES PAID FOR MEDICAL CARE, HOWEVER THE MAXIMUM DEDUCTION FOR THE TAXABLE YEAR SHALL NOT EXCEED FIVE THOUSAND DOLLARS IN THE CASE OF THE HEAD OF A HOUSEHOLD, AND SHALL NOT EXCEED TWO THOUSAND FIVE HUNDRED DOLLARS IN THE CASE OF ALL OTHER INDIVIDUALS.

D. IN THE CASE OF A HUSBAND AND WIFE FILING A JOINT RETURN OR AN INDIVIDUAL FILING A SEPARATE RETURN, IF THE HUSBAND OR WIFE OR THE INDIVIDUAL HAS REACHED THE AGE OF SIXTY-FIVE BEFORE THE CLOSE OF THE TAXABLE YEAR, THE EXPENSES FOR THE MEDICAL CARE OF THE HUSBAND OR WIFE OR THE INDIVIDUAL ARE DEDUCTIBLE WITHOUT REGARD TO THE LIMITATION SPECIFIED IN SUBSECTIONS B AND C OF THIS SECTION. THIS SUBSECTION DOES NOT RELATE TO OR IN ANY WAY AFFECT THE DEDUCTIBILITY OF EXPENSES INCURRED FOR THE MEDICAL CARE OF A DEPENDENT.

43-123.27. Deductions for care of qualified dependents

EVERY TAXPAYER, IN REPORTING INCOME FOR PURPOSES OF TAXATION, SHALL BE ENTITLED TO THE FOLLOWING DEDUCTIONS:

1. FOR PAYMENTS MADE BY ANY TAXPAYER WHO PROVIDES A HOME IN HIS OWN HOUSEHOLD FOR ANY DEPENDENT AS DEFINED IN PARAGRAPH 2 OF THIS SECTION, A DEDUCTION FOR WAGES PAID IN CASH OR ITS EQUIVALENT NOT EXCEEDING THE SUM OF ONE HUNDRED DOLLARS PER MONTH TO A HOUSEKEEPER OR NURSEMAID FOR SERVICES RENDERED IN SUCH HOUSEHOLD FOR THE CARE AND SUPERVISION OF SUCH DEPENDENTS, IF SUCH CARE AND SUPERVISION IS NECESSARY TO PERMIT THE TAXPAYER TO BE GAINFULLY EMPLOYED, PROVIDED, THAT NO DEDUCTIONS SHALL BE ALLOWED FOR PAYMENTS MADE TO A PERSON WHO, EXCEPT FOR SUCH PAYMENTS WOULD BE A DEPENDENT OF THE TAXPAYER AS DEFINED IN SECTION 43-127(c). OR, IF NO HOUSEKEEPER OR NURSEMAID IS EMPLOYED IN THE HOUSEHOLD OF THE TAXPAYER, HE MAY DEDUCT NOT EXCEEDING THE SUM OF ONE HUNDRED DOLLARS PER MONTH, FEES PAID TO LICENSED NURSERY SCHOOLS OR REST HOMES FOR THE CARE OF SUCH DEPENDENTS, IF SUCH CARE AND SUPERVISION IS NECESSARY TO PERMIT THE TAXPAYER TO BE GAINFULLY EMPLOYED.

2. A DEPENDENT FOR THE PURPOSES OF THIS SECTION SHALL BE A CHILD, STEPCHILD OR ADOPTED CHILD OF THE TAXPAYER UNDER THE AGE OF SIXTEEN YEARS, OR ANY OTHER DEPENDENT AS DEFINED IN SECTION 43-127(c) (INCLUDING A SPOUSE) WHO IS PHYSICALLY OR MENTALLY INCAPABLE OF SELF CARE.

3. A DEDUCTION UNDER THIS SECTION SHALL BE ALLOWED ONLY FOR MONTHS IN WHICH THE TAXPAYER IS GAINFULLY EMPLOYED ON A FULL-TIME BASIS FOR AT LEAST TWO WEEKS.

4. DEDUCTIONS UNDER THIS SECTION SHALL NOT BE ALLOWED TO ANY TAXPAYER IF THE SUM OF HIS OR HER GROSS INCOME TOGETHER WITH THE GROSS INCOMES OF ALL MEMBERS OF HIS HOUSEHOLD EXCEED SIX THOUSAND DOLLARS PER YEAR. A MEMBER OF THE HOUSEHOLD, FOR PURPOSES OF THIS SECTION, IS ANY PERSON SET FORTH IN SECTION 43-127(c) WHO

RESIDED IN THE HOME OF THE TAXPAYER FOR A PERIOD IN EXCESS OF SIX MONTHS FOR THE TAXABLE YEAR INVOLVED.

43-123.28. **Deductions for amounts representing taxes and interest paid to cooperative apartment corporation**

A. IN COMPUTING NET INCOME, THERE SHALL BE ALLOWED AS A DEDUCTION IN THE CASE OF A TENANT-STOCKHOLDER, AMOUNTS, NOT OTHERWISE DEDUCTIBLE, PAID OR ACCRUED TO A COOPERATIVE APARTMENT CORPORATION WITHIN THE TAXABLE YEAR, IF THOSE AMOUNTS REPRESENT THAT PROPORTION OF THE REAL ESTATE TAXES ON THE APARTMENT BUILDING AND THE LAND ON WHICH IT IS SITUATED, ALLOWABLE AS DEDUCTIONS UNDER SECTION 43-123.05, PAID OR INCURRED BY THE CORPORATION, OR OF THE INTEREST PAID OR INCURRED BY THE CORPORATION ON ITS INDEBTEDNESS CONTRACTED IN THE ACQUISITION, CONSTRUCTION, ALTERATION, REHABILITATION, OR MAINTENANCE OF THE APARTMENT BUILDING OR IN THE ACQUISITION OF THE LAND ON WHICH THE BUILDING IS LOCATED, WHICH THE STOCK OF THE CORPORATION OWNED BY THE TENANT-STOCKHOLDER IS OF THE TOTAL OUTSTANDING STOCK OF THE CORPORATION, INCLUDING THAT HELD BY THE CORPORATION.

B. AS USED IN SUBSECTION A "COOPERATIVE APARTMENT CORPORATION" MEANS A CORPORATION:

1. HAVING ONE AND ONLY ONE CLASS OF STOCK OUTSTANDING;

2. ALL OF THE STOCKHOLDERS OF WHICH ARE ENTITLED, SOLELY BY REASON OF THEIR OWNERSHIP OF STOCK IN THE CORPORATION, TO OCCUPY FOR DWELLING PURPOSES APARTMENTS IN A BUILDING OWNED OR LEASED BY SUCH CORPORATION, AND WHO ARE NOT ENTITLED, EITHER CONDITIONALLY OR UNCONDITIONALLY, EXCEPT UPON A COMPLETE OR PARTIAL LIQUIDATION OF THE CORPORATION, TO RECEIVE ANY DISTRIBUTION NOT OUT OF EARNINGS AND PROFITS OF THE CORPORATION, AND

3. EIGHTY PER CENT OR MORE OF THE GROSS INCOME OF WHICH FOR THE TAXABLE YEAR IN WHICH THE TAXES AND INTEREST DESCRIBED IN SUBSECTION A ARE PAID OR INCURRED IS DERIVED FROM TENANT-STOCKHOLDERS.

C. AS USED IN SUBSECTION A, "TENANT-STOCKHOLDER" MEANS AN INDIVIDUAL WHO IS A STOCKHOLDER IN A COOPERATIVE APARTMENT CORPORATION, AND WHOSE STOCK IS FULLY PAID-UP IN AN AMOUNT NOT LESS THAN AN AMOUNT SHOWN TO THE SATISFACTION OF THE TAX COMMISSION AS BEARING A REASONABLE RELATIONSHIP TO THE PORTION OF THE VALUE OF THE CORPORATION'S EQUITY IN THE BUILDING AND THE LAND ON WHICH IT IS SITUATED, WHICH IS ATTRIBUTABLE TO THE APARTMENT WHICH SUCH INDIVIDUAL IS ENTITLED TO OCCUPY.

43-123.29. **Optional standard deduction for individuals**

A. AN INDIVIDUAL, AT HIS ELECTION, MAY TAKE A STANDARD DEDUCTION AS FOLLOWS:

1. IF HIS ADJUSTED GROSS INCOME IS FIVE THOUSAND DOLLARS OR MORE, THE STANDARD DEDUCTION SHALL BE FIVE HUNDRED DOLLARS;

2. IF HIS ADJUSTED GROSS INCOME IS LESS THAN FIVE THOUSAND DOLLARS, THE STANDARD DEDUCTION SHALL BE AN AMOUNT EQUAL TO TEN PER CENT OF THE ADJUSTED GROSS INCOME UPON THE BASIS OF WHICH THE TAX APPLICABLE TO THE ADJUSTED GROSS INCOME OF THE TAXPAYER IS DETERMINED UNDER THE TAX TABLE PROVIDED IN SECTION 43-102(c).

3. IF THE ADJUSTED GROSS INCOME OF A MARRIED COUPLE FILING A JOINT RETURN IS LESS THAN TEN THOUSAND DOLLARS, THE STANDARD DEDUCTION SHALL BE AN AMOUNT EQUAL TO TWICE TEN PER CENT OF ONE-HALF OF THE TOTAL ADJUSTED GROSS INCOME OF BOTH TAXPAYERS UPON THE BASIS OF WHICH THE TAX APPLICABLE TO ONE-HALF OF THE ADJUSTED GROSS INCOME OF THE TAXPAYERS IS DETERMINED UNDER THE TAX TABLE PROVIDED IN SECTION 43-102(c).

4. IF THE ADJUSTED GROSS INCOME OF A MARRIED COUPLE FILING A JOINT RETURN IS TEN THOUSAND DOLLARS OR MORE, THE STANDARD DEDUCTION SHALL BE ONE THOUSAND DOLLARS.

B. THE STANDARD DEDUCTION PROVIDED FOR IN SUBSECTION A OF THIS SECTION SHALL BE IN LIEU OF ALL DEDUCTIONS OTHER THAN THOSE WHICH UNDER SECTION 43-112(f) ARE TO

BE SUBTRACTED FROM GROSS INCOME IN COMPUTING ADJUSTED GROSS INCOME.

C. THE STANDARD DEDUCTION SHALL BE ALLOWED IF THE TAXPAYER SO ELECTS IN HIS RETURN, AND THE TAX COMMISSION SHALL BY REGULATION PRESCRIBE THE MANNER OF SIGNIFYING SUCH ELECTION IN THE RETURN. AN ELECTION TO COMPUTE THE TAX UNDER SECTION 43-102(c) IS AN ELECTION TO TAKE THE STANDARD DEDUCTION.

D. IN THE CASE OF A HUSBAND AND WIFE, THE STANDARD DEDUCTION PROVIDED FOR IN SUBSECTION A OF THIS SECTION SHALL NOT BE ALLOWED TO EITHER IF THE NET INCOME OF ONE OF THE SPOUSES IS DETERMINED WITHOUT REGARD TO THE STANDARD DEDUCTION. FOR THE PURPOSES OF THIS SUBSECTION THE DETERMINATION OF WHETHER AN INDIVIDUAL IS MARRIED SHALL BE MADE AS OF THE LAST DAY OF THE TAXABLE YEAR, UNLESS HIS SPOUSE DIES DURING THE TAXABLE YEAR, IN WHICH CASE SUCH DETERMINATION SHALL BE MADE AS OF THE DATE OF SUCH SPOUSE'S DEATH.

E. THE STANDARD DEDUCTION PROVIDED FOR BY SUBSECTION A OF THIS SECTION SHALL NOT BE ALLOWED IN THE CASE OF A TAXABLE YEAR OF LESS THAN TWELVE MONTHS ON ACCOUNT OF A CHANGE IN THE ACCOUNTING PERIOD.

F. UNDER REGULATIONS PRESCRIBED BY THE TAX COMMISSION, A CHANGE OF AN ELECTION TO TAKE, OR NOT TO TAKE, THE STANDARD DEDUCTION FOR ANY TAXABLE YEAR MAY BE MADE AFTER THE FILING OF THE RETURN FOR SUCH YEAR. IF THE SPOUSE OF THE TAXPAYER FILED A SEPARATE RETURN FOR ANY TAXABLE YEAR CORRESPONDING, FOR THE PURPOSES OF SUBSECTION D OF THIS SECTION TO THE TAXABLE YEAR OF THE TAXPAYER, THE CHANGE SHALL NOT BE ALLOWED UNLESS, IN ACCORDANCE WITH SUCH REGULATIONS:

1. THE SPOUSE MAKES A CHANGE OF ELECTION WITH RESPECT TO THE STANDARD DEDUCTION FOR THE TAXABLE YEAR COVERED IN SUCH SEPARATE RETURN, CONSISTENT WITH THE CHANGE OF ELECTION SOUGHT BY THE TAXPAYER, AND

2. THE TAXPAYER AND HIS SPOUSE CONSENT IN WRITING TO THE ASSESSMENT, WITHIN SUCH PERIOD AS MAY BE AGREED UPON WITH THE TAX COMMISSION, OF ANY DEFICIENCY, TO THE

EXTENT ATTRIBUTABLE TO SUCH CHANGE OF ELECTION, EVEN THOUGH AT THE TIME OF THE FILING OF SUCH CONSENT THE ASSESSMENT OF SUCH DEFICIENCY WOULD OTHERWISE BE PREVENTED BY THE OPERATION OF ANY LAW OR RULE OF LAW.

43-123.30. **Deductions for development expenses, oil and gas**

EXPENDITURES PAID OR INCURRED DURING THE INCOME YEAR FOR THE DEVELOPMENT OF AN OIL OR GAS WELL IF PAID OR INCURRED AFTER DECEMBER 31, 1953, MAY AT THE OPTION OF THE TAXPAYER BE DEDUCTED FROM GROSS INCOME OR CHARGED TO CAPITAL ACCOUNT.

43-123.31. **Deductions for development expenses, mines**

A. EXCEPT AS PROVIDED IN SUBSECTION C OF THIS SECTION, IN COMPUTING NET INCOME THERE SHALL BE ALLOWED AS A DEDUCTION ALL EXPENDITURES PAID OR INCURRED DURING THE TAXABLE YEAR FOR THE DEVELOPMENT OF A MINE OR OTHER NATURAL DEPOSIT (OTHER THAN AN OIL OR GAS WELL) IF PAID OR INCURRED AFTER DECEMBER 31, 1953, AND AFTER THE EXISTENCE OF ORES OR MINERALS IN COMMERCIALLY MARKETABLE QUANTITIES HAS BEEN DISCLOSED.

B. THIS SECTION SHALL NOT APPLY TO EXPENDITURES FOR THE ACQUISITION OR IMPROVEMENT OF PROPERTY OF A CHARACTER WHICH IS SUBJECT TO THE ALLOWANCE FOR DEPRECIATION PROVIDED IN SECTION 43-123.14, BUT ALLOWANCES FOR DEPRECIATION SHALL BE CONSIDERED, FOR THE PURPOSES OF THIS SECTION, AS EXPENDITURES.

C. AT THE ELECTION OF THE TAXPAYER, MADE IN ACCORDANCE WITH REGULATIONS PRESCRIBED BY THE TAX COMMISSION, EXPENDITURES DESCRIBED IN SUBSECTION A OF THIS SECTION PAID OR INCURRED DURING THE TAXABLE YEAR SHALL BE TREATED AS DEFERRED EXPENSES AND SHALL BE DEDUCTIBLE ON A RATABLE BASIS AS THE UNITS OF PRODUCED ORES OR MINERALS BENEFITED BY SUCH EXPENDITURES ARE SOLD. IN THE CASE OF SUCH EXPENDITURES PAID OR INCURRED DURING THE DEVELOPMENT STAGE OF THE MINE OR DEPOSIT, THE ELECTION SHALL APPLY ONLY WITH RESPECT TO THE EXCESS OF SUCH EXPENDITURES DURING THE TAXABLE YEAR OVER THE NET RECEIPTS DURING THE TAXABLE YEAR FROM THE ORES OR MINERALS PRODUCED FROM SUCH MINE OR

DEPOSIT. THE ELECTION MUST BE FOR THE TOTAL AMOUNT OF SUCH EXPENDITURES, OR THE TOTAL AMOUNT OF SUCH EXCESS, AS THE CASE MAY BE, WITH RESPECT TO THE MINE OR DEPOSIT, AND SHALL BE BINDING FOR SUCH TAXABLE YEAR.

D. THE AMOUNT OF EXPENDITURES WHICH ARE TREATED UNDER SUBSECTION C OF THIS SECTION AS DEFERRED EXPENSES SHALL BE TAKEN INTO ACCOUNT IN COMPUTING THE ADJUSTED BASIS OF THE MINE OR DEPOSIT, EXCEPT THAT SUCH AMOUNT, AND THE ADJUSTMENTS TO BASIS PROVIDED IN SECTION 43-154(b) (2) (A), SHALL BE DISREGARDED IN DETERMINING THE ADJUSTED BASIS OF THE PROPERTY FOR THE PURPOSE OF COMPUTING A DEDUCTION FOR DEPLETION UNDER SECTION 43-153 OF THIS TITLE.

43-123.32. **Deductions for dividends from Arizona corporations**

EVERY TAXPAYER, IN REPORTING INCOME FOR PURPOSES OF TAXATION, SHALL BE ENTITLED TO A DEDUCTION FOR DIVIDENDS RECEIVED FROM A CORPORATION THE INCOME OF WHICH IS SUBJECT TO TAXATION UNDER THIS TITLE, WHICH CORPORATION HAS FILED A REPORT OF INCOME AS REQUIRED BY THIS TITLE, AND THE PRINCIPAL BUSINESS OF WHICH IS ATTRIBUTABLE TO ARIZONA. FOR THE PURPOSE OF THIS SECTION THE PRINCIPAL BUSINESS OF A CORPORATION SHALL BE CONSIDERED ATTRIBUTABLE TO ARIZONA IF FIFTY PER CENT OR MORE OF THE ENTIRE NET INCOME OR LOSS OF THE CORPORATION AFTER AN ADJUSTMENT FOR TAXES HAS BEEN MADE FOR THE YEAR PRECEDING THE PAYMENT OF SUCH DIVIDENDS, WAS USED IN COMPUTING THE AVERAGE TAXABLE INCOME PROVIDED BY THIS TITLE.

43-123.33. **Deductions for exploration expenses**

A. IN THE CASE OF EXPENDITURES PAID OR INCURRED DURING THE TAXABLE YEAR FOR THE PURPOSE OF ASCERTAINING THE EXISTENCE, LOCATION, EXTENT, OR QUALITY OF ANY DEPOSIT OF ORE OR OTHER MINERAL WITHIN THE STATE OF ARIZONA, AND PAID OR INCURRED PRIOR TO THE BEGINNING OF THE DEVELOPMENT STAGE OF THE MINE OR DEPOSIT, IN COMPUTING NET INCOME THERE SHALL BE ALLOWED AS A DEDUCTION SO MUCH OF SUCH EXPENDITURES AS DOES NOT EXCEED SEVENTY-FIVE THOUSAND DOLLARS.

B. THIS SECTION SHALL APPLY ONLY WITH RESPECT TO THE AMOUNT OF SUCH EXPENDITURES WHICH, BUT FOR THIS SECTION, WOULD NOT BE ALLOWABLE AS A DEDUCTION FOR THE TAXABLE YEAR.

C. THIS SECTION SHALL NOT APPLY TO EXPENDITURES FOR THE ACQUISITION OR IMPROVEMENT OF PROPERTY OF A CHARACTER WHICH IS SUBJECT TO THE ALLOWANCE FOR DEPRECIATION PROVIDED IN SECTION 43-123.14, BUT ALLOWANCES FOR DEPRECIATION SHALL BE CONSIDERED, FOR THE PURPOSES OF THIS SECTION, AS EXPENDITURES PAID OR INCURRED.

D. THIS SECTION SHALL LIKEWISE APPLY WITH RESPECT TO AMOUNTS PAID OR INCURRED FOR THE PURPOSE OF ASCERTAINING THE EXISTENCE, LOCATION, EXTENT, OR QUALITY OF ANY DEPOSIT OF OIL OR GAS.

E. IF THE TAXPAYER ELECTS, IN ACCORDANCE WITH REGULATIONS PRESCRIBED BY THE TAX COMMISSION, TO TREAT AS DEFERRED EXPENSES ANY PORTION OF THE AMOUNT DEDUCTIBLE FOR THE TAXABLE YEAR UNDER SUBSECTION A OF THIS SECTION, SUCH PORTION SHALL NOT BE DEDUCTIBLE UNDER THIS SECTION BUT SHALL BE DEDUCTIBLE ON A RATABLE BASIS AS THE UNITS OR PRODUCED ORES OR MINERALS DISCOVERED OR EXPLORED BY REASON OF SUCH EXPENDITURES ARE SOLD. AN ELECTION MADE FOR ANY TAXABLE YEAR SHALL BE BINDING FOR SUCH YEAR.

F. THE AMOUNT OF EXPENDITURES WHICH ARE TREATED UNDER SUBSECTION E OF THIS SECTION AS DEFERRED EXPENSES SHALL BE TAKEN INTO ACCOUNT IN COMPUTING THE ADJUSTED BASIS OF THE MINE OR DEPOSIT, BUT SUCH AMOUNTS, AND THE ADJUSTMENTS TO BASIS PROVIDED IN SECTION 43-154(b) (2) (A) SHALL BE DISREGARDED IN DETERMINING THE ADJUSTED BASIS OF THE PROPERTY FOR THE PURPOSE OF COMPUTING A DEDUCTION FOR DEPLETION UNDER SECTION 43-153 OF THIS TITLE.

43-123.34. **Deductions for farmers' cooperatives and other cooperatives**

A. IN THE CASE OF FARMERS, FRUIT GROWERS, OR LIKE ASSOCIATIONS ORGANIZED AND OPERATED ON A COOPERATIVE OR MUTUAL BASIS, FOR THE PURPOSE OF MARKETING THE PRODUCTS OF MEMBERS OR OTHER PRODUCERS, AND TURNING BACK TO THEM THE PROCEEDS OF SALES, LESS THE NECESSARY

MARKETING EXPENSES, WHICH MAY INCLUDE REASONABLE RESERVES ON THE BASIS OF EITHER THE QUANTITY OR THE VALUE OF THE PRODUCTS FURNISHED BY THEM, OR FOR THE PURPOSE OF PURCHASING, OR PRODUCING, SUPPLIES AND EQUIPMENT FOR THE USE OF MEMBERS OR OTHER PERSONS, AND TURNING OVER SUCH SUPPLIES AND EQUIPMENT TO THEM AT ACTUAL COST, PLUS NECESSARY EXPENSES, IN COMPUTING NET INCOME THERE SHALL BE ALLOWED AS A DEDUCTION ALL INCOME RESULTING FROM OR ARISING OUT OF SUCH BUSINESS ACTIVITIES FOR OR WITH THEIR MEMBERS CARRIED ON BY THEM OR THEIR AGENTS WHEN AND TO THE EXTENT DISTRIBUTED IN CASH TO SUCH MEMBERS.

B. IN THE CASE OF ANY OTHER ASSOCIATION ORGANIZED AND OPERATED ON A COOPERATIVE OR MUTUAL BASIS NO DEDUCTION OR EXEMPTION SET FORTH IN SUBSECTION A SHALL BE APPLICABLE.

43-123.35. **Additional first-year depletion allowance**

A. IN THE CASE OF SECTION 43-123.35 PROPERTY, THE TERM "REASONABLE ALLOWANCE" AS USED IN SECTION 43-123.14 MAY, AT THE ELECTION OF THE TAXPAYER, INCLUDE AN ALLOWANCE, FOR THE FIRST TAXABLE YEAR FOR WHICH A DEDUCTION IS ALLOWABLE UNDER SECTION 43-123.14 TO THE TAXPAYER WITH RESPECT TO SUCH PROPERTY, OF TWENTY PER CENT OF THE COST OF SUCH PROPERTY.

B. IF IN ANY ONE TAXABLE YEAR THE COST OF SECTION 43-123.35 PROPERTY WITH RESPECT TO WHICH THE TAXPAYER MAY ELECT AN ALLOWANCE UNDER SUBSECTION A OF THIS SECTION FOR SUCH TAXABLE YEAR EXCEEDS TEN THOUSAND DOLLARS, THEN SUBSECTION A OF THIS SECTION, SHALL APPLY WITH RESPECT TO THOSE ITEMS SELECTED BY THE TAXPAYER, BUT ONLY TO THE EXTENT OF AN AGGREGATE COST OF TEN THOUSAND DOLLARS. IN THE CASE OF A HUSBAND AND WIFE WHO FILE A JOINT RETURN, UNDER SECTION 43-141(a) (2) (B) FOR THE TAXABLE YEAR, THE LIMITATION UNDER THE PRECEDING SENTENCE SHALL BE TWENTY THOUSAND DOLLARS IN LIEU OF TEN THOUSAND DOLLARS.

C. THE ELECTION UNDER THIS SECTION FOR ANY TAXABLE YEAR SHALL BE MADE WITHIN THE TIME PRESCRIBED BY LAW (INCLUDING EXTENSIONS THEREOF) FOR FILING THE RETURN

FOR SUCH TAXABLE YEAR. THE ELECTION SHALL BE MADE IN SUCH MANNER AS THE TAX COMMISSION MAY BY REGULATIONS PRESCRIBE. ANY ELECTION MADE UNDER THIS SECTION MAY NOT BE REVOKED EXCEPT WITH THE CONSENT OF THE TAX COMMISSION.

D. FOR PURPOSES OF THIS SECTION, THE TERM "SECTION 43-123.35 PROPERTY" MEANS TANGIBLE PERSONAL PROPERTY:

1. OF A CHARACTER SUBJECT TO THE ALLOWANCE FOR DEPRECIATION UNDER SECTION 43-123.14,

2. ACQUIRED BY PURCHASE AFTER DECEMBER 31, 1969, FOR USE IN A TRADE OR BUSINESS OR FOR HOLDING FOR PRODUCTION OF INCOME, AND

3. WITH A USEFUL LIFE (DETERMINED AT THE TIME OF SUCH ACQUISITION) OF SIX YEARS OR MORE.

E. FOR PURPOSES OF SUBSECTION D OF THIS SECTION, THE TERM "PURCHASE" MEANS ANY ACQUISITION OF PROPERTY, BUT ONLY IF:

1. THE PROPERTY IS NOT ACQUIRED FROM A PERSON WHOSE RELATIONSHIP TO THE PERSON ACQUIRING IT WOULD RESULT IN THE DISALLOWANCE OF LOSSES UNDER SECTION 43-126(b) (BUT, IN APPLYING SECTION 43-126(b) (1) AND (2) FOR PURPOSES OF THIS SECTION, PARAGRAPH (D) OF SECTION 43-126 (b) (2) SHALL BE TREATED AS PROVIDING THAT THE FAMILY OF AN INDIVIDUAL SHALL INCLUDE ONLY HIS SPOUSE, ANCESTORS, AND LINEAL DESCENDANTS).

2. THE PROPERTY IS NOT ACQUIRED BY ONE MEMBER OF AN AFFILIATED GROUP FROM ANOTHER MEMBER OF THE SAME AFFILIATED GROUP, AND

3. THE BASIS OF THE PROPERTY IN THE HANDS OF THE PERSON ACQUIRING IT IS NOT DETERMINED:

(a) IN WHOLE OR IN PART BY REFERENCE TO THE ADJUSTED BASIS OF SUCH PROPERTY IN THE HANDS OF THE PERSON FROM WHOM ACQUIRED, OR

(b) UNDER SECTION 43-153(a) (5) (RELATING TO PROPERTY ACQUIRED FROM A DECEDENT).

F. FOR PURPOSES OF THIS SECTION, THE COST OF PROPERTY DOES NOT INCLUDE SO MUCH OF THE BASIS OF SUCH PROPERTY AS IS DETERMINED BY REFERENCE TO THE BASIS OF OTHER PROPERTY HELD AT ANY TIME BY THE PERSON ACQUIRING SUCH PROPERTY.

G. THIS SECTION SHALL NOT APPLY TO TRUSTS.

H. IN THE CASE OF AN ESTATE, THIS SECTION SHALL APPLY TO THE EXTENT PROVIDED IN ACCORDANCE WITH THE PROVISIONS HEREIN.

I. FOR PURPOSES OF SUBSECTION B OF THIS SECTION:

1. ALL MEMBERS OF AN AFFILIATED GROUP SHALL BE TREATED AS ONE TAXPAYER, AND

2. THE TAX COMMISSION SHALL APPORTION THE DOLLAR LIMITATION CONTAINED IN SUCH SUBSECTION B OF THIS SECTION AMONG THE MEMBERS OF SUCH AFFILIATED GROUP IN SUCH MANNER AS IT SHALL BY REGULATIONS PRESCRIBE.

J. FOR THE PURPOSES OF SUBSECTIONS E AND I OF THIS SECTION, THE TERM "AFFILIATED GROUP" HAS THE MEANING ASSIGNED TO "CONTROLLED CORPORATIONS" BY SECTION 43-135.

K. IN APPLYING SECTION 43-123.14, SUBSECTION H, THE ADJUSTMENT UNDER SECTION 43-153(b) (1) (B) RESULTING BY REASON OF AN ELECTION MADE UNDER THIS SECTION WITH RESPECT TO ANY SECTION 43-123.35 PROPERTY SHALL BE MADE BEFORE ANY OTHER DEDUCTION ALLOWED BY SECTION 43-123.14 IS COMPUTED.

L. THE TAX COMMISSION SHALL PRESCRIBE SUCH REGULATIONS AS MAY BE NECESSARY TO CARRY OUT THE PURPOSES OF THIS SECTION.

Sec. 4. Section 43-101, Arizona Revised Statutes, is amended to read:

43-101. **General provisions and definitions**

(a) **Effective date.** The provisions of this title shall apply only to taxable years beginning after December 31, 1953.

(b) **Construction.** Except where the context otherwise requires, the definitions given in this section govern the construction of this title.

(c) **Tax commission.** "Tax commission" or "commission" means the Arizona state tax commission.

(d) **Tax.** "Tax" means the taxes imposed under this title.

(e) **Taxpayer.** "Taxpayer" means any person subject to a tax imposed by this title, but in no case shall it include the United States, the state, counties, cities, villages, school districts, or other political subdivisions or units of the state or federal government.

(f) **Individual.** "Individual" means a natural person.

(g) **Fiduciary.** "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, whether individual or corporate, or any person acting in any fiduciary capacity for any person, estate or trust.

(h) **Person.** "Person" includes individuals, fiduciaries, partnerships, and corporations.

(i) **Partnership.** "Partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on and which is not, within the meaning of this title, a trust or estate or a corporation.

"Partner" includes a member in such a syndicate, group, pool, joint venture, or organization.

(j) **Corporation.** "Corporation" shall mean and include all corporations, joint stock companies, banks, insurance companies, business trusts or so-called "Massachusetts trusts", investment companies, building and loan associations, and other associations whether incorporated or unincorporated.

(k) **Taxable year.** "Taxable year" means the calendar year or the fiscal year (ending during such calendar year) upon the basis of which the net income is computed under this title. If no fiscal year has been established, "taxable year" means the calendar year.

"Taxable year" means, in the case of a return made for a fractional part of a year under this title or under regulations prescribed by the tax commission, the period for which the return is made.

(l) **Income year.** For the purposes of the tax imposed under this title, wherever "income year" is used throughout this title it means "taxable year" as that term is defined in this section.

(m) **Fiscal year.** "Fiscal year" means an accounting period of twelve months ending on the last day of any month other than December.

(n) **Paid or incurred.** "Paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed under this title.

(o) **Assessment.** "Assessment" includes "proposed additional assessment".

(p) **Resident.** "Resident" includes:

(1) Every individual who is in this state for other than a temporary or transitory purpose.

(2) Every individual domiciled in this state who is outside the state for a temporary or transitory purpose.

Any individual who is a resident of this state continues to be a resident even though temporarily absent from the state.

(q) **Nonresident.** "Nonresident" means every individual other than a resident.

(r) **Presumption of residence.** Every individual who spends in the aggregate more than nine months of the taxable year within this state shall be presumed to be a resident. The presumption may be overcome by competent evidence that the individual is in the state for a temporary or transitory purpose.

(s) **United States.** "United States", when used in a geographical sense, includes the states, ~~the territories of Alaska and Hawaii,~~ the District of Columbia, and the possessions of the United States.

(t) **State.** "State" includes the states of the United States, ~~the territories of Alaska and Hawaii,~~ the District of Columbia, and the possessions of the United States.

(u) **Foreign country.** "Foreign country" means any jurisdiction other than one embraced within the United States.

(v) **Trade or business.** "Trade or business" includes the performance of the functions of a public office.

(w) **Husband and wife.**

(1) As used in section 43-112(e) (1), (2) and (4), section ~~43-123(u)~~ 43-123.23 and section 43-164, and the last paragraph of section 43-127 (c), if the husband and wife therein referred to are divorced, the term "wife" shall be read "former wife" and the term "husband" shall be read "former husband". If the payments described in such sections are made by or on behalf of the wife or former wife to the husband or former husband instead of vice versa, wherever appropriate to the meaning of such sections, the term "husband" shall be read "wife" and the term "wife" shall be read "husband".

(2) An individual who is legally separated from his (or her) spouse under a decree of divorce or of separate maintenance shall not be considered as married (or as husband and wife).

(3) A taxpayer shall be considered as married at the close of his (or her) taxable year if his (or her) spouse died during the taxable year.

(x) **Head of household.** For the purposes of this title, an individual shall be considered a head of a household if, and only if, such individual is not married at the close of his taxable year and maintains as his home a household which constitutes for such taxable year the principal place of abode, as a member of such household, of any person who is a dependent of the taxpayer, if the taxpayer is entitled to an exemption for the taxable year for such person under section 43-127(c). An individual may be considered as maintaining a household only if over half of the cost of maintaining the household during the taxable year is furnished by such individual.

(y) **Military or naval forces.** The term "military or naval forces of the United States" includes the army, the navy, the air force, the marine corps, the coast guard, the army nurse corps, female, the women's army auxiliary corps, the navy nurse corps, female, and the women's reserve branch of the naval reserve.

(z) **Counsel for tax commission.** The terms "counsel for tax commission" and "tax commission counsel" as used in this title, means attorney or attorneys acting subject to the approval and under the supervision of the department of law, and the attorney general.

(aa) **Income derived from sources within this state.** Income derived from or attributable to sources within this state includes income from tangible or intangible property located or having a situs in this state and income from any activities carried on in this state, regardless of whether carried on in intrastate, interstate or foreign commerce.

(bb) **Specific definitions.** Definitions, other than general definitions, are set forth in the section to which specifically applicable.

Sec. 5. Section 43-102, Arizona Revised Statutes, is amended to read:

43-102. **Imposition of tax**

(a) **Taxes and rates–individuals, estates and trusts.** There shall be levied, collected, and paid for each taxable year upon the entire net income of every estate or trust taxable under this title and of every resident of this state and upon the entire net income of every nonresident which is derived from sources within this state, taxes in the following amounts and at the following rates upon the amount of net income in excess of credits against net income provided in sections 43-127 and 43-128.

On the first one thousand dollars or any part thereof, two per cent.

On the second one thousand dollars or any part thereof, three per cent.

On the third one thousand dollars or any part thereof, four per cent.

On the fourth one thousand dollars or any part thereof, five per cent.

On the fifth one thousand dollars or any part thereof, six per cent.

On the sixth one thousand dollars or any part thereof, seven per cent.

On the seventh one thousand dollars or any part thereof, and all taxable income in excess of seven thousand dollars, eight per cent.

(b) **Taxes and rates–corporations.** There shall be levied, collected, and paid for each taxable year upon the entire net income of every corporation, except as otherwise provided in this title or by law, taxes in the following amounts and at the following rates:

Upon net income not in excess of one thousand dollars, two per cent of such net income.

Twenty dollars upon net income of one thousand dollars; and upon net income in excess of one thousand dollars and not in excess of two thousand dollars, three per cent in addition of such excess.

Fifty dollars upon net income of two thousand dollars; and upon net income in excess of two thousand dollars and not in excess of three thousand dollars, four per cent in addition of such excess.

Ninety dollars upon net income of three thousand dollars; and upon net income in excess of three thousand dollars, and not in excess of four thousand dollars, five per cent in addition of such excess.

One hundred forty dollars upon net income of four thousand dollars; and upon net income in excess of four thousand dollars and not in excess of five thousand dollars, six per cent in addition of such excess.

Two hundred dollars upon net income of five thousand dollars; and upon net income in excess of five thousand dollars and not in excess of six thousand dollars, seven per cent in addition of such excess.

Two hundred seventy dollars upon net income of six thousand dollars; and upon net income in excess of six thousand dollars, eight per cent in addition of such excess.

(c) **Optional tax.**

(1) In lieu of the tax imposed under subsection (a), there shall be levied, collected and paid for each taxable year upon the gross income of each individual whose gross income for such year is less than five thousand dollars and who has elected to pay the tax imposed by this subsection for such year, the tax shown in the following table:

Gross Income		Single Person or Married Person Filing Separately	Married Couple Filing Jointly or Single Person-Head of Household
At Least	But Less Than		
$1,100.00	$1,150.00	$ .25	$ 0
1,150.00	1,200.00	1.15	0
1,200.00	1,250.00	2.05	0
1,250.00	1,300.00	2.95	0
1,300.00	1,350.00	3.85	0
1,350.00	1,400.00	4.75	0
1,400.00	1,450.00	5.65	0
1,450.00	1,500.00	6.55	0
1,500.00	1,550.00	7.45	0
1,550.00	1,600.00	8.35	0
1,600.00	1,650.00	9.25	0
1,650.00	1,700.00	10.15	0
1,700.00	1,750.00	11.05	0
1,750.00	1,800.00	11.95	0
1,800.00	1,850.00	12.85	0
1,850.00	1,900.00	13.75	0
1,900.00	1,950.00	14.65	0
1,950.00	2,000.00	15.55	0
2,000.00	2,050.00	16.45	0
2,050.00	2,100.00	17.35	0
2,100.00	2,150.00	18.25	0
2,150.00	2,200.00	19.15	0
2,200.00	2,250.00	20.07	.05
2,250.00	2,300.00	21.42	.95
2,300.00	2,350.00	22.77	1.85
2,350.00	2,400.00	24.12	2.75
2,400.00	2,450.00	25.47	3.65
2,450.00	2,500.00	26.82	4.55
2,500.00	2,550.00	28.17	5.45
2,550.00	2,600.00	29.52	6.35
2,600.00	2,650.00	30.87	7.25
2,650.00	2,700.00	32.22	8.15
2,700.00	2,750.00	33.57	9.05
2,750.00	2,800.00	34.92	9.95
2,800.00	2,850.00	36.27	10.85
2,850.00	2,900.00	37.62	11.75
2,900.00	2,950.00	38.97	12.65
2,950.00	3,000.00	40.32	13.55
3,000.00	3,050.00	41.67	14.45
3,050.00	3,100.00	43.02	15.35
3,100.00	3,150.00	44.37	16.25
3,150.00	3,200.00	45.72	17.15
3,200.00	3,250.00	47.07	18.05
3,250.00	3,300.00	48.42	18.95
3,300.00	3,350.00	49.75	19.85
3,350.00	3,400.00	51.50	20.75

Gross Income		Single Person or Married Person Filing Separately	Married Couple Filing Jointly or Single Person-Head of Household
At Least	But Less Than		
$3,400.00	$3,450.00	$53.30	$21.65
3,450.00	3,500.00	55.10	22.55
3,500.00	3,550.00	56.90	23.45
3,550.00	3,600.00	58.70	24.35
3,600.00	3,650.00	60.50	25.25
3,650.00	3,700.00	62.30	26.15
3,700.00	3,750.00	64.10	27.05
3,750.00	3,800.00	65.90	27.95
3,800.00	3,850.00	67.70	28.85
3,850.00	3,900.00	69.50	29.75
3,900.00	3,950.00	71.30	30.65
3,950.00	4,000.00	73.10	31.55
4,000.00	4,050.00	74.90	32.45
4,050.00	4,100.00	76.70	33.35
4,100.00	4,150.00	78.50	34.25
4,150.00	4,200.00	80.30	35.15
4,200.00	4,250.00	82.10	36.05
4,250.00	4,300.00	83.90	36.95
4,300.00	4,350.00	85.70	37.85
4,350.00	4,400.00	87.50	38.75
4,400.00	4,450.00	89.30	39.65
4,450.00	4,500.00	91.37	40.82
4,500.00	4,550.00	93.62	42.17
4,550.00	4,600.00	95.87	43.52
4,600.00	4,650.00	98.12	44.87
4,650.00	4,700.00	100.37	46.22
4,700.00	4,750.00	102.62	47.57
4,750.00	4,800.00	104.87	48.92
4,800.00	4,850.00	107.12	50.27
4,850.00	4,900.00	109.37	51.62
4,900.00	4,950.00	111.62	52.97
4,950.00	5,000.00	113.87	54.32

In applying the above table to determine the tax of such individual, there shall be subtracted from his gross income the amount of the federal income tax paid during the taxable year.

In applying the above table to determine the tax of a taxpayer with one or more dependents, there shall be subtracted from his gross income six hundred dollars for each dependent, except that in the case of a "head of household" the deduction for dependents shall be permitted only for those dependents in excess of one.

(2) For the purpose of this subsection:

(A) "Married person" means a married person on the last day of the taxable year.

(B) "Dependent" means a person who is dependent under section 43-127(c).

(C) An individual, who is not a head of a family or a married person, shall be treated as a single person.

(D) "Head of household" means a head of household on the last day of the taxable year, unless such person dies during the taxable year, in which case such determination shall be made as of the date of death.

(E) In the case of a joint return of a husband and wife filed pursuant to section 43-141(a) (2), the tax imposed under subsection (a) shall be twice the tax that would be determined if the net income and credits against net income provided by sections 43-127 and 43-128 were reduced by one-half.

(3) This subsection shall not apply to an estate or trust, an individual filing a return for a period of less than twelve months on account of a change in the accounting period, or to a married individual whose spouse files a return and computes the tax without regard to this section or section ~~43-123(aa) (1)~~ 43-123.29, SUBSECTION A.

(d) **Effect of changes in rates during a taxable year**

If any rate of tax imposed by this chapter changes, and if the taxable year includes the effective date of the change (unless that date is the first day of the taxable year), then

(1) Tentative taxes shall be computed by applying the rate for the period before the effective date of the change, and the rate for the period on and after such date, to the taxable income for the entire taxable year; and

(2) The tax for such taxable year shall be the sum of that proportion of each tentative tax which the number of days in each period bears to the number of days in the entire taxable year.

Sec. 6. Section 43-112, Arizona Revised Statutes, is amended to read:

43-112. **Gross income**

(a) **Definition–"Gross income".** Gross income includes gains, profits, and income derived from salaries, wages, or compensation for personal service, including personal service as an officer or employee of this state or the federal government, or any political division thereof or any agency or instrumentality of any one or more of the foregoing, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever, including interest which now or hereafter constitutionally may be taxed.

(b) **Exclusions from gross income.** In computing the tax imposed under this title, "gross income" does not include any of the items specified in this subsection.

(1) **Life insurance–death benefits.** Gross income does not include amounts received:

(A) Under a life insurance contract, paid by reason of the death of the insured or,

(B) Under a contract of an employer providing for the payment of such amounts to the beneficiaries of an employee, paid by reason of the death of the employee; whether in a single sum or otherwise (but if such amounts are held by the insurer, or the employer, under an agreement to pay interest thereon, the interest payments shall be included in gross income). The aggregate of the amounts excludible under (B) by all the beneficiaries of the employee under all such contracts of any one employer may not exceed five thousand dollars.

(2) **Life insurance other than death benefits.** Gross income also does not include amounts received (other than amounts paid by reason of the death of the insured and interest payments on such amounts and other than amounts received as annuities) under a life insurance or endowment contract, but if such amounts (when added to amounts received before the taxable year under such contract) exceed the aggregate premiums or consideration paid (whether or not paid during the taxable year) then the excess shall be included in gross income.

(3) **Annuity.** Gross income also does not include amounts received as an annuity under an annuity or endowment contract, but if such amounts (when added to amounts received before the taxable year under such

contracts) exceed the aggregate premiums or consideration paid (whether or not paid during the taxable year) then the excess shall be included in gross income.

(4) **Other insurance proceeds.** Gross income does not include amounts received (other than amounts paid by reason of the death of the insured under life insurance, endowment or annuity contracts) either during the term or at maturity or upon surrender of the contract, equal to the total amount of premiums paid thereon. In the case of a transfer for a valuable consideration by assignment or otherwise, of a life insurance, endowment or annuity contract or any interest therein, only the actual value of such consideration and the amount of the premiums and other sums subsequently paid by the transferee shall be excluded from gross income under paragraph (1). The preceding sentence shall not apply in the case of such a transfer if such contract or interest therein has a basis for determining gain or loss in the hands of a transferee determined in whole or in part by reference to such basis of such contract or interest therein in the hands of the transferor.

(5) **Alimony paid under life insurance, endowment, or annuity contract.** Paragraphs (1), (2), (3) and (4) shall not apply with respect to so much of a payment under a life insurance, endowment, or annuity contract, or any interest therein, as is includible in gross income under subsection (e), (1), (2), (3) and (4).

(6) **Annuities for employees.** If an annuity contract is purchased by an employer for an employee under a plan with respect to which the employer's contribution is deductible under section ~~43-123(p)~~ 43-123.18 or if an annuity contract is purchased for an employee by an employer exempt under section 43-147(a) (4) the employee shall include in his income the amounts received under such contract for the year received. If the employee paid any of the consideration for the annuity, the annuity shall be included in his income as provided in paragraphs (2), (3) and (4). The consideration for the annuity is the amount contributed by the employee.

(7) **Employee annuities, nonforfeitable.** Except as provided in paragraph (6), if the employee's rights under the contract are nonforfeitable other than for failure to pay future premiums, the amount contributed by the employer for such annuity contract on or after such rights become nonforfeitable shall be included in the income of the employee in the year in which the amount is contributed. This amount, together with any amount contributed by the employee, shall constitute the consideration paid for the annuity contract in determining the amount of the annuity required to be included in the income of the employee under paragraphs (2), (3), and (4).

(8) **Joint and survivor's annuity.** For purposes of paragraphs (2), (3), (4), (6) and (7), where amounts are received by a surviving annuitant under a joint and survivor's annuity contract and the basis of such survivor annuitant's interest is determined under section 43-153(a) (5) (A) the consideration paid for such survivor's annuity shall be considered to be an amount equal to such basis.

(9) **Gifts.** Gross income also does not include the value of property acquired by gift, bequest, devise, or inheritance. There shall not be excluded from gross income under this paragraph the income from such property, or, in case the gift, bequest, devise, or inheritance is of income from property, the amount of income. For the purposes of this paragraph, if, under the terms of the gift, bequest, devise, or inheritance, payment, crediting, or distribution thereof is to be made at intervals, to the extent that it is paid or credited or to be distributed out of income from property, it shall be considered a gift, bequest, devise, or inheritance of income from property.

(10) **Tax exempt interest.** Gross income also does not include interest upon the obligations of this state or any political subdivision thereof, or the obligations of the United States or its possessions.

(11) **Amounts received for injury or sickness.** Except in the case of amounts attributable to, and not in excess of, deductions allowed under section ~~43-123(x) (1), (2) and (3)~~ 43-123.26, SUBSECTIONS A, B AND C, gross income also does not include amounts received through accident or health insurance or under workmen's compensation acts as compensation for personal injuries or sickness, plus the amount of any damages received whether by suit or agreement on account of such injuries or sickness. Gross income does not include amounts received as a pension, annuity, medical retirement or similar allowance for personal injuries or sickness resulting from active service in the armed forces of any country.

(12) **Minister's compensation.** Gross income also does not include the rental value of a dwelling house and appurtenances thereof furnished to a minister of a religion as part of his compensation.

(13) **Compensation of employees of foreign government.** Gross income also does not include wages, fees, or salary of an employee of a foreign country (including a consular or other officer, or non-diplomatic representative) received as compensation for official services to that country:

(A) If the employee is not a citizen of the United States;

(B) If the services are of a character similar to those performed by employees of the United States in foreign countries; and

(C) If the foreign country and political subdivision thereof do not tax the wages, fees, or salaries of employees of the United States performing similar services in that country.

(14) **Discharge of indebtedness evidenced by security.** Gross income does not include the amount of any income of a corporation attributable to the discharge, within the income year, of any indebtedness of the taxpayer, or for which the taxpayer is liable, evidenced by a security, as hereinafter defined, if the taxpayer makes and files at the time of filing the return, in such manner as the tax commission by regulation prescribes, its consent to the regulations prescribed under section 43-153(b) (3). In such case the amount of any income of the taxpayer attributable to any unamortized premium, computed as of the first day of the income year in which such discharge occurred, with respect to such indebtedness shall not be included in gross income and the amount of the deduction attributable to any unamortized discount, computed as of the first day of the income year in which such discharge occurred, with respect to such indebtedness shall not be allowed as a deduction. "Security" means any bond, debenture, note, or certificate, or other evidence of indebtedness, issued by any corporation.

(15) **Discharge of indebtedness–railroad corporation–Sec. 77m, Bankruptcy Act.** Gross income does not include the amount of any income attributable to the discharge, within the income year, of any indebtedness of a railroad corporation, as defined in section 77m of the national bankruptcy act, as amended, to the extent that such income is deemed to have been realized by reason of a modification in or cancellation in whole or in part of such indebtedness pursuant to an order of a court in a receivership proceeding or in a proceeding under section 77 of the national bankruptcy act, as amended. In such case the amount of any income of the taxpayer attributable to any unamortized premium, computed as of the first day of the income year in which such discharge occurred, with respect to such indebtedness shall not be included in gross income and the amount of the deduction attributable to any unamortized discount, computed as of the first day of the income year in which such discharge occurred, with respect to such indebtedness shall not be allowed as a deduction. Paragraph (14) shall not apply with respect to any discharge of indebtedness to which this paragraph applies.

(16) **Lessee improvements.** Gross income also does not include income, other than rent, derived by a lessor of real property upon the termination of a lease, representing the value of such property attributable to buildings erected or other improvements made by the lessee.

(17) **Recovery of bad debt, prior tax, or delinquency amount.** Gross income also does not include income attributable to the recovery during the taxable year of a bad debt, prior tax, or delinquency amount, to the extent of the amount of the recovery exclusion with respect to that debt, tax, or amount.

(18) **Bad debt.** As used in paragraph (17) "bad debt" means a debt on account of worthlessness or partial worthlessness of which a deduction was allowed for a prior taxable year.

(19) **Prior tax.** As used in paragraph (17) "prior tax" means a tax on account of which a deduction or credit was allowed for a prior taxable year.

(20) **Delinquency amount.** As used in paragraph (17) "delinquency amount" means an amount paid or accrued on account of which a deduction or credit was allowed for a prior taxable year and which is attributable to failure to file a return with respect to a tax, or pay a tax, within the time required by the law under which the tax is imposed, or to failure to file a return with respect to a tax or pay a tax.

(21) **Recovery exclusion.** As used in paragraph (17) "recovery exclusion", with respect to a bad debt, prior tax, or delinquency amount, means the amount, determined in accordance with regulations prescribed by the tax commission, of the deductions or credits allowed, on account of such bad debt, prior tax, or delinquency amount, which did not result in a reduction of the taxpayer's tax under this title, reduced by the amount excludible in previous taxable years with respect to such debt, tax or amount under this paragraph.

(22) **Compensation for military service.**

(A) Gross income also does not include the salary, wages, bonuses, allowances, and other compensation received by an individual for his services as a member of the armed forces of the United States, including any auxiliary branch thereof, up to and including one thousand dollars per annum in the aggregate.

(B) Gross income also does not include amounts received during the

taxable year as mustering out payments and terminal leave and unused leave pay and bonds, and educational benefits received under federal or state legislation with respect to services in the military or naval forces of the United States.

(23) **Option price–employee stock options.** Gross income also does not include any amount, other than the option price, received by any bank or corporation, or its parent or subsidiary bank or corporation, as consideration for the issuance of stock to an employee of such bank or corporation, as a result of the exercise by the employee of a "restricted stock option" as defined in section 43-160(d) (1).

(24) **Constitutionally exempt income.** Gross income also does not include income which this state is prohibited from taxing under the constitution or laws of the United States of America or under the constitution of this state.

(25) **Federal civil service benefits.** The amount of two thousand five hundred dollars or less received each year as annuities under the United States civil service retirement system from the United States government service retirement and disability fund.

(26) **Dividends from controlled corporations.** Gross income also does not include, in the case of a corporation, dividends received from another corporation owned or controlled directly or indirectly by the recipient-corporation. "Control" for purposes of this subsection shall mean direct or indirect ownership or control of fifty per cent or more of the voting stock of the payor-corporation by the recipient-corporation. Dividends shall have the meaning provided in section 43-155(a). This exclusion shall apply without regard to the provisions of section ~~43-123(b),~~ 43-123.04, section 43-135(g), and section 43-126(a) (5) with the exception of the deduction for federal income taxes.

(c) **Inventories, as prescribed by the tax commission.**

Whenever in the opinion of the tax commission the use of inventories is necessary in order clearly to determine the income of any taxpayer, inventories shall be taken by the taxpayer upon such basis as the tax commission may prescribe as conforming as nearly as may be to the best accounting practice in the trade or business and as most clearly reflecting the income.

(d) **Method used in inventorying goods.**

(1) **First in, last out method, permissible.** A taxpayer may use the following method (whether or not the method has been prescribed under subsection (c) in inventorying goods specified in the application required under paragraph (2):

(A) Inventory them at cost;

(B) Treat those remaining on hand at the close of the taxable year as being: first, those included in the opening inventory of the taxable year (in order of acquisition) to the extent thereof, and second, those acquired in the taxable year; and

(C) Treat those included in the opening inventory of the taxable year in which the method is first used as having been acquired at the same time and determine their cost by the average cost method.

(2) **First in, last out method, when applicable.** The method described in paragraph (1) may be used

(A) Only in inventorying goods (required under subsection (c) to be inventoried) specified in an application to use such method filed at such time and in such manner as the tax commission may prescribe; and

(B) Only if the taxpayer establishes to the satisfaction of the tax commission that the taxpayer has used no procedure other than that specified in subparagraphs (B) and (C) of paragraph (1) in inventorying to ascertain the income, profit, or loss of the first taxable year for which the method described in paragraph (1) is to be used, for the purpose of a report or statement covering the taxable year to shareholders, partners, or other proprietors, or to beneficiaries, or for credit purposes.

(3) **First in, last out method, tax commission to prescribe regulations.** The change to, and the use of, the described method shall be in accordance with such regulations as the tax commission may prescribe as necessary in order that the use of the method may clearly reflect income.

(4) **First in, last out method, inventoried at cost.** In determining income for the taxable year preceding the taxable year for which the described method is first used, the closing inventory of such preceding year of the goods specified in the application shall be at cost.

(5) **First in, last out method, inconsistent use.** If a taxpayer, having complied with paragraph (2), uses the method described in paragraph (1) for any taxable year, that method shall be used in all subsequent taxable years unless

(A) With the approval of the tax commission a change to a different method is authorized; or

(B) The tax commission determines that the taxpayer has used for any such subsequent taxable year some procedure other than that specified in subparagraph (B) of paragraph (1) in inventorying the goods specified in the application to ascertain the income, profit or loss of such subsequent taxable year for the purpose of a report or statement covering such taxable year to shareholders, partners, or other proprietors, or beneficiaries, or for credit purposes, and requires a change to a method different from that prescribed in paragraph (1) beginning with such subsequent taxable year or any taxable year thereafter.

In either of the above cases, the change to, and the use of the different method shall be in accordance with such regulations as the tax commission may prescribe as necessary in order that the use of such method may clearly reflect income.

(6) **Adjustment of net income, when applicable.** The net income of the taxpayer otherwise determined for the year of involuntary liquidation shall be adjusted according to the provisions of paragraphs (7) and (8):

(A) If, for any taxable year beginning after December 31, 1953, and while a state of war exists and prior to the termination of such war as proclaimed by the president of the United States, the closing inventory of a taxpayer inventorying goods under the method provided in this subsection reflects a decrease from the opening inventory of goods for this year; and

(B) If, at the time of the filing of the taxpayer's income tax return for such year, the taxpayer elects to have the provisions of paragraphs (6) through (15) apply and so notifies the tax commission; and

(C) If, at the time of such election, it is established to the satisfaction of the tax commission, in accordance with the rules and regulations prescribed by the tax commission, that such decrease is attributable to the involuntary liquidation of the inventory as defined in paragraph (9); and

(D) If the closing inventory of a subsequent taxable year, ending not more than four years after the termination of such war as proclaimed by the president of the United States, reflects a replacement, in whole or in part, of the goods so previously liquidated.

(7) **Adjustment of net income, method.** The taxpayer's net income shall be adjusted as follows:

(A) Increased by an amount equal to the excess, if any, of the aggregate cost of such goods reflected in the opening inventory of the year of involuntary liquidation over the aggregate replacement cost; or

(B) Decreased by an amount equal to the excess, if any, of the aggregate replacement cost of such goods over the aggregate cost thereof reflected in the opening inventory of the year of the involuntary liquidation.

(8) **Adjustment of taxes.** The taxes imposed by this title for the year of such liquidation and for all taxable years intervening between that year and the year of replacement shall be redetermined giving effect to adjustments provided for in paragraph (6). Any increase in taxes resulting from these adjustments shall be assessed and collected as a deficiency but without interest, and any overpayment so resulting shall be credited or refunded to the taxpayer without interest.

(9) **Definition–"involuntary liquidation".** As used in paragraphs (6) through (15), "involuntary liquidation" means the sale or other disposition of goods inventoried under the method described in this subsection, either voluntary or involuntary, coupled with a failure on the part of the taxpayer to purchase, manufacture, or otherwise produce and have on hand at the close of the taxable year in which a sale or other disposition occurred such goods as would, if on hand at the close of such taxable year, be subject to the provisions of this subsection if such failure on the part of the taxpayer is due, directly and exclusively:

(A) To enemy capture or control of sources of limited foreign supply;

(B) To shipping or other transportation shortages;

(C) To material shortages resulting from priorities or allocations;

(D) To labor shortages;

(E) To other prevailing war conditions, beyond the control of the taxpayer.

(10) **Replacements.** If, in the case of any taxpayer subject to the provisions of paragraphs (6), (7) and (8), the closing inventory of the taxpayer for a taxable year, subsequent to the year of involuntary liquidation but prior to the complete replacement of the goods so liquidated, reflects an increase over the opening inventory of the goods for the taxable year, the goods reflecting such increase shall be considered, in the order of their acquisition, as having been acquired in replacement of

the goods most recently liquidated (whether or not in a year of involuntary liquidation) and not previously replaced. If the liquidation was an involuntary liquidation, the goods reflecting the increase shall be taken into purchases and included in the closing inventory of the taxpayer for the year of replacement at the inventory cost basis of the goods replaced.

(11) **Election, irrevocable.** An election by the taxpayer to have the provisions of paragraphs (6) through (15) apply, once made, shall be irrevocable and shall be binding for the year of the involuntary liquidation and for all determinations for prior and subsequent taxable years insofar as they are related to the year of liquidation or replacement.

(12) **Adjustment, within three years.** If the adjustments specified in paragraphs (6), (7) and (8) are, with respect to any taxable year, prevented, on the date of the filing of the income tax return of the taxpayer for the year of the replacement, or within four years from such date, by any provision or rule of law (other than paragraphs (12) through (15)) such adjustments shall nevertheless be made if, in respect to the taxable year for which the adjustment is sought, a notice of proposed additional assessment is mailed or a claim for refund is filed, as the case may be, within four years after the date of the filing of the income tax return for the year of replacement.

(13) **Adjustment, limited to effect of liquidation.** If, at the time of the mailing of the notice of proposed additional assessment or the filing of the claim for refund, the adjustment is so prevented, then the amount of the adjustment authorized by paragraphs (6) through (15) shall be limited to the increase or decrease of the tax imposed by this title previously determined for the taxable year which results solely from the effect of paragraphs (6), (7) and (8). The tax previously determined shall be ascertained in accordance with rules and regulations prescribed by the tax commission.

(14) **Adjustment, method of assessment or refund.** The amount of the adjustment shall be assessed and collected, or credited or refunded in the same manner as if it were a deficiency or an overpayment, as the case may be, for such taxable year and as if, on the date of the filing of the income tax return for the year of the replacement, three years remain before the expiration of the periods of limitation upon assessment or the filing of claim for refund for the taxable year.

(15) **Adjustment, based on paragraph (6).** The amount of the adjustment shall not be diminished by any credit or set-off based upon any item, inclusion, deduction, credit, exemption, gain, or loss, other than one

resulting from the effect of paragraphs (6), (7), and (8). The amount, if paid, shall not be recovered by a claim or suit for refund or suit for erroneous refund based upon any item, inclusion, deduction, credit, exemption, gain, or loss, other than one resulting from the effect of paragraphs (6), (7) and (8).

(e) **Alimony, etc.**

(1) **Alimony–periodic payments.** In the case of a wife who is divorced or legally separated from her husband under a decree of divorce or of separate maintenance, periodic payments (whether or not made at regular intervals) received subsequent to such decree in discharge of, or attributable to property transferred (in trust or otherwise) in discharge of, a legal obligation which, because of the marital or family relationship, is imposed upon or incurred by such husband under such decree or under a written instrument incident to such divorce or separation shall be includible in the gross income of such wife. Such amounts received as are attributable to property so transferred shall not be includible in the gross income of such husband.

(2) **Minor's support.** Paragraph (1) shall not apply to that part of any periodic payment which the terms of the decree or written instrument fix, in terms of an amount of money or a portion of the payment, as a sum which is payable for the support of minor children of the husband. In case any periodic payment is less than the amount specified in the decree or written instrument, that payment, to the extent of the sum payable for support, shall be considered a payment for such support.

(3) **Alimony installment payments of less than ten years.** Installment payments discharging a part of an obligation the principal sum of which is, in terms of money or property, specified in the decree or instrument shall not be considered period payments for the purposes of paragraphs (1) and (2).

(4) **Alimony installment payments of more than ten years.** An installment payment shall be considered a periodic payment for the purposes of paragraphs (1) and (2) if the principal sum, by the terms of the decree or instrument may be or is to be paid within a period ending more than ten years from the date of such decree or instrument. But it shall be considered a periodic payment only to the extent that the installment payment for the taxable year of the wife (or if more than one installment payment for the taxable year is received during the taxable year, the aggregate of these installment payments) does not exceed ten per cent of the principal sum. For the purposes of paragraph (3) and this paragraph,

the portion of a payment of the principal sum which is allocable to a period after the taxable year of the wife in which it is received shall be considered an installment payment for the taxable year in which it is received.

(f) **Definition–"adjusted gross income".** As used in this title, the term "adjusted gross income" means the gross income minus–

(1) The deductions allowed by ~~section 43-123~~ SECTIONS 43-123.03 THROUGH 43-123.35 which are attributable to a trade or business carried on by the taxpayer, if such trade or business does not consist of the performance of services by the taxpayer as an employee;

(2) The deductions allowed by ~~section 43-123~~ SECTIONS 43-123.03 THROUGH 43-123.35 which consist of expenses of travel, meals, and lodging while away from home, paid or incurred by the taxpayer in connection with the performance by him of services as an employee;

(3) The deductions allowed by ~~section 43-123~~ SECTIONS 43-123.03 THROUGH 43-123.35 (other than expenses of travel, meals, and lodging while away from home) which consist of expenses paid or incurred by the taxpayer, in connection with the performance by him of services as an employee, under a reimbursement or other expense allowance arrangement with his employer;

(4) The deductions (other than those provided in paragraphs (1), (5) or (6) allowed by ~~section 43-123~~ SECTIONS 43-123.03 THROUGH 43-123.35, which are attributable to property held for the production of rents or royalties;

(5) The deductions (other than those provided in paragraph (1) for depreciation and depletion, allowed by ~~section 43-123(1) and (m)~~ SECTIONS 43-123.14 AND 43-123.15, to a life tenant of property or to an income beneficiary of property held in trust; and

(6) The deductions (other than those provided in paragraph (1) allowed by ~~section 43-123~~ SECTIONS 43-123.03 THROUGH 43-123.35 as losses from the sale or exchange of property.

(g) **Dealers in tax exempt securities.**

(1) **"Short-term municipal bonds", income from.** In computing the gross income of a taxpayer who holds during the taxable year a short-term municipal bond (as defined in paragraph (2) (A)) primarily for sale to customers in the ordinary course of his trade or business.

(A) If the gross income of the taxpayer from such trade or business is computed by the use of inventories and his inventories are valued on any basis other than cost, the cost of securities sold (as defined in paragraph (2) (B)) during such year shall be reduced by an amount equal to the amortizable bond premium that would be disallowed as a deduction for such year pursuant to section ~~43-123 (v) (1) (B)~~ 43-123.24, SUBSECTION B, PARAGRAPH 2 if the definition in section ~~43-123 (v) (3)~~ 43-123.24, SUBSECTION F of the term "bond" did not exclude such short-term municipal bond; or

(B) If the gross income of the taxpayer from such trade or business is computed without the use of inventories, or by use of inventories valued at cost, and the short-term municipal bond is sold or otherwise disposed of during such year, the adjusted basis (computed without regard to this subparagraph) of the short-term municipal bond shall be reduced by the amount of the adjustment that would be required under section 43-153(b) (1) (D) if the definition in section ~~43-123(v)~~ 43-123.24 of the term "bond" did not include such short-term municipal bond.

(2) **Definition–"Short-term municipal bonds".** For the purposes of paragraph (1)–

(A) The term "short-term municipal bond" means any obligation issued by a government or political subdivision thereof if the interest on such obligation is excludible from gross income; but such term does not include such an obligation if (i) it is sold or otherwise disposed of by the taxpayer within thirty days after the date of its acquisition by him, or (ii) its earliest maturity or call date is a date more than five years from the date on which it was acquired by the taxpayer.

(B) The term "cost of securities sold" means the amount ascertained by subtracting the inventory value of the closing inventory of a taxable year from the sum of (i) the inventory value of the opening inventory for such year and (ii) the cost of securities and other property purchased during such year which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year.

Sec. 7. Section 43-123.01, Arizona Revised Statutes, is amended to read:

43-123.01. **Deductibility of dividends received from Arizona business and financing institutions**

The income of banks, investment companies and loan associations taxed under the provisions of chapter 5, title 42, shall be deemed subject to

taxation under this title for the purposes of determining whether a taxpayer is entitled to a deduction under the provisions of ~~paragraph (dd) of~~ section ~~43-123~~ 43-123.32 for dividends received by a stockholder of a corporation.

Sec. 8. Section 43-123.02, Arizona Revised Statutes, is amended to read:

43-123.02. **Election to amortize expenditures incurred in the acquisition of atmospheric and water pollution control devices, machinery or equipment**

(a) **General rule.** Any taxpayer may elect to amortize the adjusted basis of any device, machinery or equipment for the collection and control at the source of atmospheric and water pollutants and contaminants based upon a period of sixty months. In computing net income, such amortization shall be allowed as a deduction ratably over the period allowed under this subsection beginning with the month in which such device, machinery or equipment is completed or acquired and is placed in service by the taxpayer. This election shall be indicated by the taxpayer in an appropriate statement in the taxpayer's income tax return for the taxable year of the acquisition or completion and placement in service of such devices, machinery or equipment. An election to discontinue amortization with respect to the remainder of the amortization period is permitted and shall be indicated by an appropriate statement in the taxpayer's income tax return for the taxable year of discontinuance.

(b) **Deduction in lieu of depreciation.** The deduction provided under subsection (a) shall be in lieu of any allowance for the exhaustion, wear and tear of property used in a trade or business, or of property held for the production of income, including a reasonable allowance for obsolescence as provided under section ~~43-123(1)~~ 43-123.14.

(c) **Certification requirement by the state department of health.** In determining the adjusted basis for the purposes of subsection (a), such device, machinery or equipment upon certification by the state department of health as a device, machinery or equipment for the collection and control at the source of atmospheric and water pollutants and contaminants shall include only an amount that is properly attributable to the construction, reconstruction, remodeling, installation or acquisition of such device, machinery or equipment as certified by the state department of health.

Sec. 9. Section 43-125, Arizona Revised Statutes, is amended to read:

43-125. **Deductions from gross income—deductions of nonresidents**

(a) **Deductions connected with taxable income.** In the case of a nonresident the deductions allowed by ~~section 43-123~~ SECTIONS 43-123.03 THROUGH 43-123.35 shall unless otherwise provided in this section be allowed only to the extent that they are connected with the income arising from sources within this state and taxable under this title to a nonresident. The proper apportionment and allocation of the deductions with respect to sources of income within and without the state shall be determined under rules and regulations prescribed by the tax commission.

(b) **Taxes.** Taxes or licenses paid or accrued to this state or its political subdivisions which are deductible under section ~~43-123(c)~~ 43-123.05 are deductible by nonresidents even though not connected with income from sources within this state.

(c) **Contributions to local corporations.** In the case of a nonresident the deductions for contributions and gifts shall be allowed only as to contributions or gifts to corporations or associations incorporated by or organized under the laws of this state or to this state or any political subdivision thereof for exclusively public purposes.

Sec. 10. Section 43-126, Arizona Revised Statutes, is amended to read:

43-126. **Deductions from gross income–items not deductible**

(a) **Personal and capital expenses and expenses allocable to exempt income.** In computing net income no deduction shall in any case be allowed in respect of:

(1) Personal, living, or family expenses, except extraordinary medical expenses deductible under section ~~43-123(x)~~ 43-123.26.

(2) Any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate, except expenditures incurred for the purpose of soil and water conservation and the prevention of erosion within the meaning of section ~~43-123(a)(1)(B)~~ 43-123.03, SUBSECTION A, PARAGRAPH 1.

(3) Any amount expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made.

(4) Premiums paid on any life insurance policy covering the life of any officer or employee, or of any person financially interested in any trade or business carried on by the taxpayer when the taxpayer is directly or indirectly a beneficiary under the policy.

(5) Any amount otherwise allowable as a deduction which is allocable to one or more classes or income (whether or not any amount of income of that class or classes is received or accrued) wholly exempt from the taxes imposed by this title.

(6) Any amount paid or accrued on indebtedness incurred or continued to purchase a single premium life insurance or endowment contract. For the purposes of this paragraph, if substantially all the premiums on a life insurance or endowment contract are paid within a period of four years from the date on which such contract is purchased, such contract shall be considered a single premium life insurance or endowment contract; or

(7) Amounts paid or accrued for such taxes and carrying charges as, under regulations prescribed by the tax commission, are chargeable to capital account with respect to property, if the taxpayer elects, in accordance with such regulations, to treat those taxes or charges as so chargeable.

(b) **Losses from sales or exchanges of property**

(1) **Transactions, between related persons.** In computing net income no deduction shall in any case be allowed in respect of losses from sales or exchanges of property, directly or indirectly:

(A) Between members of a family as defined in paragraph (2) (D).

(B) Except in the case of distributions in liquidation, between an individual and a corporation more than fifty per cent in value of the outstanding stock of which is owned, directly or indirectly, by or for the individual.

(C) Between a partnership and a member thereof, between partnerships where more than fifty per cent of the partnership interest in each are owned by the same persons, and between a partnership and a corporation fifty per cent of the stock of which is owned or controlled by the partnership or members thereof.

(D) Between a grantor and a fiduciary of any trust.

(E) Between the fiduciary of a trust and the fiduciary of another trust, if the same person is a grantor with respect to each trust.

(F) Between a fiduciary of a trust and a beneficiary of such trust.

(2) **Stock ownership, determination for paragraph (1).** For the purposes of determining, in applying paragraph (1), the ownership of stock:

(A) Stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust, shall be considered as being owned proportionately by or for its shareholders, partners, or beneficiaries.

(B) An individual shall be considered as owning the stock of the partnership interest owned, directly or indirectly, by or for his family.

(C) An individual owning (otherwise than by the application of subparagraph (B)) any stock in a corporation shall be considered as owning the stock owned, directly or indirectly, by or for his partner.

(D) The family of an individual shall include only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

(E) Stock constructively owned by a person by reason of the application of subparagraph (A) shall, for the purpose of applying subparagraphs (A), (B) or (C), be treated as actually owned by such person, but stock constructively owned by an individual by reason of the application of subparagraph (B) or (C) shall not be treated as owned by him for the purpose of again applying either of those subparagraphs in order to make another the constructive owner of such stock.

(c) **Unpaid expenses and interest.** In computing net income no deduction shall be allowed under section ~~43-123(a) (1) and (2)~~ 43-123.03, SUBSECTIONS A AND B, relating to expenses incurred, or under section ~~43-123(b)~~ 43-123.04 relating to interest accrued:

(1) If within the period consisting of the taxable year of the taxpayer and two and one-half months after the close thereof (A) such expenses or interest are not paid, and (B) the amount thereof is not includible in the gross income of the person to whom the payment is to be made; and

(2) If, by reason of the method of accounting of the person to whom the payment is to be made, the amount thereof is not, unless paid, includible in the gross income of that person for the taxable year in which or with which the taxable year of the taxpayer ends; and

(3) If, at the close of the taxable year of the taxpayer or at any time within two and one-half months thereafter, both the taxpayer and the person to whom the payment is to be made are persons between whom losses would be disallowed under section 43-126(b).

The amount of expenses incurred or interest accrued the deduction of which is disallowed under this section in the year incurred or accrued, may be deducted in the year paid.

(d) **Life or terminable interest, shrinkage in value.** Amounts paid under the laws of any state, territory, District of Columbia, possession of the United States, or foreign country as income to the holder of a life or terminable interest acquired by gift, bequest, or inheritance shall not be reduced or diminished by any deduction for shrinkage (by whatever name called) in the value of such interest due to the lapse of time, or by any deduction allowed by this title (except the deductions provided for in ~~subsections (1) and (m) of section 43-123~~ SECTIONS 43-123.14 AND 43-123.15) for the purpose of computing the net income of an estate or trust but not allowed under the laws of such state, territory, District of Columbia, possession of the United States, or foreign country for the purpose of computing the income to which such holder is entitled.

(e) **Obligor of covenant bond.** In computing net income no deduction shall be allowed to the obligor of a covenant bond for the payment of the tax imposed by this title, or any other tax paid pursuant to the tax-free covenant clause, nor shall such tax be included in the gross income of the obligee.

(f) **Expenses of unharvested crop sold.** Where an unharvested crop sold by the taxpayer is considered under the provisions of section 43-157(j) (3) as "property used in the trade or business", in computing net income no deduction (whether or not for the taxable year of the sale or whether for expenses, depreciation, or otherwise) attributable to the production of such crop shall be allowed.

(g) **Charitable contributions.** In computing net income no deduction shall be allowed under section ~~43-123(a) (1)~~ 43-123.03, SUBSECTION A for any contribution or gift which would be allowable as a deduction under section ~~43-123(o)~~ 43-123.17 were it not for the twenty per cent limitation therein contained and for the requirement therein that payment must be made within the taxable year.

(h) **Illegal activities.** In computing net income, no deductions shall be allowed to any taxpayer on any of his gross income derived from illegal activities as defined in sections 5-101 through 5-115, 13-431 through 13-437 and 44-1651 through 44-1660; nor shall any deductions be allowed to any taxpayer on any of his gross income derived from any other activities which tend to promote or to further, or are connected or associated with, such illegal activites.

(i) **Employee stock options.** Any amount attributable to the transfer of a share of stock pursuant to the exercise of a "restricted stock option", as defined in this title by an employer bank or corporation, or its parent or subsidiary bank or corporation to an employee of the bank or corporation.

Sec. 11. Section 43-135, Arizona Revised Statutes, is amended to read:

43-135. **Allocation of income deductions**

(a) **Transactions between related persons.** In any case of two or more persons, organizations, trades, or businesses, whether or not organized in the United States and whether or not affiliated, owned or controlled directly or indirectly by the same interests, the tax commission is authorized to distribute, apportion, or allocate gross income, deductions, credits or allowances between or among such organizations, trades, or businesses, if it determines that such distribution, apportionment, or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any such persons, organizations, trades or businesses. For the purpose of enforcing this subsection, the tax commission may require the filing of a combined report and such other information as it deems necessary.

(b) **Controlled corporations.** In any case of two or more corporations owned or controlled directly or indirectly by the same interests, the tax commission is authorized to distribute, apportion, or allocate gross income, deductions, credits or allowances, between or among such taxpayers, if it determines that such distribution, apportionment, or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any such taxpayer. For the purpose of enforcing this subsection the tax commission may require the filing of a combined report and such other information as it deems necessary.

(c) **Transactions, between husband and wife.** In any case where husband and wife file separate returns, the tax commission may distribute, apportion or allocate gross income between the spouses, if it is determined that such distribution, apportionment, or allocation is necessary in order to reflect the proper income of the spouses.

(d) **Intercompany transactions.** In the case of a corporation doing business within the meaning of this title, whether under agreement or otherwise, in such manner as either directly or indirectly to benefit the members or stockholders of the corporation, or any of them, or any person or persons, directly or indirectly interested in such business, by rendering services of any nature whatsoever, or acquiring or disposing of its products or the goods or commodities in which it deals, at less than a fair price therefor, the tax commission, in order to prevent evasion of taxes or clearly to reflect the income of such corporation, may require a report of such facts as it deems necessary, and may determine the amount which shall be deemed to be the entire net income allocable to this state of the business of such corporation for the calendar or fiscal year, and compute the tax upon such net income. In determining the entire net

income the tax commission shall have regard to the fair profits which, but for any agreement, arrangement, or understanding, might be or could have been obtained from dealing in such products, goods or commodities.

(e) **Consolidated reports required**

(1) **Consolidated report.** In the case of a corporation liable to report under this title owning or controlling, either directly or indirectly, another corporation, or other corporations, and in the case of a corporation liable to report under this title and owned or controlled, either directly or indirectly, by another corporation, the tax commission may require a consolidated report showing the combined net income or such other facts as it deems necessary. The tax commission is authorized and empowered, in such manner as it may determine, to assess the tax against either of the corporations whose net income is involved in the report upon the basis of the combined entire net income and such other information as it may possess, or it may adjust the tax in such other manner as it shall determine to be equitable if it determines it to be necessary in order to prevent evasion of taxes or to clearly reflect the net income earned by said corporation or corporations from business done in this state.

(2) **Definition–"control".** Direct or indirect ownership or control of more than fifty per cent of the voting stock of the taxpayer shall constitute ownership or control for the purposes of this section.

(f) **Basis of transferor–tax evasion–deduction denied**

(1) If (A) any person or persons acquire, on or after January 1, 1954, directly or indirectly, control of a corporation, or (B) any corporation acquires, on or after January 1, 1954, directly or indirectly, property of a corporation, not controlled, directly or indirectly, immediately prior to such acquisition, by such acquiring person or corporation or its stockholders, the basis of which property, in the hands of the acquiring person or corporation, is determined by reference to the basis in the hands of the transferror corporation, and the principal purpose for which such acquisition was made is evasion or avoidance of tax under this title by securing the benefit of a deduction or other allowance which such person or corporation would not otherwise enjoy, then such deduction or other allowance shall not be allowed. For the purposes of subparagraphs (A) and (B) of this paragraph, control means the ownership of stock possessing at least fifty per cent of the total combined voting power of all classes of stock entitled to vote or at least fifty per cent of the total value of shares of all classes of stock of the corporation.

(2) In any case to which paragraph (1) is applicable the tax commission is authorized–

(A) To allow as a deduction or allowance any part of any amount disallowed by such paragraph, if it determines that such allowance will not result in the evasion or avoidance of tax for which the acquisition was made; or

(B) To distribute, apportion, or allocate gross income, and distribute, apportion, or allocate the deductions or allowances the benefit of which was sought to be secured, between or among the persons and corporations, or properties, or parts thereof, involved, and to allow such deductions or allowances so distributed, apportioned, or allocated, but to give effect to such allowance only to such extent as it determines will not result in the evasion or avoidance of tax for which the acquisition was made; or

(C) To exercise its powers in part under subparagraph (A) and in part under subparagraph (B) of this paragraph.

(g) **Allocation formula.** When the income of a corporation subject to the tax imposed under this title is derived from or attributable to sources both within and without the state, the tax shall be measured by the net income derived from or attributable to sources within this state. Such income shall be determined by first deducting from the income of the taxpayer such part thereof, less related expenses if any, as follows the situs of the property or the residence of the recipient (provided, that the amount of interest and dividend income deductible under this provision as following the situs of the property or residence of the recipient shall be limited to the total interest and dividend income received in excess of the total interest, or related expenses if any, paid and allowable as a deduction from income attributable to sources within this state under ~~section 43-123~~ SECTIONS 43-123.03 THROUGH 43-123.35 during the income year), and the income attributable to sources within this state shall then be determined by (1) separate accounting thereof when requested by the taxpayer or required by the tax commission to more clearly reflect the income of the taxpayer, or, (2) an allocation upon the basis of sales, purchases, expenses of manufacture, payroll, value and situs of tangible property including leased property or by reference to any of these or other factors or by such other method of allocation as is fairly calculated to determine the net income derived from or attributable to sources within this state, provided that in no case shall the tax be less than would result from the use of the allocation method. Income from business carried on partly within and partly without this state shall be allocated in such a manner as is fairly calculated to apportion such income among the states

or countries in which such business is conducted. Income attributable to isolated or occasional transactions in states or countries in which the taxpayer is not doing business shall be allocated to the state in which the taxpayer has its principal place of business or commercial domicile.

If the tax commission reallocates net income upon its examination of any return, it shall, upon the written request of the taxpayer, disclose to him the basis upon which its reallocation has been made.

Sec. 12. Section 43-147, Arizona Revised Statutes, is amended to read:

43-147. **Exemptions from tax on corporations**

(a) **Organization exempt as specified.** The following organizations are exempt from the taxes imposed under this title, except as provided in section 43-149.

(1) **Labor, agricultural, horticultural, other than co-operatives.** Labor, agricultural, or horticultural organizations, other than cooperative organizations described in section ~~43-123(gg) and (hh)~~ 43-123.34.

(2) **Fraternal beneficiary societies.** Fraternal beneficiary societies, orders, or organizations, (A) operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system; and (B) providing for the payment of life, sick, accident, or other benefits to the members of such society, order or organization or their dependents.

(3) **Cemetery companies.** Cemetery companies owned and operated exclusively for the benefit of their members or which are not operated for profit; or any corporation chartered for burial purposes is a cemetery corporation and not permitted by its charter to engage in any business not necessarily related to that purpose, no part of the net earnings of which inures to the benefit of any private shareholder or individual member thereof.

(4) **Religious, charitable, educational, etc.** Corporations organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation.

(5) **Business leagues, etc.** Business leagues, chambers of commerce, real estate boards, or boards of trade, not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(6) **Civil leagues.** Civil leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local organizations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.

(7) **Social clubs.** Clubs organized and operated exclusively for pleasure, recreation, and other non-profitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder.

(8) **Holding companies.** Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this title.

(9) **Voluntary employees' beneficiary organizations.** Voluntary employees' beneficiary organizations providing for the payment of life, sick, accident, or other benefits to the members of such organizations or their dependents, if (A) no part of their net earnings inures (other than through such payments) to the benefit of any private shareholder or individual, and (B) eighty-five per cent or more of the income consists of amounts collected from members and amounts contributed to the organization by the employer of the members for the sole purpose of making such payments and meeting expenses.

(10) **Teachers' or public employees' retirement fund organizations.** Teachers' or public employees' retirement fund organizations of a purely local character, if (A) no part of their net earnings inures (other than through payment of retirement benefits) to the benefit of any private shareholder or individual, and (B) the income consists solely of amounts received from public taxation, amounts received from assessments upon the salaries of members, and income in respect of investments. For the purposes of this paragraph, "public employees" means employees of the state, and its political subdivisions.

(11) **Religious or apostolic organizations.** Religious or apostolic organizations or corporations, if such organizations or corporations have a common treasury or community treasury, even if such corporations or

organizations engage in business for the common benefit of the members, but only if the members thereof include (at the time of filing their returns) in their gross income their pro rata shares, whether distributed or not, of the net income of the organizations or corporations for such year. Any amount so included in the gross income of a member shall be treated as a dividend received.

(12) **Voluntary beneficiary organizations–United States government.** Voluntary employees' beneficiary organizations providing for the payment of life, sick, accident or other benefits to the members of such organization or their dependents or their designated beneficiaries, if (A) admission to membership in such organization is limited to individuals who are officers or employees of the United States government, and (B) no part of the net earnings of such organization inures (other than through such payments) to the benefit of any private shareholder or individual.

(13) **Diversified management companies.** Corporations classified as diversified management companies under section 5 of the federal investment company act of 1940, and registered as provided in that act.

(b) **Feeder organizations.** An organization operated for the primary purpose of carrying on a trade or business for profit shall not be exempt under any subsection of this section on the ground that all of its profits are payable to one or more organizations exempt under this section from taxation. For the purposes of this subsection, the term "trade or business" shall not include the rental by an organization of its real property (including personal property leased with the real property).

(c) **Insurance companies.** There shall be exempt from taxation under the provisions of this title insurance companies paying to the state tax upon premium income derived from sources within this state.

Sec. 13. Section 43-149, Arizona Revised Statutes, is amended to read:

43-149. **Taxation of business income of certain Section 43-147 organizations**

(a) **In general.** Every organization and trust described in subsection (b) shall be subject to the tax imposed under section 43-102 upon its "Section 43-149" net income as defined in subsection (c).

(b) **Organization subject to tax.** The tax imposed under subsection (a) shall apply in the case of any organization, or trust, or church, or a convention or association of churches, which is exempt, except as

provided in this section, from taxation under this title by reason of section 43-147(a) (1) through (13), sections 43-162(a), and 43-165. Such taxes shall also apply to an organization described in section 43-147(a) (8) if the income is payable to an organization which itself is subject to the tax imposed under this section or to a church or to a convention or association of churches.

(c) **Definition–"Section 43-149 net income"**. The "Section 43-149" net income of an organization or trust or any church, convention or association of churches means the amount by which its unrelated business net income, as defined in subsection (d), exceeds one thousand dollars.

(d) **Definition–"unrelated business net income"**. The term "unrelated business net income" means the gross income derived by any organization or trust or any church, convention or association of churches from any unrelated trade or business, as defined in subsection (e), regularly carried on by it, less the deductions allowable by ~~section 43-123,~~ SECTIONS 43-123.03 THROUGH 43-123.35, which are directly connected with the carrying on of such trade or business, subject to the exceptions, additions, and limitations prescribed in this subsection.

(1) There shall be excluded all dividends, interest, and annuities, and all deductions directly connected with such income.

(2) There shall be excluded all royalties, including over-riding royalties, whether measured by production or by gross or net income from the property, and all deductions directly connected with such income.

(3) There shall be excluded all rents from real property (including personal property leased with the real property), and all deductions directly connected with such rents.

(4) Notwithstanding paragraph (3) in the case of a section 43-149 lease (as defined in subsection (f)), there shall be included, as an item of gross income derived from an unrelated trade or business, the amount ascertained under subsection (i) (1), and there shall be allowed, as a deduction, the amount ascertained under subsection (i) (2).

(5) There shall be excluded all gains or losses from the sale, exchange, or other disposition of property other than (A) stock in trade or other property of a kind which would properly be includible in inventory if on hand at the close of the taxable year, or (B) property held primarily for sale to customers in the ordinary course of the trade or business.

(6) In computing the "unrelated business net income" there shall be allowed the net operating loss deduction provided in section ~~43-123(s),~~ 43-123.21, except that (A) in computing such net operating loss for any taxable year, the amount of the net operating loss carry-back or carry-over to any taxable year shall be determined under said section ~~43-123(s)~~ 43-123.21 without taking into account any amount of income or deduction which is excluded under this section in computing the unrelated business net income; and (D) the terms "preceding taxable year" and "preceding taxable years" as used in section ~~43-123(s)~~ 43-123.21 shall not include any taxable year for which the organization was not subject to the provisions of this section.

(7) There shall be excluded all income derived from research for (A) the United States or any of its agencies or instrumentalities, or (B) any state or political subdivision thereof; and there shall be excluded all deductions directly connected with such income.

(8) (A) In the case of a college, university, or hospital, there shall be excluded all income derived from research performed for any person, and all deductions directly connected with such income.

(B) In the case of an organization operated primarily for the purposes of carrying on fundamental research, the results of which are freely available to the general public, there shall be excluded all income derived from research performed for any person, and all deductions directly connected with such income.

(9) (A) In the case of any organization described in subsection (b), the so-called "charitable contribution" deduction allowed by section ~~43-123(q)~~ 43-123.19 shall be allowed (whether or not directly connected with the carrying on of the trade or business), but shall not exceed five per cent of the unrelated business net income computed without the benefit of this subparagraph.

(B) In the case of any trust described in section 43-162(a), the so-called "charitable contribution" deduction allowed by section 43-162(a) shall be allowed (whether or not directly connected with the carrying on of the trade or business), and for such purpose a distribution made by the trust to a beneficiary described in section 43-162(a) (2) shall be considered as a gift or contribution. The deduction allowed by this subparagraph shall not exceed fifteen per cent of the unrelated business net income computed without the benefit of this subparagraph.

If a trade or business regularly carried on by a partnership, of which an

organization is a member, is an unrelated trade or business with respect to such organization, such organization in computing its unrelated business net income shall, subject to the exceptions, additions, and limitations contained in paragraphs (1) through (9), above, include its share (whether or not distributed) of the gross income of the partnership from such unrelated trade or business and its share of the partnership deductions directly connected with such gross income. If the taxable year of the organization is different from that of the partnership, the amounts to be included or deducted in computing the unrelated business net income shall be based upon the income and deductions of the partnership for any taxable year of the partnership ending within or with the taxable year of the organization. In the case of an organization described in section 43-144(b) (2) which is a member of a partnership of all whose members are organizations described in section 43-144(b) (2), if a trade or business regularly carried on by such partnership is an unrelated trade or business with respect to such organization, such organization shall, for taxable years beginning before January 1, 1954, be allowed a deduction in an amount equal to the portion of the gross income of such partnership from such unrelated trade or business which such organization is required (by a provision of a written contract executed by such organization prior to January 1, 1954, which provision expressly deals with the disposition of the gross income of the partnership) to pay within the taxable year in discharge of indebtedness incurred by such organization in acquiring its share of such trade or business, or to irrevocably set aside within the taxable year for the discharge of such indebtedness (to the extent that such amount has been so paid or set aside) if (i) such partnership was formed prior to January 1, 1954, for the purpose of carrying on such trade or business, and (ii) substantially all the assets used in carrying on such trade or business where acquired by it or by its members prior to such date. As used in the preceding sentence, the word "indebtedness" does not include indebtedness incurred after January 1, 1954.

(e) **"Unrelated trade or business".** The term "unrelated trade or business" means, in the case of any organization subject to the tax imposed by subsection (a), any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 43-147, except that such term shall not include any trade or business–

(1) In which substantially all the work in carrying on such trade or business is performed for the organization without compensation; or

(2) Which is carried on, in the case of an organization described in section 43-147(a) (4) by the organization primarily for the convenience of its members, students, patients, officers, or employees; or

(3) Which is the selling of merchandise, substantially all of which has been received by the organization as gifts or contributions.

The term "unrelated trade or business" means in the case of a trust computing its unrelated business net income under this section for the purpose of section 43-162(g) (1), any trade or business regularly carried on by such trust or by a partnership of which it is a member. If a publishing business carried on by an organization during an income year beginning before January 1, 1954, is, without regard to this sentence, an unrelated trade or business, but before the beginning of the third succeeding income year the business is carried on by it (or by a successor who acquired such business in a liquidation which would constitute a tax-free exchange under section 43-152(b) (6) and (7)) in such manner that the conduct thereof is substantially related to the exercise or performance by such organization (or such successor) of its educational or other purpose or function described in section 43-147(a) (4), such publishing business shall not be considered, for the income year, as an unrelated trade or business.

(f) **"Section 43-149 lease"**. The term "section 43-149 lease" means a lease for a term of more than five years of real property by an organization or trust (or by a partnership of which it is a member), if at the close of the lessor's taxable year there is a section 43-149 lease indebtedness (as defined in subsection (g)) with respect to such property. In computing the term of a lease which contains an option for renewal or extension, the term of such lease shall be considered as including any period for which such option may be exercised; and the term of any lease made pursuant to an exercise of such option shall include the period during which the prior lease was in effect. If real property is acquired subject to a lease, the term of such lease shall be considered to begin on the date of such acquisition. No lease shall be considered a section 43-149 lease if (1) such lease is entered into primarily, for purposes which are substantially related (aside from the need of such organization for income or funds or the use it makes of the rents derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption, or (2) the lease is of premises in a building primarily designed for occupancy, and occupied, by the organization. If a lease for more than five years to a tenant is for only a portion of the real property, and space in the real property is rented during the taxable year under a lease for not more than five years to any other tenant of the organization, leases of the real property for more than five years shall be considered as section 43-149 leases during the taxable year only if—

(A) The rents derived from the real property during the taxable year under such leases represents fifty per cent or more of the total rents derived during the taxable year from the real property; or the area of the premises occupied under such leases represents, at any time during the taxable year, fifty per cent or more of the total area of the real property rented at such time; or

(B) The rent derived from the real property during the taxable year from any tenant under such a lease, or from a group of tenants (under such leases) who are (i) members of an affiliated group or (ii) partners, represents more than ten per cent of the total rents derived during the taxable year from such property; or the area of the premises occupied by any one such tenant, or by any such group of tenants, represents at any time during the taxable year more than ten per cent of the total area of the real property rented at such time. For the purposes of this subparagraph an "affiliated group" means one or more chains of includible corporations connected through stock ownership with a common parent corporation which is an includible corporation if stock possessing at least ninety-five per cent of the voting power of all classes of stock and at least ninety-five per cent of each class of the non-voting stock of each of the includible corporations (except the common parent corporation) is owned directly by one or more of the other includible corporations and the common parent corporation owns directly stock possessing at least ninety-five per cent of the voting power of all classes of stock and at least ninety-five per cent of each class of the non-voting stock of at least one of the other includible corporations. As used in the preceding sentence, the term "stock" does not include non-voting stock which is limited and preferred as to dividends. As used in this subparagraph, the term "includible corporation" means any corporation except corporations exempt from taxation under section 43-147 and a corporation which is a resident of a foreign country.

(g) **"Section 43-149 lease indebtedness"**. The term "Section 43-149 lease indebtedness" means, with respect to any real property leased for a term of more than five years, the unpaid amount of–

(1) The indebtedness incurred by the lessor in acquiring or improving such property;

(2) The indebtedness incurred prior to the acquisition or improvement of such property if such indebtedness would not have been incurred but for such acquisition or improvement; and

(3) The indebtedness incurred subsequent to the acquisition or improvement of such property if such indebtedness would not have been incurred but for such acquisition or improvement and the incurrence of such indebtedness was reasonably foreseeable at the time of such acquisition or improvement.

Where real property is acquired subject to a mortgage or other similar lien, the amount of the indebtedness secured by such mortgage or lien shall be considered (whether the acquisition was by gift, devise, or purchase) as an indebtedness of the lessor incurred in acquiring such property even though the lessor did not assume or agree to pay such indebtedness, except that where real property was acquired by a gift, bequest, or devise prior to January 1, 1954, subject to a mortgage or other similar lien, the amount of such mortgage or other similar lien shall not be considered as an indebtedness of the lessor incurred in acquiring such property.

Where real property was acquired by gift, bequest, or devise prior to January 1, 1954, subject to a lease requiring improvements in such property upon the happening of stated contingencies, indebtedness incurred in improving such property in accordance with the terms of such lease shall not be considered as an indebtedness for purposes of this subsection. In the case of a corporation described in section 43-147(a) (8), all of the stock of which was acquired prior to January 1, 1954, by an organization described in section 43-147(a) (1), (4) or (5) or by a trust described in sections 43-162(a) (2) and 43-165 (and more than one-third of such stock was acquired by such organization or trust by a gift or bequest), any indebtedness incurred by such corporation prior to January 1, 1954, and any indebtedness incurred by such corporation on or after such date in improving real property in accordance with the terms of a lease entered into prior to such date, shall not be considered as an indebtedness with respect to such corporation or such organization for purposes of this section. In determining the amount of the section 43-149 lease indebtedness where only a portion of the real property is subject to a section 43-149 lease, proper allocation to the premises covered by such lease shall be made of the indebtedness incurred by the lessor with respect to the real property.

(h) **Definition–"real property".** For the purposes of this section, the term "real property" and the term "premises" include personal property of the lessor leased by it to a lessee of its real estate if the lease of such personal property is made under, or in connection with, the lease of such real estate.

(i) **Computation of unrelated business net income.** In computing under subsection (d) the unrelated business net income for any taxable year:

(1) There shall be included with respect to each section 43-149 lease, as an item of gross income derived from an unrelated trade or business, an amount which is the same percentage (but not in excess of one hundred per cent) of the total rents derived during the taxable year under such lease as (A) the section 43-149 lease indebtedness, at the close of the taxable year, with respect to the premises covered by such lease is of (B) the adjusted basis, at the close of the taxable year, of such premises.

(2) There shall be allowed with respect to each section 43-149 lease, as a deduction to be taken into account in computing unrelated business net income, an amount which is the same percentage (but not in excess of one hundred per cent) of the sum determined under paragraph (3) as the amount determined under subparagraph (A) of paragraph (1) is of the amount determined under subparagraph (B) of such paragraph.

(3) The sum referred to in paragraph (2) is the sum of the following deductions allowable under ~~section 43-123~~ SECTIONS 43-123.03 THROUGH 43-123.35:

(A) Taxes and other expenses paid or accrued during the taxable year upon or with respect to the real property subject to the section 43-149 lease.

(B) Interest paid or accrued during the taxable year on the section 43-149 lease indebtedness.

(C) A reasonable allowance for exhaustion, wear and tear (including a reasonable allowance for obsolescence) of the real property subject to such lease.

Where only a portion of the real property is subject to the section 43-149 lease, there shall be taken into account under subparagraph (A), (B), or (C) only those amounts which are properly allocable to the premises covered by such lease.

Sec. 14. Section 43-152, Arizona Revised Statutes, is amended to read:

43-152. **Gain or loss–recognition of gain or loss**

(a) **General rule.** Upon the sale or exchange of property the entire amount of the gain or loss, determined under section 43-151, shall be recognized, except as otherwise provided in this section.

(b) **Exchanges solely in kind**

(1) **Exchange of property held for productive use or investment.** No gain or loss shall be recognized if property held for productive use in trade or business or for investment (not including stock in trade or other property held primarily for sale, or stocks, bonds, notes, choses in action, certificates of trust or beneficial interest, or other securities or evidences of indebtedness or interest) is exchanged solely for property of a like kind to be held either for productive use in trade or business or for investment.

(2) **Exchange of stock for stock of same corporation.** No gain or loss shall be recognized if common stock in a corporation is exchanged solely for common stock in the same corporation, or if preferred stock in a corporation is exchanged solely for preferred stock in the same corporation.

(3) **Exchange of stock for stock on reorganization.** No gain or loss shall be recognized if stock or securities in a corporation a party to a reorganization are, in pursuance of the plan of reorganization, exchanged solely for the stock or securities in such corporation or in another corporation a party to the reorganization.

(4) **Exchange of property for stock on reorganization.** No gain or loss shall be recognized if a corporation a party to a reorganization exchanges property, in pursuance of the plan of reorganization, solely for stock or securities in another corporation a party to the reorganization.

(5) **Transfer to corporation controlled by transferor.** No gain or loss shall be recognized if property is transferred to a corporation by one or more persons solely in exchange for stock or securities in such corporation, and immediately after the exchange such person or persons are in control of the corporation; but in the case of an exchange by two or more persons this paragraph applies only if the amount of the stock and securities received by each is substantially in proportion to his interest in the property prior to the exchange.

Where the transferee assumes a liability of a transferor, or where property of a transferor is transferred subject to a liability, then for the purpose only of determining whether the amount of stock or securities received by each of the transferors is in the proportion required by this paragraph, the amount of such liability (if under subsection (k) it is not to be considered as "other property or money") shall be considered as stock or securities received by such transferor.

(6) **Property received by corporation on complete liquidation of another.** No gain or loss shall be recognized upon the receipt by a

corporation of property distributed in complete liquidation of another corporation. For the purposes of this paragraph a distribution shall be considered to be in complete liquidation only if:

(A) The corporation receiving such property was, on the date of the adoption of the plan of liquidation, and has continued to be at all times until the receipt of the property, the owner of stock (in such other corporation) possessing at least eighty per cent of the total combined voting power of all classes of stock entitled to vote and the owner of at least eighty per cent of the total number of shares of all other classes of stock (except nonvoting stock which is limited and preferred as to dividends), and was at no time on or after the date of the adoption of the plan of liquidation and until the receipt of the property the owner of a greater percentage of any class of stock than the percentage of such class owned at the time of the receipt of the property; and

(B) No distribution under the liquidation was made before the first day of the first taxable year of the corporation beginning after December 31, 1953; and either

(C) The distribution is by such other corporation in complete cancellation or redemption of all its stock, and the transfer of all the property occurs within the taxable year; in such case the adoption by the shareholders of the resolution under which is authorized the distribution of all the assets of such corporation in complete cancellation or redemption of all its stock, shall be considered an adoption of a plan of liquidation even though no time for the completion of the transfer of the property is specified in such resolution; or

(D) Such distribution is one of a series of distributions by such other corporation in complete cancellation or redemption of all its stock in accordance with a plan of liquidation under which the transfer of all the property under the liquidation is to be completed within three years from the close of the income year during which is made the first of the series of distributions under the plan, except that if such transfer is not completed within such period, or if the taxpayer does not continue qualified under subparagraph (A) until the completion of such transfer, no distribution under the plan shall be considered a distribution in complete liquidation.

(7) **Transfers not completed during taxable year.** If the transfer provided in paragraph (6) of all the property does not occur within the taxable year, the tax commission may require of the taxpayer, such bond, or waiver of the statute of limitations on assessment and collection, or both, as it may deem necessary to insure, if the transfer of the property is not completed

within such three-year period or if the taxpayer does not continue qualified under subsection (b) (6) (A) until the completion of such transfer, the assessment and collection of all taxes imposed by this title then due or to become due, to the extent attributable to property so received. A distribution otherwise constituting a distribution in complete liquidation within the meaning of this paragraph and paragraph (6) shall not be considered as not constituting such a distribution merely because it does not constitute a distribution or liquidation within the meaning of the corporate law under which the distribution is made; and for the purposes of this paragraph and paragraph (6) a transfer of property of such other corporation to the taxpayer shall not be considered as not constituting a distribution (or one of a series of distributions) in complete cancellation or redemption of all the stock of such other corporation, merely because the carrying out of the plan involves

(i) The transfer under the plan to the taxpayer by such other corporation of property, not attributable to shares owned by the taxpayer, upon an exchange described in subsection (b) (4); and

(ii) The complete cancellation or redemption under the plan as a result of exchanges described in subsection (b) (3), of the shares not owned by the taxpayer.

(8) **Gain or loss–exchanges and distributions in obedience to orders of federal securities and exchange commission.** No gain or loss shall be recognized to a shareholder from a distribution of stock or securities in liquidation of a corporation made pursuant to an order of the federal securities and exchange commission under authority vested in it by the public utility holding company act of 1935, as amended.

(9) **Loss not recognized on certain railroad reorganizations.** No loss shall be recognized if property of a railroad corporation as defined in section 77m of the national bankruptcy act, as amended, is transferred, after December 31, 1938, in pursuance of an order of the court having jurisdiction of such corporation–

(A) In a receivership proceeding, or

(B) In a proceeding under section 77 of the national bankruptcy act, as amended, to a railroad corporation, as defined in section 77m of the national bankruptcy act, as amended, organized or made use of to effectuate a plan of reorganization approved by the court in such proceeding. The term "reorganization", as used in this paragraph, shall not be limited by the definition of such term in subsection (g).

(10) **Gain or loss not recognized on reorganization of corporations in certain receivership and bankruptcy proceedings.** No gain or loss shall be recognized if property of a corporation (other than a railroad corporation, as defined in section 77m of the national bankruptcy act, as amended) is transferred in pursuance of an order of the court having jurisdiction of such corporation–

(A) In a receivership, foreclosure, or similar proceeding, or

(B) In a proceeding under section 77B or chapter X of the national bankruptcy act, as amended–to another corporation organized or made use of to effectuate a plan of reorganization approved by the court in such proceeding, in exchange solely for stock or securities in such other corporation.

(11) **Distribution of stock not in liquidation.** If there is distributed, in pursuance of a plan of reorganization, to a shareholder of a corporation which is a party to the reorganization, stock (other than preferred stock) in another corporation which is a party to the reorganization, without the surrender by such shareholder of stock, no gain to the distributee from the receipt of such stock shall be recognized unless it appears that–

(A) Any corporation which is a party to such reorganization was not intended to continue the active conduct of a trade or business after such reorganization, or

(B) The corporation whose stock is distributed was used principally as a device for the distribution of earnings and profits to the shareholders of any corporation a party to the reorganization.

(c) **Gain from exchanges not solely in kind**

(1) If an exchange would be within the provisions of subsection (b) (1), (2), (3) or (5), or within the provisions of subsection (1) of this section, if it were not for the fact that the property received in exchange consists not only of property permitted by such paragraphs or by subsection (1) to be received without the recognition of gain, but also of other property or money, then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property.

(2) If a distribution made in pursuance of a plan of reorganization is within the provisions of paragraph (1) of this subsection but has the effect of the distribution of a taxable dividend, there shall be taxed as a dividend

to each distributee such an amount of the gain recognized under paragraph (1) as is not in excess of his ratable share of the undistributed earnings and profits of the corporation accumulated after January 1, 1933. The remainder, if any, of the gain recognized under paragraph (1), shall be taxed as a gain from the exchange of property.

(d) **Same–Gain of corporation.** If an exchange would be within the provisions of subsection (b) (4) or (10) of this section if it were not for the fact that the property received in exchange consists not only of stock or securities permitted by such paragraph to be received without the recognition of gain, but also of other property or money, then:

(1) If the corporation receiving such other property or money distributes it in pursuance of the plan of reorganization, no gain to the corporation shall be recognized from the exchange, but

(2) If the corporation receiving such other property or money does not distribute it in pursuance of the plan of reorganization, the gain, if any, to the corporation shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property so received, which is not so distributed.

(3) Except as provided above under subsections (d) (1) and (2) gain or loss on sales or exchanges in connection with certain corporate liquidations shall be subject to the provisions of section 43-152(o).

(4) Except as provided above under subsection (d) (1), (2) and (3) gain or loss on sales or exchanges in connection with certain corporate liquidations shall be subject to the provisions of section 43-152(p).

(5) The provisions of this subsection shall be effective for all years beginning on or after January 1, 1970.

(e) **Loss from exchanges not solely in kind.** If an exchange would be within the provisions of subsection (b) (1) to (5), inclusive, or (10), or within the provisions of subsection (1) of this section if it were not for the fact that the property received in exchange consists not only of property permitted by such paragraph to be received without the recognition of gain or loss, but also of other property or money, then no loss from the exchange shall be recognized.

(f) **Involuntary conversion.** If property (as a result of its destruction in whole or in part, theft, seizure, or requisition or condemnation or threat or imminence thereof) is compulsorily or involuntarily converted–

(1) Into property similar or related in service or use to the property so converted, no gain shall be recognized.

(2) Into money, and the disposition of the converted property occurred before January 1, 1954, no gain shall be recognized if such money is forthwith in good faith, under regulations prescribed by the tax commission, expended in the acquisition of other property similar or related in service or use to the property so converted, or in the acquisition of control of a corporation owning such other property, or in the establishment of a replacement fund. If any part of the money is not so expended, the gain shall be recognized to the extent of the money which is not so expended (regardless of whether such money is received in one or more taxable years and regardless of whether or not the money which is not so expended constitutes gain). For the purposes of this paragraph and paragraphs (3) and (4), the term "disposition of the converted property" means the destruction, theft, seizure, requisition, or condemnation of the converted property, or the sale or exchange of such property under threat or imminence of requisition or condemnation.

(3) Into money or into property not similar or related in service or use to the converted property, and the disposition of the converted property (as defined in paragraph (2)) occurred after January 1, 1954, the gain (if any) shall be recognized except to the extent hereinafter provided in this paragraph.

(A) **Nonrecognition of gain.** If the taxpayer during the period specified in subparagraph (B), for the purpose of replacing the property so converted, purchases other property similar or related in service or use to the property so converted, or purchases stock in the acquisition of control of a corporation owning such other property, at the election of the taxpayer the gain shall be recognized only to the extent that the amount realized upon such conversion (regardless of whether such amount is received in one or more taxable years) exceeds the cost of such other property or such stock. Such election shall be made at such time and in such manner as the tax commission may by regulations prescribe. For the purpose of this paragraph–

(i) No property or stock acquired before the disposition of the converted property shall be considered to have been acquired for the purpose of replacing such converted property unless held by the taxpayer on the date of such disposition; and

(ii) The taxpayer shall be considered to have purchased property or stock only if, but for the provisions of section 43-153(a) (9), the

unadjusted basis of such property or stock would be its cost within the meaning of section 43-153(a).

(B) **Period within which property must be replaced.** The period referred to in subparagraph (A) shall be the period beginning with the date of the disposition of the converted property, or the earliest date of the threat or imminence of requisition or condemnation of the converted property, whichever is the earlier, and ending–

(i) One year after the close of the first taxable year in which any part of the gain upon the conversion is realized, or

(ii) Subject to such terms and conditions as may be specified by the tax commission, at the close of such later date as the tax commission may designate upon application by the taxpayer. Such application shall be made at such time and in such manner as the tax commission may by regulations prescribe.

(C) **Time for assessment of deficiency attributable to gain upon conversion.** If a taxpayer has made the election provided in subparagraph (A), then

(i) The statutory period for the assessment of any deficiency, for any taxable year in which any part of the gain upon such conversion is realized, attributable to such gain shall not expire prior to the expiration of four years from the date the tax commission is notified by the taxpayer (in such manner as the tax commission may by regulations prescribe) of the replacement of the converted property or of an intention not to replace, and

(ii) Such deficiency may be assessed prior to the expiration of such four-year period notwithstanding the provisions of section 43-177(d) or the provisions of any other law or rule of law which would otherwise prevent such assessment.

(D) **Time for assessment of other deficiency attributable to election.** If the election provided in subparagraph (A) is made by the taxpayer and such other property or such stock was purchased prior to the beginning of the last taxable year in which any part of the gain upon such conversion is realized, any deficiency, to the extent resulting from such election, for any taxable year ending before such last taxable year may be assessed (notwithstanding the provisions of section 43-177(d) or the provisions of any other law or rule of law which would otherwise prevent such assessment) at any time before the expiration of the period within which a deficiency for such last taxable year may be assessed.

(4) **Involuntary conversion–residence.** This subsection shall not apply in the case of property used by a taxpayer as his principal residence, if the destruction, theft, seizure, requisition, or condemnation of the residence, or the sale or exchange of such residence under threat or imminence thereof, occurs after January 1, 1954.

(g) **Definition of reorganization.** As used in this section (other than subsection (b) (10) and subsection (1) and in section 43-153 (other than section 43-153(a) (20)):

(1) The term "reorganization" means

(A) A statutory merger or consolidation, or

(B) The acquisition by one corporation in exchange solely for all or a part of its voting stock: Of at least eighty per cent of the voting stock and at least eighty per cent of the total number of shares of all other classes of stock of another corporation; or of substantially all the properties of another corporation, but in determining whether the exchange is solely for voting stock, the assumption by the acquiring corporation of a liability of another, or the fact that property acquired is subject to a liability, shall be disregarded, or

(C) A transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor or its shareholders or both are in control of the corporation to which the assets are transferred, or

(D) A recapitalization, or

(E) A mere change in identity, form, or place of organization, however effected.

(2) The term "a party to a reorganization" includes a corporation resulting from a reorganization and includes both corporations in the case of a reorganization resulting from the acquisition by one corporation of stock or properties of another.

(h) **Definition of control.** "Control", as used in this section, means the ownership of stock possessing at least eighty per cent of the total combined voting power of all classes of stock entitled to vote and at least eighty per cent of the total number of shares of all other classes of stock of the corporation.

(i) **Foreign corporations.** In determining the extent to which gains shall be recognized in the case of any of the exchanges (made after January 1, 1954) described in subsection (b) (3), (4), (5) or (6) or described in so much of subsection (c) as refers to subsection (b) (3) or (5) or described in subsection (d), a corporation created or organized in a foreign country shall not be considered as a corporation unless, prior to such exchange, it has been established to the satisfaction of the tax commission that the exchange is not in pursuance of a plan having as one of its principal purposes the avoidance of income or franchise taxes.

(j) **Installment obligations.** For nonrecognition of gain or loss in the case of installment obligations, see section 43-134(d).

(k) **Assumption of liability not recognized.** Where upon an exchange the taxpayer receives as part of the consideration property which would be permitted by subsection (b) (4), (5) or (10) of this section, to be received without the recognition of gain if it were the sole consideration, and as part of the consideration another party to the exchange assumes a liability of the taxpayer or acquires from the taxpayer property subject to a liability, the assumption or acquisition shall not be considered as "other property or money" received by the taxpayer within the meaning of subsection (c), (d) or (e) of this section, and shall not prevent the exchange from being within the provisions of subsection (b) (4), (5) or (10), except that if, taking into consideration the nature of the liability and the circumstances in the light of which the arrangement for the assumption or acquisition was made, it appears that the principal purpose of the taxpayer with respect to the assumption or acquisition was a purpose to avoid state income tax on the exchange, or, if not such purpose, was not a bona fide business purpose, the assumption or acquisition (in the amount of the liability) shall, for the purposes of this section, be considered as money received by the taxpayer upon the exchange.

In any suit or proceeding where the burden is on the taxpayer to prove that the assumption or acquisition is not to be considered as money received by the taxpayer, the burden shall not be considered sustained unless the taxpayer sustains the burden by the clear preponderance of the evidence.

(l) **Exchanges by security holders in connection with certain corporate reorganizations.** No gain or loss shall be recognized upon an exchange consisting of the relinquishment or extinguishment of stock or securities in a corporation the plan of reorganization of which is approved by the court, in a proceeding described in subsection (b) (10), in consideration of

the acquisition solely of stock or securities in a corporation organized or made use of to effectuate such plan of reorganization.

(m) **Gain from sale or exchange to effectuate policies of federal communications commission.** If the sale or exchange of property (including stock in a corporation) is certified by the federal communications commission to be necessary or appropriate to effectuate the policies of the commission with respect to the ownership and control of radio broadcasting stations, such sale or exchange shall, if the taxpayer so elects, be treated as an involuntary conversion of such property within the meaning of subsection (f) of this section. For the purposes of subsection (f) of this section, as made applicable by the provisions of this subsection, stock of a corporation operating a radio broadcasting station, whether or not representing control of such corporation, shall be treated as property similar or related in service or use to the property so converted. The part of the gain, if any, upon such sale or exchange to which subsection (f) is not applied shall nevertheless not be recognized, if the taxpayer so elects, to the extent that it is applied to reduce the basis for determining gain or loss upon sale or exchange of property, of a character subject to the allowance for depreciation under ~~section 43-123(1)~~ 43-123.14, remaining in the hands of the taxpayer immediately after the sale or exchange, or acquired in the same taxable year. The manner and amount of such reduction shall be determined under regulations prescribed by the tax commission. Any election made by the taxpayer under this subsection shall be made by a statement to that effect in his return for the taxable year in which the sale or exchange takes place, and such election shall be binding for the taxable year and all subsequent taxable years.

(n) **Gain from sale or exchange of residence**

(1) **Nonrecognition of gain.** If property (hereinafter in this subsection called "old residence") used by the taxpayer as his principal residence is sold by him and, within a period beginning one year prior to the date of such sale and ending one year after such date, property (hereinafter in this subsection called "new residence") is purchased and used by the taxpayer as his principal residence, gain (if any) from such sale shall be recognized only to the extent that the taxpayer's selling price of the old residence exceeds the taxpayer's cost of purchasing the new residence.

(2) **Rules for application of subsection.** For the purposes of this subsection:

(A) An exchange by the taxpayer of his residence for other property shall be considered as a sale of such residence, and the acquisition of a

residence upon the exchange of property shall be considered as a purchase of such residence.

(B) If the taxpayer's residence (as a result of its destruction in whole or in part, theft, or seizure) is compulsorily or involuntarily converted into property or into money, such destruction, theft, or seizure shall be considered as a sale of the residence; and if the residence is so converted into property which is used by the taxpayer as his residence, such conversion shall be considered as a purchase of such property by the taxpayer.

(C) In the case of an exchange or conversion described in subparagraph (A) or (B), in determining the extent to which the selling price of the old residence exceeds the taxpayer's cost of purchasing the new residence, the amount realized by the taxpayer upon such exchange or conversion shall be considered the selling price of the old residence.

(D) A residence any part of which was constructed or reconstructed by the taxpayer shall be considered as purchased by the taxpayer. In determining the taxpayer's cost of purchasing a residence, there shall be included only so much of his cost as is attributable to the acquisition, construction, reconstruction, and improvements made which are properly chargeable to capital account, during the period specified in paragraph (1).

(E) If a residence is purchased by the taxpayer prior to the date of his sale of the old residence, the purchased residence shall not be treated as his new residence if sold or otherwise disposed of by him prior to the date of the sale of the old residence.

(F) If the taxpayer, during the period described in paragraph (1), purchases more than one residence which is used by him as his principal residence at some time within one year after the date of the sale of the old residence, only the last of the residences so used by him after the date of such sale shall constitute the new residence. If within the one year referred to in the preceding sentence property used by the taxpayer as his principal residence is destroyed, stolen, seized, requisitioned, or condemned, or is sold or exchanged under threat or imminence thereof, then for the purposes of the preceding sentence such one year shall be considered as ending with the date of such destruction, theft, seizure, requisition, condemnation, sale or exchange.

(G) In the case of a new residence the construction of which was commenced by the taxpayer prior to the expiration of one year after the date of the sale of the old residence, the period specified in paragraph (1),

and the one year referred to in subparagraph (f) of this paragraph, shall be considered as including a period of eighteen months beginning with the date of the sale of the old residence.

(3) **Limitation.** The provisions of paragraph (1) shall not be applicable with respect to the sale of the taxpayer's residence if within one year prior to the date of such sale the taxpayer sold at a gain other property used by him as his principal residence, and any part of such gain was not recognized by reason of the provisions of paragraph (1). For the purposes of this paragraph, the destruction, theft, seizure, requisition, or condemnation of property or the sale or exchange of property under threat or imminence thereof, shall not be considered as a sale of such property.

(4) **Basis of new residence.** Where the purchase of a new residence results, under paragraph (1), in the nonrecognition of gain upon the sale of an old residence, in determining the adjusted basis of the new residence as of any time following the sale of the old residence, the adjustments to basis shall include a reduction by an amount equal to the amount of the gain not so recognized upon the sale of the old residence. For this purpose, the amount of the gain not so recognized upon the sale of the old residence includes only so much of such gain as is not recognized by reason of the cost, up to such time, of purchasing the new residence.

(5) **Tenant stockholder in cooperative apartment corporation.** For the purposes of this subsection, section 43-153(b) (1) (G) and section 43-157(h) (6), references to property used by the taxpayer as his principal residence, and references to the residence of a taxpayer, shall include stock held by a tenant-stockholder, ~~(~~–as defined in section ~~43-123(z) (3)~~ 43-123.28, SUBSECTION C, in a cooperative apartment as defined in section ~~43-123(z) (2)~~ 43-123.28, SUBSECTION B if–

(A) In the case of stock sold, the apartment which the taxpayer was entitled to occupy as such stockholder was used by him as his principal residence, and

(B) In the case of stock purchased, the taxpayer used as his principal residence the apartment which he was entitled to occupy as such stockholder.

(6) **Husband and wife.** If the taxpayer and his spouse, in accordance with regulations which shall be prescribed by the tax commission pursuant to this paragraph, consent to the application of subparagraph (B) of this paragraph, then–

(A) For the purposes of this subsection, the words "taxpayer's selling price of the old residence" shall mean the selling price (of the taxpayer, or of the taxpayer and his spouse) of the old residence, and the words "taxpayer's cost of purchasing the new residence" shall mean the cost (to the taxpayer, his spouse or both) of purchasing the new residence (whether held by the taxpayer, his spouse, or the taxpayer and his spouse); and

(B) So much of the gain upon the sale of the old residence as is not recognized solely by reason of this paragraph, and so much of the adjustment under paragraph (4) to the basis of the new residence as results solely from this paragraph, shall be allocated between the taxpayer and his spouse as provided in such regulations.

This paragraph shall apply only if the old residence and the new residence are each used by the taxpayer and his spouse as their principal residence. In case the taxpayer and his spouse do not consent to the application of subparagraph (B) of this paragraph, then the recognition of gain upon the sale of the old residence shall be determined under this subsection without regard to the rules provided in this paragraph.

(7) **Statute of limitations.** If the taxpayer during a taxable year sells at a gain property used by him as his principal residence, then–

(A) The statutory period for the assessment of any deficiency attributable to any part of such gain shall not expire prior to the expiration of four years from the date the tax commission is notified by the taxpayer (in such manner as the commission may by regulations prescribe) of–

(i) The taxpayer's cost of purchasing the new residence which the taxpayer claims results in nonrecognition of any part of such gain.

(ii) The taxpayer's intention not to purchase a new residence within the period specified in paragraph (1), or

(iii) A failure to make such purchase within such period; and

(B) Such deficiency may be assessed prior to the expiration of such four-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

(o) **Gain or loss on sales or exchanges in connection with certain liquidations**

(1) **General rule. If**

(A) A corporation adopts a plan of complete liquidation after December 31, 1969, and

(B) Within the twelve-month period beginning on the date of the adoption of such plan, all of the assets of the corporation are distributed in complete liquidation, less assets retained to meet claims,

Then no gain or loss shall be recognized to such corporation from the sale or exchange by it of property within such twelve-month period.

(2) **Property defined.**

(A) **In general.** For purposes of subsection (1), the term "property" does not include–

(i) Stock in trade of the corporation, or other property of a kind which would properly be included in the inventory of the corporation if on hand at the close of the taxable year, and property held by the corporation primarily for sale to customers in the ordinary course of its trade or business,

(ii) Installment obligations acquired in respect of the sale or exchange (without regard to whether such sale or exchange occurred before, on, or after the date of the adoption of the plan referred to in subsection (1)) of stock in trade or other property described in subparagraph (2) of this paragraph, and

(iii) Installment obligations acquired in respect of property (other than property described in subparagraph (ii)) sold or exchanged before the date of the adoption of such plan of liquidation.

(B) **Nonrecognition with respect to inventory in certain cases.** Notwithstanding paragraph (A) of this subsection, if substantially all of the property described in subparagraph (i) of such paragraph (A) which is attributable to a trade or business of the corporation is, in accordance with this section, sold or exchanged to one person in one transaction, then for purposes of subsection (1) the term "property" includes–

(i) Such property so sold or exchanged, and

(ii) Installment obligations acquired in respect of such sale or exchange.

(3) **Limitations.**

(A) **Collapsible corporations and liquidations to which section 43-152(p) applies.** This section shall not apply to any sale or exchange–

(i) Made by a collapsible corporation (as defined in section 43-157(m)),

(ii) Following the adoption of a plan of complete liquidation, if section 43-152(p) applies with respect to such liquidation, or

(B) **Liquidations to which section 43-152(b) (6) applies.** In the case of a sale or exchange following the adoption of a plan of complete liquidation, if section 43-152(b) (6) applies with respect to such liquidation, then–

(i) If the basis of the property of the liquidating corporation in the hands of the distributee is determined under section 43-153(a) (15), this section shall not apply.

(4) **Special rule for certain minority shareholders.** If a corporation adopts a plan of complete liquidation on or after January 1, 1970, and if subsection (1) does not apply to sales or exchanges of property by such corporation, solely by reason of the application of subsection (3) (B), then for the first taxable year of any shareholder (other than a corporation which meets the eighty per cent ownership requirement specified in section 43-152(b) (6) (A)) in which he receives a distribution in complete liquidation–

(A) The amount realized by such shareholder on the distribution shall be increased by his proportionate share of the amount by which the tax imposed by this subtitle on such corporation would have been reduced if subsection (3) (B) had not been applicable, and

(B) For purposes of this title, such shareholder shall be deemed to have paid, on the last day prescribed by law for the payment of the tax imposed by this subtitle on such shareholder for such taxable year, an amount of tax equal to the amount of the increase described in paragraph (A).

(p) **Election as to recognition of gain in certain liquidations**

(1) **General rule.** In the case of property distributed in complete liquidation of a corporation (other than a collapsible corporation to which section 43-157(m) applies), if–

(A) The liquidation is made in pursuance of a plan of liquidation adopted on or after January 1, 1970, and

(B) The distribution is in complete cancellation or redemption of all the stock, and the transfer of all the property under the liquidation occurs within some one calendar month, then in the case of each qualified

electing shareholder (as defined in subsection (3)) gain on the shares owned by him at the time of the adoption of the plan of liquidation shall be recognized only to the extent provided in subsection (5) and (6).

(2) **Excluded corporation.** For purposes of this section, the term "excluded corporation" means a corporation which at any time between January 1, 1970, and the date of the adoption of the plan of liquidation, both dates inclusive, was the owner of stock possessing fifty per cent or more of the total combined voting power of all classes of stock entitled to vote on the adoption of such plan.

(3) **Qualified electing shareholders.** For purposes of this section, the term "qualified electing shareholder" means a shareholder (other than an excluded corporation) of any class of stock (whether or not entitled to vote on the adoption of the plan of liquidation) who is a shareholder at the time of adoption of such plan, and whose written election to have the benefits of subsection (1) has been made and filed in accordance with subsection (4), but–

(A) In the case of shareholder other than a corporation, only if written elections have been so filed by shareholders (other than corporations) who at the time of the adoption of the plan of liquidation are owners of stock possessing at least eighty per cent combined voting power (exclusive of voting power possessed by stock owned by corporations) of all classes of stock entitled to vote on the adoption of such plan or liquidation; or

(B) In the case of a shareholder which is a corporation, only if written elections have been so filed by corporate shareholders (other than an excluded corporation) which at the time of the adoption of such plan of liquidation are owners of stock possessing at least eighty per cent of the total combined voting power (exclusive of voting power possessed by stock owned by an excluded corporation and by shareholders who are not corporations) of all classes of stock entitled to vote on the adoption of such plan of liquidation.

(4) **Making and filing of elections.** The written elections referred to in subsection (3) must be made and filed in such manner as to be not in contravention of regulations prescribed by the Arizona state tax commission. The filing must be within thirty days after the date of the adoption of the plan of liquidation.

(5) **Noncorporate shareholders.** In the case of qualified electing shareholder other than a corporation–

(A) There shall be recognized, and treated as a dividend, so much of the gain as is not in excess of his ratable share of the earnings and profits of the corporation accumulated after February 28, 1913, such earnings and profits to be determined as of the close of the month in which the transfer in liquidation occurred under subsection (1) (B), but without diminution by reason of distributions made during such month; but by including in the computation thereof all amounts accrued up to the date on which the transfer of all the property under the liquidation is completed; and

(B) There shall be recognized, and treated as short-term or long-term capital gains, as the case may be, so much of the remainder of the gain as is not in excess to the amount by which the value of that portion of the assets received by him which consists of money, or of stock or securities acquired by the corporation after December 31, 1953, exceeds his ratable share of such earnings and profits.

(6) **Corporate shareholders.** In the case of a qualified electing shareholder which is a corporation, the gain shall be recognized only to the extent of the greater of the two following–

(A) The portion of the assets received by it which consists of money, or of stock or securities acquired by the liquidating corporation after December 31, 1953; or

(B) Its ratable share of the earnings and profits of the liquidating corporation accumulated after February 28, 1913, such earnings and profits to be determined as of the close of the month in which the transfer in liquidation occurred under subsection (1) (B), but without diminution by reason of distributions made during such month; but by including in the computation thereof all amounts accrued up to the date on which the transfer of all the property under the liquidation is completed.

(7) **Special Rule**

(A) **In general.** In the case of a liquidation occurring after December 31, 1969, of a corporation referred to in paragraph (C)–

(i) The date "December 31, 1953" referred to in subsections (5) (B) and (6) (A) shall be treated as if such date were "December 31, 1962", and

(ii) So much of the gain recognized under subsection (5) (A) as is attributable to the earnings and profits accumulated after February 28, 1913, and before January 1, 1967, shall, in the case of stock in such corporation held for more than six months, be treated as long-term capital gain, and only the remainder of such gain shall be treated as a dividend.

Clause (ii) shall not apply to any earnings and profits to which the corporation succeeds after December 31, 1963, pursuant to any corporate reorganization or pursuant to any liquidation to which sections 43-152(b)(6) and 43-155(c) (1) apply, except earnings and profits which on December 31, 1963, constituted earnings and profits of a corporation referred to in paragraph (C), and except earnings and profits which were earned after such date by a corporation referred to in paragraph (C).

(B) **Corporations to which applicable.** Paragraph (A) shall apply only with respect to a corporation which is referred to in paragraph (C) and which before December 31, 1970 notifies the Arizona state tax commission that it may wish to have paragraph (A) apply to it and submits such information as may be required by regulation prescribed by the Arizona state tax commission.

(C) **Corporations referred to.** For purpose of paragraph (A) a corporation referred to in this paragraph is a corporation–

(i) Which would have been a personal holding company under United States internal revenue code of 1954 section 542 as amended and

(ii) Has complied with the special rule for liquidations after December 31, 1966 under United States internal revenue code of 1954 sections 333(g) (2) and (3) as amended.

(D) **Mistake as to applicability of subsection.** An election made under this section by a qualified electing shareholder of a corporation in which such shareholder states that such election is made on the assumption that such corporation is a corporation referred to in paragraph (C) shall have no force or effect if it is determined that the corporation is not a corporation referred to in paragraph (C).

Sec. 15. Section 43-153, Arizona Revised Statutes, is amended to read:

43-153. **Basis for determining gain or loss, unadjusted basis**

(a) **In general–basis is cost.** The basis of property shall be the cost of such property except that–

(1) **Last inventory value.** If the property should have been included in the last inventory, the basis shall be the last inventory value thereof.

(2) **Property acquired by gift after 1920.** If the property was acquired by gift after December 31, 1920, the basis shall be the same as it would be in

the hands of the donor or the last preceding owner by whom it was not acquired by gift, except that if such basis (adjusted for the period prior to the date of the gift as provided in subsection (b)) is greater than the fair market value of the property at the time of the gift, then for the purpose of determining loss the basis shall be such fair market value. If the facts necessary to determine the basis in the hands of the donor or the last preceding owner are unknown to the donee, the tax commission shall, if possible, obtain such facts from such donor or last preceding owner, or any other person cognizant thereof. If the tax commission finds it impossible to obtain such facts, the basis in the hands of such donor or last preceding owner shall be the fair market value of such property as found by the tax commission as of the date or approximate date at which, according to the best information that the tax commission is able to obtain, such property was acquired by such donor or last preceding owner.

(3) **Basis, property acquired by transfer in trust.** If the property was acquired after December 31, 1920, by a transfer in trust (other than by a transfer in trust by a gift, bequest or devise) the basis shall be the same as it would be in the hands of the grantor, increased in the amount of gain or decreased in the amount of loss recognized to the grantor upon such transfer under the law applicable to the year in which the transfer was made.

(4) **Basis, property acquired by transfer in trust or by gift prior to December 31, 1920.** If the property was acquired by gift or transfer in trust on or before December 31, 1920, the basis shall be the fair market value of the property at the time of its acquisition.

(5) **Property transmitted at death**

(A) **Basis, property acquired by bequest, devise, or inheritance.** If the property was acquired by bequest, devise, or inheritance, or by the decedent's estate from the decedent, the basis shall be the fair market value of the property at the time of its acquisition.

In the case of property transferred in trust to pay the income for life to or upon the order or direction of the grantor, with the right reserved to the grantor at all times prior to his death to revoke the trust, or to make any change in the enjoyment thereof through the exercise of power to alter, amend or terminate the trust, the basis of the property in the hands of the persons entitled under the terms of the trust instrument to the property after the grantor's death shall, after his death, be the same as if the trust instrument had been a will executed on the day of the grantor's death.

For the purpose of this paragraph, property passing without full and

adequate consideration under a general power of appointment exercised by will shall be deemed to be property passing from the individual exercising the power by bequest or devise.

(B) **Basis, surviving spouse's share of community property.** For the purposes of this paragraph the surviving spouse's one-half share of community property held by the decedent and the surviving spouse under the community property laws of any state, territory or possession of the United States or any foreign country shall be considered to be property "acquired by bequest, devise, or inheritance" from the decedent, if the death of the decedent is after the effective date of this title, and if at least one-half of the whole community interest in such property is includible in determining the value of the decedent's gross estate under article 1, chapter 9 of Title 42.

(C) **Basis, survivor's interest in joint and survivor's annuity.** For the purposes of this paragraph the survivor's interest in a joint and survivor's annuity shall be considered to be property "acquired by bequest, devise or inheritance" from the decedent if the death of the decedent was after December 31, 1953, and if the value of any part of such interest was required to be included in determining the value of the decedent's interest taxable under article 1, chapter 9 of Title 42.

(6) **Property acquired after February 28, 1913.** If the property was acquired, after February 28, 1913, upon an exchange described in section 43-152(b) to (e), inclusive, or section 43-152(1) the basis (except as provided in paragraphs (15) or (17) of this subsection) shall be the same as in the case of the property exchanged, decreased in the amount of money received by the taxpayer and increased in the amount of gain or decreased in the amount of loss to the taxpayer that was recognized upon such exchange under the law applicable to the year in which such exchange was made. If the property so acquired consisted in part of the type of property permitted by section 43-152(b) or section 43-152(1), to be received without the recognition of gain or loss, and in part of other property, the basis provided in this paragraph shall be allocated between the properties (other than money) received, and for the purpose of the allocation there shall be assigned to such other property an amount equivalent to its fair market value at the date of the exchange. Where, as part of the consideration to the taxpayer, another party to the exchange assumed a liability of the taxpayer or acquired from the taxpayer property subject to a liability, such assumption or acquisition (in the amount of the liability) shall, for the purpose of this paragraph, be considered as money received by the taxpayer upon the exchange. This paragraph shall not apply to property acquired by a corporation by the issuance of its stock or

securities as the consideration in whole or in part for the transfer of the property to it.

(7) **Property acquired in tax-free reorganization.** If the property was acquired:

(A) After December 31, 1917, and in an income year beginning before January 1, 1936, by a corporation in connection with a reorganization, and immediately after the transfer an interest or control in such property of fifty per cent or more remained in the same persons or any of them, or

(B) In an income year beginning after December 31, 1935, by a corporation in connection with a reorganization, then the basis shall be the same as it would be in the hands of the transferror, increased in the amount of gain or decreased in the amount of loss recognized to the transferror upon such transfer under the law applicable to the year in which the transfer was made. This paragraph shall not apply if the property acquired consists of stock or securities in a corporation a party to the reorganization, unless acquired by the issuance of stock or securities of the transferee as the consideration in whole or in part for the transfer.

(8) **Property acquired after December 31, 1920.** If the property was acquired after December 31, 1920, by a corporation:

(A) By the issuance of its stock or securities in connection with a transaction described in section 43-152(b) 5, (including, also, cases where part of the consideration for the transfer of such property to the corporation was property or money, in addition to such stock or securities), or

(B) As paid-in surplus or as a contribution to capital, then the basis shall be the same as it would be in the hands of the transferror, increased in the amount of gain or decreased in the amount of loss recognized to the transferror upon such transfer under the law applicable to the year in which the transfer was made.

(9) **Involuntary conversion**

(A) **Basis, property acquired upon involuntary conversion.** If the property was acquired after February 28, 1913, as a result of a compulsory or involuntary conversion described in section 43-152(f), (1) or (2), the basis shall be the same as in the case of the property so converted, decreased in the amount of any money received by the taxpayer which was not expended in accordance with the provisions of law

(applicable to the year in which such conversion was made) determining the taxable status of the gain or loss upon the conversion, and increased in the amount of gain or decreased in the amount of loss to the taxpayer recognized upon such conversion under the law applicable to the year in which the conversion was made. In the case of property purchased by the taxpayer which resulted, under the provisions of section 43-152(f) (3), in the nonrecognition of any part of the gain realized as a result of a compulsory or involuntary conversion, the basis shall be the cost of such property decreased in the amount of the gain not so recognized; and if the property purchased consists of more than one piece of property, the basis determined under this sentence shall be allocated to the purchased properties in proportion to their respective costs.

(B) **Basis, property acquired upon involuntary conversion after December 31, 1953.** This paragraph shall not apply in respect of property acquired as a result of a compulsory or involuntary conversion of property used by the taxpayer as his principal residence, if the destruction, theft, seizure, requisition, or condemnation of such residence, or the sale or exchange of such residence under threat or imminence thereof, occurred after December 31, 1953.

(10) **Basis, securities acquired in a wash sale.** If the property consists of stock or securities the acquisition of which (or the contract or option to acquire which) resulted in the nondeductibility (under section ~~43-123(j)~~ 43-123.12, relating to wash sales) of the loss from the sale or other disposition of substantially identical stock or securities, the basis shall be the basis of the stock or securities so sold or disposed of, increased or decreased, as the case may be, by the difference, if any, between the price at which the property was acquired and the price at which the substantially identical stock or securities were sold or otherwise disposed of.

(11) **Property acquired during affiliation.** In the case of property acquired by a corporation, during a period of affiliation, from a corporation with which it was affiliated, the basis of such property, after such period of affiliation, shall be determined, in accordance with regulations prescribed by the tax commission without regard to intercompany transactions in respect of which gain or loss was not recognized. The basis in case of property acquired by a corporation during any period, in the taxable year 1929 or any subsequent taxable year, in respect of which a consolidated return is made by such corporation under section 141 of the United States internal revenue code or the federal revenue act of 1928 or the federal revenue act of 1932 or the federal revenue act of 1934 or the federal revenue act of 1936 or the federal revenue act of 1938, shall be

determined in accordance with regulations prescribed under section 141 of the United States internal revenue code or the federal revenue act of 1928 or the federal revenue act of 1932 or the federal revenue act of 1934 or the federal revenue act of 1936 or the federal revenue act of 1938. The basis in the case of property held by a corporation during any period, in the taxable year 1929 or any subsequent taxable year, in respect of which a consolidated return is made by such corporation under section 141 of the United States internal revenue code or the federal revenue act of 1928 or the federal revenue act of 1932 or the federal revenue act of 1934 or the federal revenue act of 1936 or the federal revenue act of 1938, shall be adjusted in respect of any items relating to such period, in accordance with regulations prescribed under section 141 of the United States internal revenue code or the federal revenue act of 1928 or the federal revenue act of 1932 or the federal revenue act of 1934 or the federal revenue act of 1936 or the federal revenue act of 1938, applicable to such period.

(12) **Basis, where prescribed by revenue act of 1932.** If the property was acquired after February 28, 1913, in any taxable year beginning prior to January 1, 1934, and the basis thereof for the purposes of the federal revenue act of 1932 was prescribed by sections 113(a), (6), (7), or (9) of that act, for the purposes of this title, the basis shall be the basis therein prescribed in the federal revenue act of 1932.

(13) **Basis, partnership property.** If the property was acquired after February 28, 1913, by a partnership and the basis is not otherwise determined under any other paragraph of this subsection, then the basis shall be the same as it would be in the hands of the transferror, increased in the amount of gain or decreased in the amount of loss recognized to the transferror upon the transfer under the law applicable to the year in which the transfer was made. If the property was distributed in kind by a partnership to any partner, the basis of the property in the hands of the partner shall be such part of the basis in his hands of his partnership interest as is properly allocable to the property.

(14) **Basis, property acquired before March 1, 1913.** In the case of property acquired before March 1, 1913, if the basis otherwise determined under this subsection, adjusted (for the period prior to March 1, 1913) as provided in subsection (b), is less than the fair market value of the property as of March 1, 1913, the basis for determining gain shall be such fair market value. In determining the fair market value of stock in a corporation as of March 1, 1913, due regard shall be given to the fair market value of the assets of the corporation as of that date.

(15) **Property received in complete liquidation.** If the property was

received by a corporation upon distribution in complete liquidation of another corporation within the meaning of section 43-152(b) (6), then the basis shall be the same as it would be in the hands of the transferror.

(16) **Basis, where prescribed by revenue act of 1934.** If the property was acquired after March 1, 1913, in any taxable year beginning prior to January 1, 1936, and the basis thereof for the purpose of the federal revenue act of 1934 was prescribed by section 113(a) (6), (7), or (8) of that act, for the purposes of this title, the basis shall be the same as the basis therein prescribed in the federal revenue act of 1934.

(17) **Basis, securities acquired pursuant to federal securities and exchange commission order.** In the case of stocks or securities received by a taxpayer on or after January 1, 1943, under circumstances described in section 43-152(b) (8), the basis of such stocks or securities shall be the same as that of the stocks or securities for the surrender of which they were acquired.

(18) **Stock rights acquired after February 28, 1913**

(A) If the property was acquired by a shareholder in a corporation and consists of stock in such corporation, or rights to acquire such stock acquired by him after February 28, 1913, in a distribution by such corporation, and

(i) the right to acquire such stock was acquired in an income year beginning before January 1, 1936 (except as provided in subparagraph (B)), or

(ii) the right to acquire such stock was acquired in an income year beginning after December 31, 1935, and its distribution did not constitute income to the shareholder within the meaning of the sixteenth amendment to the constitution of the United States; then the basis of the stock in respect of which the rights were declared and the right to acquire stock, respectively, shall, in the shareholder's hands be determined by allocating between the stock and the right to acquire stock the adjusted basis of the stock, such allocation to be made under regulations which shall be prescribed by the tax commission.

(B) If a stock right was acquired prior to January 1, 1936, for the purpose of the tax imposed by this title, and it constituted income within the purview of the sixteenth amendment to the constitution of the United States, the basis of the stock in respect of which the rights were declared shall not be affected and the basis of the right shall be its fair market value as of the date of its acquisition.

(C) Where the shareholder acquired the right to acquire such stock in an income year beginning before January 1, 1954, and sold the same, and there was included in the gross income for such year of sale the entire amount of the proceeds of such sale, then if before January 1, 1955, the taxpayer has not asserted (by claim for a refund or credit or otherwise) that any part of the proceeds of the sale of such rights should be excluded from gross income for the year of its sale, the basis of the stock shall be determined without regard to subparagraphs (A) and (B), and no part of the proceeds of the sale of such rights shall ever be excluded from the gross income for the year of such sale.

(19) **Railroad corporation–property acquired after December 31, 1942.** If the property of a railroad corporation, as defined in section 77m of the national bankruptcy act, as amended, was acquired after December 31, 1938, in pursuance of an order of the court having jurisdiction of such corporation–

(A) In receivership proceeding, or

(B) In a proceeding under section 77 of the national bankruptcy act, as amended, and the acquiring corporation is a railroad corporation, as defined in section 77m of the national bankruptcy act, as amended, organized or made use of to effectuate a plan of reorganization approved by the court in such proceeding, the basis shall be the same as it would be in the hands of the railroad corporation whose property was so acquired. The term "reorganization", as used in this paragraph, shall not be limited by the definition of such term in section 43-152(g).

(20) **Property acquired on reorganization of certain corporations.** If the property was acquired by a corporation upon a transfer to which section 43-152(b) (10), or so much of section 43-152(d) or (e) as relate to section 43-152(b) (10), is applicable, the basis in the hands of the acquiring corporation shall be the same as it would be in the hands of the corporation whose property was so acquired, increased in the amount of gain recognized to the corporation whose property was so acquired under the law applicable to the year in which the acquisition occurred, and such basis shall not be adjusted under subsection (b) (3) by reason of a discharge of indebtedness pursuant to the plan of reorganization under which such transfer was made.

(21) **Adjustments, stock after reorganization.** If the property consists of stock distributed to a taxpayer in connection with a transaction described in section 43-152(b) (11), (hereinafter in this paragraph called "new stock"), or consists of stock in respect of which such distribution was

made (hereinafter in this paragraph called "old stock"), then the basis of the new stock and of the old stock, respectively, shall, in the shareholder's hands, be determined by allocating between the old stock and the new stock the adjusted basis of the old stock; such allocation to be made under regulations prescribed by the tax commission.

(b) **Adjusted basis, general.** The adjusted basis for determining the gain or loss from sale or other disposition of property, whenever acquired, shall be the basis determined under subsection (a), adjusted as hereinafter provided.

(1) **Adjustments in respect of property.** Proper adjustment in respect of the property shall in all cases be made–

(A) For expenditures, receipts, losses, or other items properly chargeable to capital account, but no such adjustment shall be made for taxes or other carrying charges or expenditures described in section ~~43-123(a)(1)(B)~~ 43-123.03, SUBSECTION A, PARAGRAPH 1, for which deductions have been taken by the taxpayer in determining net income for the income year or prior income years.

(B) For exhaustion, wear and tear, obsolescence, amortization, and depletion: In the case of a taxpayer subject to the tax imposed by this title, to the extent allowed for Arizona income tax purposes prior to January 1, 1954, (but not less than the amount allowable) under the provisions of this title. However, if a taxpayer has not claimed an amortization deduction for an emergency facility, an adjustment shall be made only to the extent ordinarily provided under section ~~43-123(1)~~ 43-123.14.

(C) In the case of stock (to the extent not provided for in the foregoing subparagraphs) for the amount of distributions previously made which, under the law applicable to the year in which the distribution was made, either were tax-free or were applicable in reduction of basis (not including distributions made by a corporation, which was classified as a personal service corporation under the federal revenue act of 1918 or 1921, out of its earnings or profits which were taxable in accordance with the provisions of section 218 of the federal revenue act of 1918 or 1921).

(D) In the case of taxpayers subject to the tax imposed by this title, in the case of any bond (as defined in section ~~43-123(v)(3)~~ 43-123.24, SUBSECTION F) the interest on which is wholly exempt from the tax imposed by this title, to the extent of the amortizable bond premium disallowable as a deduction pursuant to section ~~43-123(v)(1)(B)~~

43-123.24, SUBSECTION B, PARAGRAPH 2, and in the case of any other bond (as defined in such section) to the extent of the deductions allowable pursuant to section ~~43-123(v) (1) (A)~~ 43-123.24, SUBSECTION B, PARAGRAPH 1 with respect thereto.

(E) In the case of property pledged to the commodity credit corporation, to the extent of the amount received as a loan from the commodity credit corporation and treated by the taxpayer as income for the year in which received pursuant to section 43-113(b) (1) and (2), and to the extent of any deficiency on such loan with respect to which the taxpayer has been relieved from liability.

(F) In the case of any short-term municipal bond (as defined in section 43-112(g) (1) and (2), to the extent provided in section 43-112(g) (1) (B)).

(G) In the case of a residence the acquisition of which resulted, under the provisions of section 43-152(n) in the nonrecognition of any part of the gain realized upon the sale, exchange, or involuntary conversion of another residence, proper adjustment shall be made to the extent provided in section 43-152(n) (4).

(2) **Definition–"substituted basis".** The term "substituted basis" as used in this section means a basis determined under any provisions of subsection (a) of this section, providing that the basis shall be determined:

(A) By reference to the basis in the hands of a transferror, donor, or grantor, or

(B) By reference to other property held at any time by the person for whom the basis is to be determined.

Whenever it appears that the basis of property in the hands of the taxpayer is a substituted basis, then the adjustments provided in paragraph (1) of this subsection shall be made after first making in respect of such substituted basis proper adjustments of a similar nature in respect of the period during which the property was held by the transferror, donor, or grantor, or during which the other property was held by the person for whom the basis is to be determined. A similar rule shall be applied in the case of a series of substituted bases.

(3) **Discharge of indebtedness–exclusion from gross income.** Where in the case of a taxpayer any amount is excluded from gross income under section 43-112(b) (14), on account of the discharge of indebtedness, the whole or a part of the amount so excluded from gross income shall be

applied in a reduction of the basis of any property held (whether before or after the time of the discharge) by the taxpayer during any portion of the income year in which such discharge occurred. The amount to be so applied (not in excess of the amount so excluded from gross income, reduced by the amount of any deduction disallowed under section 43-112(b) (14)), and the particular properties to which the reduction shall be allocated, shall be determined under regulations (prescribed by the tax commission) in effect at the time of the filing of the consent by the taxpayer referred to in section 43-112(b) (14). The reduction shall be made as of the first day of the income year in which the discharge occurred except in the case of property not held by the taxpayer on such first day, in which case it shall take effect as of the time the holding of the taxpayer began.

(4) **Adjustment for deductions disallowed under section 43-126(f).** Proper adjustments shall be made for deductions to the extent disallowed under section 43-126(f) notwithstanding the provisions of any other paragraph of this subsection.

(5) **Development of mines.** Proper adjustment shall also be made for amounts allowed as deductions under section ~~43-123(oo)~~ 43-123.31 and resulting in a reduction of the taxpayer's taxes under this title but not less than the amounts allowable under such subsection.

(c) **Adjustments–lessee improvements.** Neither the basis nor the adjusted basis of any portion of real property shall, in the case of the lessor of the property, be increased or diminished on account of income derived by the lessor in respect of the property and excludible from gross income under section 43-112(b) (16). If an amount representing any part of the value of real property attributable to buildings erected or other improvements made by a lessee in respect of the property was included in gross income of the lessor for any taxable year beginning before January 1, 1954, the basis of each portion of the property shall be properly adjusted for the amount so included in gross income.

Sec. 16. Section 43-154, Arizona Revised Statutes, is amended to read:

43-154. **Gain or loss–basis for depreciation and depletion**

(a) **Basis, depreciation.** The basis upon which exhaustion, wear and and tear, and obsolescence are to be allowed in respect of any property shall be the adjusted basis provided in section 43-153(b), for the purpose of determining the gain upon the sale or other disposition of the property.

(b) **Basis for depletion**

(1) **General rule.** The basis upon which depletion is to be allowed in respect of any property shall be the adjusted basis provided in section 43-153(b), for the purpose of determining the gain upon the sale or other disposition of such property, except as provided in the remainder of this subsection.

(2) **Discovery value in the case of mines**

(A) **Basis for depletion, mines.** In the case of mines (except mines in respect of which percentage depletion is allowable under paragraph (4) of this subsection) the basis for depletion shall be the fair market value of the property as of January 1, 1954.

In the case of mines (except mines in respect of which percentage depletion is allowable under paragraph (4) of this subsection) discovered by the taxpayer after December 31, 1953, the basis for depletion shall be the fair market value of the property at the date of discovery or within thirty days thereafter, if such mines were not acquired as the result of purchase of a proven tract or lease, and if the fair market value of the property is materially disproportionate to the cost.

(B) **Depletion allowance, limitation.** The depletion allowance under section ~~43-123(m)~~ 43-123.15 based on discovery value provided in subsection (b) (2) (A), shall not exceed fifty per cent of the net income of the taxpayer (computed without allowance for depletion) from the property upon which the discovery was made. The only cases where the depletion allowance shall be less than it would be if computed without reference to discovery value is in those mines on the unit basis method of computing Arizona state income tax prior to January 1, 1954.

(C) **Definition–"Discoveries".** "Discoveries" shall include minerals in commercial quantities contained within a vein or deposit discovered in an existing mine or mining tract by the taxpayer after December 31, 1953, if the vein or deposit thus discovered was not merely the uninterrupted extension of a continuing commercial vein or deposit already known to exist, and if the discovered minerals are of sufficient value and quantity that they could be separately mined and marketed at a profit.

(3) **Percentage depletion, oil and gas wells.** In the case of oil and gas wells the allowance for depletion under section ~~43-123(m)~~ 43-123.15 shall be twenty-seven and one-half per cent of the gross income from the property during the taxable year, excluding from such gross income an

amount equal to any rents or royalties paid or incurred by the taxpayer in respect of the property. The allowance shall not exceed fifty per cent of the net income of the taxpayer (computed without allowance for depletion) from the property, except that in no case shall the depletion allowance be less than it would be if computed without reference to this paragraph.

(4) **Percentage depletion, mines**

(A) In general the allowance for depletion under section ~~43-123(m)~~ 43-123.15 shall be:

(i) In the case of sand, gravel, slate, stone (including pumice and scoria), brick and tile clay, shale, oyster shell, clam shell, granite, marble, sodium chloride, and if from brine wells, calcium chloride, magnesium chloride, and bromine, five per cent;

(ii) In the case of coal, asbestos, brucite, dolomite, magnesite, perlite, wollastonite, calcium carbonate other than calcium carbonates specified in item (i), and magnesium carbonates, ten per cent;

(iii) In the case of metal mines, aplite, bauxite, fluorspar, flake graphite, vermiculite, beryl, garnet, feldspar, mica, talc (including pyrophyllite), lepidolite, spodumene, barite, ball and sagger clay, china clay, phosphate rock, rock asphalt, trona, bentonite, gilsonite, thenardite, borax, fuller's earth, tripoli, refractery and fire clay, quartzite, diatomaceous earth, metallurgical grade limestone, chemical grade limestone and potash, fifteen per cent;

(iv) In the case of sulphur, twenty-three per cent; of the gross income from the property during the taxable year, excluding from such gross income an amount equal to any rents or royalties paid or incurred by the taxpayer in respect of the property.

The allowance shall not exceed fifty per cent of the net income of the taxpayer (computed without allowance for depletion) from the property. Only with respect to those mines using the unit depletion method in computing depletion allowance for Arizona state income tax purposes immediately prior to January 1, 1954, shall the depletion allowance be less than it would be if computed by the percentage depletion method.

(B) **Definition–"Gross income from the property".** As used in this paragraph the term "gross income from the property" means the gross income from mining. The term "mining", as used herein, shall be

considered to include not merely the extraction of the ores or minerals from the ground but also the ordinary treatment processes normally applied by mine owners or operators in order to obtain the commercially marketable mineral product or products, and so much of the transportation of ores or minerals (whether or not by common carrier) from the point of extraction from the ground to the plants or mills in which the ordinary treatment processes are applied thereto as is not in excess of fifty miles unless the tax commission finds that the physical and other requirements are such that the ore or mineral must be transported a greater distance to such plants or mills. The term "ordinary treatment processes", as used herein, shall include the following:

(i) In the case of coal–cleaning, breaking, sizing, and loading for shipment;

(ii) In the case of sulphur–pumping to vats, cooling, breaking, and loading for shipment;

(iii) In the case of iron ore, bauxite, ball and sagger clay, rock asphalt, and minerals which are customarily sold in the form of a crude mineral product–sorting, concentrating, and sintering to bring to shipping grade and form, and loading for shipment; and

(iv) In the case of lead, zinc, copper, gold, silver, or fluorspar ores, potash, and ores which are not customarily sold in the form of crude mineral product–crushing, grinding, and benefication by concentration (gravity, flotation, amalgamation, electrostatic, or magnetic), cynadation, leaching, crystallization, precipitation (but not including as an ordinary treatment process electrolytic deposition, roasting, thermal or electric smelting or refining), or by substantially equivalent processes or combination of processes used in the separation or extraction of the product or products from the ore, including the furnacing of quicksilver ores.

Sec. 17. Section 43-157, Arizona Revised Statutes, is amended to read:

43-157. **Capital gains or losses**

(a) **Definition–"capital assets"**. "Capital assets" means property held by the taxpayer (whether or not connected with his trade or business), but does not include–

(1) Stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business; or

(2) Property used in the trade or business of a character which is subject to the allowance for depreciation provided in section ~~43-123(1)~~ 43-123.14; or

(3) Real property used in the trade or business of the taxpayer; or

(4) A copyright; a literary, musical, or artistic composition; or similar property; held by–

(i) A taxpayer whose personal efforts created such property, or

(ii) A taxpayer in whose hands the basis of such property is determined, for the purpose of determining gain from a sale or exchange, in whole or in part by reference to the basis of such property in the hands of the person whose personal efforts created such property.

(b) **Deduction from gross income.** In the case of any taxpayer other than a corporation, only the following percentages of the gain or loss recognized upon the sale or exchange of a capital asset shall be taken into account in computing net income:

(1) One hundred per cent if the capital asset has been held for not more than six months;

(2) Fifty per cent if the capital asset has been held for more than six months.

(c) **Taxability to employee of termination payments.** Amounts received from the assignment or release by an employee, after more than twenty years' employment, of all his rights to receive, after termination of his employment, and for a period of not less than five years (or for a period ending with his death), a percentage of future profits or receipts of his employer shall be considered an amount received from the sale or exchange of a capital asset held for more than six months, if such rights were included in the terms of the employment of such employee for not less than twelve years, and if the total of the amounts received for such assignment or release are received in one taxable year and after the termination of such employment.

(d) **Limitations on capital losses.**

(1) **Corporations**–In the case of a corporation, losses from sales or exchanges of capital assets shall be allowed only to the extent of, one thousand dollars plus the gains from such sales or exchanges.

(2) **Other taxpayers**–In the case of a taxpayer other than a corporation, losses from the sales or exchanges of capital assets shall be allowed only to the extent of the gains from such sales or exchanges plus–

(A) One thousand dollars for a single individual, head of household, trust, estate, or married individuals filing a joint return.

(B) Five hundred dollars for married individuals filing separate returns. In the case of the limitations provided for under (A) or (B) above, the amount of the net income as computed without regard to capital gains or losses shall apply as a further limitation.

(e) **Capital loss carry-over.** If, for any taxable year beginning after December 31, 1970, the taxpayer has a net capital loss, the amount thereof shall be a capital loss in each of the succeeding taxable years to the extent that such amount has not been deducted in a prior year.

(f) **Retirement of bonds, etc.** Amounts received by the holder upon the retirement of bonds, debentures, notes, or certificates or other evidences of indebtedness issued by any corporation (including those issued by a government or political subdivision thereof), shall be considered as amounts received in exchange therefor.

(g) **Gains and losses from short sales, etc.** For the purposes of this title–

(1) Gains or losses from short sales of property shall be considered as gains or losses from sale or exchanges of capital assets; and

(2) Gains or losses attributable to the failure to exercise privileges or options to buy or sell property shall be considered as gains or losses from sales or exchanges of capital assets held for not more than six months; and

(3) Gain from the sale or exchange of property, to the extent that the adjusted basis of such property is less than its adjusted basis determined without regard to section 124A of the internal revenue code (relating to amortization deduction), shall be considered as gain from the sale or exchange of property which is neither a capital asset nor property described in subsection (j).

(h) **Determination of period for which held–for the purpose of this section.**

(1) **Holding period.** In determining the period for which the taxpayer has held property received on an exchange, for purposes of subsection (b) of

this section, there shall be included the period for which he held the property exchanged if under the provisions of section 43-153 the property received has, for the purpose of determining gain or loss from a sale or exchange, the same basis in whole or in part in his hands as the property exchanged. For the purposes of this paragraph, an involuntary conversion described in section 43-152(f) shall be considered an exchange of the property converted for the property acquired.

(2) **Holding period, where substituted basis.** In determining the period for which the taxpayer has held property, however acquired, for purposes of subsection (b) of this section, there shall be included the period for which the property was held by any other person, if under the provisions of section 43-153 the property has, for the purpose of determining gain or loss from a sale or exchange, the same basis in whole or in part in his hands as it would have in the hands of the other person.

(3) **Holding period for stock or securities, where no gain was recognized under revenue act of 1928 or 1932.** In determining the period for purposes of subsection (b) of this section, for which the taxpayer has held stock or securities received upon a distribution where no gain was recognized to the distributee under the provisions of section 112(g) of the federal revenue act of 1928 or the federal revenue act of 1932, or under the provisions of section 371(c) of the federal revenue act of 1938, there shall be included the period for which he held the stock or securities in the distributing corporation prior to the receipt of the stock or securities upon the distribution.

(4) **Holding period, effect of wash sales.** In determining the period for purposes of subsection (b) of this section, for which the taxpayer has held stock or securities the acquisition of which (or the contract or option to acquire which) resulted in the nondeductibility (under section ~~43-123(j),~~ 43-123.12, relating to wash sales) of the loss from the sale or other disposition of substantially identical stock or securities, there shall be included the period for which he held the stock or securities the loss from the sale or other disposition of which was not deductible.

(5) **Holding period, of stock acquired through exercise of rights.** In determining the period for purposes of subsection (b) of this section, for which the taxpayer has held stock or securities acquired from a corporation by the exercise of rights to acquire the stock or securities, there shall be included only the period beginning with the date upon which the right to acquire was exercised.

(6) **Holding period, residence acquired under section 43-152(n).** In determining the period for which the taxpayer has held a residence, the

acquisition of which resulted under section 43-152(n) in the nonrecognition of any part of the gain realized on the sale, exchange, or involuntary conversion of another residence, there shall be included the period for which such other residence had been held as of the date of such sale, exchange or involuntary conversion.

(7) **Holding period, property transmitted at death under section 43-153(a) (5).** In determining the period for which the taxpayer has held property transmitted at death, within the meaning of section 43-153(a) (5), if–

(A) The basis of such property in the hands of such taxpayer is determined under section 43-153, and

(B) Such property is sold or otherwise disposed of by such taxpayer within six months after the decedent's death, then such taxpayer shall be deemed to have held such property for more than six months.

(i) **Gain from sale of certain property between spouses or between an individual and a controlled corporation.**

(1) **Treatment of gain as ordinary income.** In the case of a sale or exchange, directly or indirectly, of property described in paragraph (2)–

(A) Between a husband and wife; or

(B) Between an individual and a corporation more than eighty per cent in value of the outstanding stock of which is owned by such individual, his spouse, and his minor children and minor grandchildren; any gain recognized to the transferror from the sale or exchange of such property shall be considered as gain from the sale or exchange of property which is neither a capital asset nor property described in subsection (j).

(2) This subsection shall apply only in the case of a sale or exchange of property by a transferror which in the hands of the transferee is property of a character which is subject to the allowance for depreciation provided in section ~~43-123(1)~~ 43-123.14.

(j) **Gains and losses from involuntary conversion and from the sale or exchange of certain property used in the trade or business.**

(1) **Definition of "property used in the trade or business".** For the purposes of this subsection, the term "property used in the trade or business" means property used in the trade or business, of a character

which is subject to the allowance for depreciation provided in section ~~43-123(1)~~ 43-123.14 held for more than six months, and real property used in the trade or business held for more than six months which is not–

(A) Property of a kind which would properly be includible in the inventory of the taxpayer if on hand at the close of the taxable year, or

(B) Property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business, or

(C) A copyright, a literary, musical or artistic composition, or similar property, held by a taxpayer described in subsection (a) (4) of this section.

Such term also includes timber with respect to which subsection (k) (1) or (2) is applicable and unharvested crops to which paragraph (3) is applicable. Such term also includes livestock, regardless of age, held by the taxpayer for draft, breeding, or dairy purposes, and held by him for twelve months or more from the date of acquisition. It does not include poultry.

(2) **Gains and losses from sales of property used in trade or business, treatment of.** If, during the taxable year, the recognized gains upon sales or exchanges of property used in the trade or business, plus the recognized gains from the compulsory or involuntary conversion, as a result of destruction in whole or in part, theft or seizure, or an exercise of the power of requisition or condemnation or the threat or imminence thereof, of property used in the trade or business and capital assets held for more than six months into other property or money, exceed the recognized losses from the sales, exchanges, and conversions, the gains and losses shall be considered as gains and losses from sales or exchanges of capital assets held for more than six months. If the gains do not exceed the losses, the gains and losses shall not be considered as gains and losses from sales or exchanges of capital assets. For the purposes of this paragraph:

(A) In determining under this paragraph whether gains exceed losses, the gains and losses described therein shall be included only if and to the extent taken into account in computing net income except that subsections (b) and (d) shall not apply.

(B) Losses upon the destruction, in whole or in part, theft or seizure, or requisition or condemnation of property used in the trade or business or capital assets held for more than six months shall be considered losses from a compulsory or involuntary conversion.

(3) **Unharvested crop, property used in trade or business.** In the case of an unharvested crop on land used in the trade or business and held for more than six months, if the crop and the land are sold or exchanged (or compulsorily or involuntarily converted as described in paragraph (2)), at the same time and to the same person, the crops shall be considered as "property used in the trade or business".

(k) **Gain or loss in the case of timber.**

(1) If the taxpayer so elects upon his return for a taxable year, the cutting of timber (for sale or for use in the taxpayer's trade or business) during such year by the taxpayer who owns, or has contract right to cut, such timber (providing he has owned such timber or has held such contract right for a period of more than six months prior to the beginning of such year) shall be considered as a sale or exchange of such timber cut during such year. In case such election has been made, gain or loss to the taxpayer shall be recognized in an amount equal to the difference between the adjusted basis for depletion of such timber in the hands of the taxpayer and the fair market value of such timber. Such fair market value shall be the fair market value as of the first day of the taxable year in which such timber is cut, and shall thereafter be considered as the cost of such cut timber to the taxpayer for all purposes for which such cost is a necessary factor. If a taxpayer makes an election under this paragraph, such election shall apply with respect to all timber which is owned by the taxpayer or which the taxpayer has a contract right to cut and shall be binding upon the taxpayer for the taxable year for which the election is made and for all subsequent years, unless the tax commission, on showing of undue hardship, permits the taxpayer to revoke his election; such revocation, however, shall preclude any further elections under this section except with the consent of the tax commission.

(2) In the case of the disposal of timber (held for more than six months prior to such disposal) by the owner thereof under any form or type of contract by virtue of which the owner retains an economic interest in such timber, the difference between the amount received for such timber and the adjusted basis thereof shall be considered as though it were a gain or loss, as the case may be, upon the sale of such timber.

(1) **Short sales.** In the case of a short sale of property made by the taxpayer after the effective date of this title, if substantially identical property has been held by the taxpayer on the date of such short sale for not more than six months (determined without regard to the effect, under paragraph (1) of this subsection, of such short sale on the holding period), or if substantially identical property is acquired by the taxpayer after such short sale and on or before the date of the closing thereof–

(1) Any gain upon the closing of such short sale shall be considered as a gain upon the sale or exchange of a capital asset held for not more than six months (notwithstanding the period of time any property used to close such short sale has been held); and

(2) The holding period of such substantially identical property shall be considered to begin (notwithstanding the provisions of subsection (h)) on the date of the closing of the short sale, or on the date of a sale, gift or other disposition of such property, whichever date occurs first. This subparagraph shall apply to such substantially identical property in the order of the dates of the acquisition of such property, but only to so much of such property as does not exceed the quantity sold short.

For the purpose of this subsection, the acquisition of an option to sell property at a fixed price shall be considered as a short sale, and the exercise or failure to exercise such option shall be considered as a closing of such short sale.

(m) **Collapsible corporations.**

(1) **Treatment of gain to shareholders.** Gain from the sale or exchange (whether in liquidation or otherwise) of stock of a collapsible corporation, to the extent that it would be considered (but for the provisions of this subsection) as gain from the sale or exchange of a capital asset held for more than six months, shall, except as provided in paragraph (3), be considered as gain from the sale or exchange of property which is not a capital asset.

(2) **Definition–"collapsible corporations".**

(A) For the purposes of this subsection, the term "collapsible corporation" means a corporation formed or availed of principally for the manufacture, construction, or production of property, for the purchase of property which (in the hands of the corporation) is property described in subsection (a) (1), or for the holding of stock in a corporation so formed or availed of, with a view to–

(i) The sale or exchange of stock by its shareholders (whether in liquidation or otherwise), or a distribution to its shareholders, prior to the realization by the corporation manufacturing, constructing, producing, or purchasing the property of a substantial part of the net income to be derived from such property, and

(ii) The realization by such shareholders of gain attributable to such property.

(B) For the purposes of subparagraph (A), a corporation shall be deemed to have manufactured, constructed, produced, or purchased property, if–

(i) It engaged in the manufacture, construction, or production of such property to any extent.

(ii) It holds property having a basis determined, in whole or in part, by reference to the cost of such property in the hands of a person who manufactured, constructed, produced, or purchased property, or

(iii) It holds property having a basis determined, in whole or in part, by reference to the cost of property manufactured, constructed, produced, or purchased by the corporation.

(3) **Limitations on application of subsection.** In the case of gain realized by a shareholder upon his stock in a collapsible corporation–

(A) This subsection shall not apply unless, at any time after the commencement of the manufacture, construction, or production of the property, or at the time of the purchase of the property described in subsection (a) (1), or at any time thereafter, such shareholder (i) owned (or was considered as owning) more than ten per cent in value of the outstanding stock of the corporation, or (ii) owned stock which was considered as owned at such time by another shareholder who then owned (or was considered as owning) more than ten per cent in value of the outstanding stock of the corporation;

(B) This subsection shall not apply to the gain recognized during a taxable year unless more than seventy per cent of such gain is attributable to the property so manufactured, constructed, produced, or purchased; and

(C) This subsection shall not apply to gain realized after the expiration of three years following the completion of such manufacture, construction, production, or purchase.

For the purposes of subparagraph (A), the ownership of stock shall be determined in accordance with the rules prescribed by section 43-126(b) (2), except that, in addition to the persons prescribed by subparagraph (D) of that paragraph, the family of an individual shall include the spouses of that individual's brothers and sisters (whether by the whole or half blood) and the spouses of that individual's lineal descendants.

(n) **Dealers in securities.**

(1) **Capital gains.** Gain by a dealer in securities from the sale or exchange of any security shall in no event be considered as gain from the sale or exchange of a capital asset unless–

(A) The security was, prior to the expiration of the thirtieth day after the date of its acquisition or after the date of the enactment of this title (whichever is the later), clearly identified in the dealer's records as a security held for investment; and

(B) The security was not, at any time after the expiration of such thirtieth day, held by such dealer primarily for sale to customers in the ordinary course of his trade or business.

(2) Loss by a dealer in securities from the sale or exchanges of any security shall in no event be considered as loss from the sale or exchange of property which is not a capital asset if at any time after the thirtieth day following the date of the enactment of this title the security was clearly identified in the dealer's records as a security held for investment.

(3) For the purposes of this subsection the term "security" means any share of stock in any corporation, certificate of stock or interest in any corporation, note, bond, debenture, or evidence of indebtedness, or any evidence of an interest in or right to subscribe to or purchase any of the foregoing.

(o) **Bonds, etc., losses of banks.** For the purpose of this section, in the case of a bank, as defined in section 104(a) of the Internal Revenue Code, (as amended Oct. 20, 1951, 2:07 p.m., E.S.T., C. 521, Title III, Sec. 313(h), 65 Stat. 491), if the losses of the taxable year from sales or exchanges of bonds, debentures, notes, or certificates, or other evidence of indebtedness issued by any corporation (including one issued by a government or political subdivision thereof) with interest coupons or in registered form, exceed the gains of the taxable year from such sales or exchanges, no such sale or exchange shall be considered a sale or exchange of a capital asset.

(p) **Gain from dispositions of certain depreciable property.**

(1) **General rule.**

(A) **Ordinary income.** Except as otherwise provided in this section, if section 43-157(p) property is disposed of during a taxable year beginning after December 31, 1969, the amount by which the lower of–

(i) The recomputed basis of the property, or

(ii) In the case of a sale, exchange, or involuntary conversion, the amount realized, or

(iii) In the case of any other disposition, the fair market value of such property,

Exceeds the adjusted basis of such property shall be treated as gain from the sale or exchange of property which is neither a capital asset nor property described in section 43-157(j). Such gain shall be recognized notwithstanding any other provision of this subtitle.

(B) **Recomputed basis.** For purposes of this section, the term "recomputed basis" means–

(i) With respect to any property referred to in paragraph (C) (i) or (ii), its adjusted basis recomputed by adding thereto all adjustments, attributable to periods after December 31, 1969, or

(ii) With respect to any property referred to in paragraph (C) (v), its adjusted basis recomputed by adding thereto all adjustments, attributable to periods after December 31, 1969, reflected in such adjusted basis on account of deductions (whether in respect of the same or other property) allowed or allowable to the taxpayer or to any other person for depreciation, or for amortization under section ~~43-123(1) (11)~~ 43-123.14, SUBSECTION K. For purposes of the preceding sentence, if the taxpayer can establish by adequate records or other sufficient evidence, that the amount allowed for depreciation, or for amortization under section ~~43-123(1) (11)~~ 43-123.14, SUBSECTION K, for any period was less than the amount allowable, the amount added for such period shall be the amount allowed.

(C) **Section 43-157(p) property.** For purposes of this section the term "section 43-157(p) property" means any property (other than livestock) which is or has been property of a character subject to the allowance for depreciation provided in section ~~43-123(1)~~ 43-123.14 and is either–

(i) Personal property, or

(ii) Other property (not including a building or its structural components) but only if such other property is tangible and has an adjusted basis in which there are reflected adjustments described in paragraph (B) for a period in which such property (or other property)–

(iii) Was used as an integral part manufacturing production, or extraction or of furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services, or

(iv) Constituted research or storage facilities used in connection with any of the activities referred to in clause (iii), or

(v) An elevator or an escalator.

(2) **Exceptions and limitations.**

(A) **Gifts.** Subsection (1) shall not apply to a disposition by gift.

(B) **Transfer at death.** Except as provided in section 43-158 (relating to income in respect of a decedent), subsection (1) shall not apply to a transfer at death.

(C) **Certain tax-free transactions.** If the basis of property in the hands of a transferee is determined by reference to its basis in the hands of the transferor by reason of the application of any of the following–sections 43-152(b) (4), 43-152(b) (5), 43-152(b) (6), 43-152(b) (9), or 43-152(b) (10), and sections 43-152(c), 43-152(d), or 43-152(e), then the amount of gain taken into account by the transferor under subsection (1) (A) shall not exceed the amount of gain recognized to the transferor on the transfer of such property (determined without regard to this section). This paragraph shall not apply to a disposition to an organization which is exempt from the tax imposed by this title.

(D) **Like kind exchanges; involuntary conversions.** If property is disposed of and gain (determined without regard to this section) is not recognized in whole or in part under sections 43-152(b) (1), 43-152(b) (2), 43-152(c), or 43-152(f), then the amount of gain taken into account by the transferor under subsection (1) (A) shall not exceed the sum of–

(i) The amount of gain recognized on such disposition (determined without regard to this section), plus

(ii) The fair market value of property acquired which is not section 43-157(p) property and which is not taken into account under subparagraph (i).

(E) **Sections 43-152(m) and 43-152(b) (8) transactions.** Under regulations prescribed by the tax commission, rules consistent with paragraphs (C) and (D) of this subsection shall apply in the case of transactions

described in section 43-152(m) (relating to gain from sale or exchange to effectuate policies of F.C.C.) or section 43-152(b) (8) (relating to exchange in obedience to S.E.C. orders).

(3) **Adjustments to basis.** The tax commission shall prescribe such regulations as it may deem necessary to provide for adjustments to the basis of property to reflect gain recognized under subsection (1).

(4) **Application of section.** This section shall apply notwithstanding any other provision of this title.

(q) **Gain from dispositions of certain depreciable realty.**

(1) **General rule.**

(A) **Ordinary income.** Except as otherwise provided in this section, if section 43-157(q) property is disposed of after December 31, 1969, the applicable percentage of the lower of–

(i) The additional depreciation (as defined in subsection (2) (A)) in respect of the property, or

(ii) The excess of the amount realized (in the case of a sale, exchange or involuntary conversion) or the fair market value of such property (in the case of any other disposition), over

(iii) The adjusted basis of such property, shall be treated as gain from the sale or exchange of property which is neither a capital asset nor property described in section 43-157(j). Such gain shall be recognized notwithstanding any other provision of this subtitle.

(B) **Applicable percentage.** For purposes of paragraph (A), the term "applicable percentage" means one hundred per cent minus one percentage point for each full month the property was held after the date on which the property was held twenty full months.

(2) **Additional depreciation defined.** For purposes of this section–

(A) **In general.** The term "additional depreciation" means, in the case of any property, the depreciation adjustments in respect of such property; except that, in the case of property held more than one year, it means such adjustments only to the extent that they exceed the amount of the depreciation adjustments which would have resulted if such adjustments had been determined for each taxable year under the straight line method

of adjustment. For purposes of the preceding sentence, if a useful life (or salvage value) was used in determining the amount allowed as a deduction for any taxable year, such life (or value) shall be used in determining the depreciation adjustments which would have resulted for such year under the straight line method.

(B) **Property held by lessee.** In the case of a lessee, in determining the depreciation adjustments which would have resulted in respect of any building erected (or other improvement made) on the leased property, or in respect of any cost of acquiring the lease, the lease period shall be treated as including all renewal periods. For purposes of the preceding sentence–

(i) The term "renewal period" means any period for which the lease may be renewed, extended, or continued pursuant to an option exercisable by the lessee, but

(ii) The inclusion of renewal periods shall not extend the period taken into account by more than two-thirds of the period on the basis of which the depreciation adjustments were allowed.

(C) **Depreciation adjustments.** The term "depreciation adjustments" means, in respect of any property, all adjustments attributable to periods after December 31, 1969, reflected in the adjusted basis of such property on account of deductions (whether in respect of the same or other property) allowed or allowable to the taxpayer or to any other person for exhaustion, wear and tear, obsolescense, or amortization (other than amortization for emergency facilities under section ~~43-123(1)-(11)~~ 43-123.14, SUBSECTION K). For purposes of the preceding sentence, if the taxpayer can establish by adequate records or other sufficient evidence that the amount allowed as a deduction for any period was less than the amount allowable, the amount taken into account for such period shall be the amount allowed.

(3) **Section 43-157(q) property.** For purposes of this section, the term "section 43-157(q) property" means any real property (other than section 43-157(p) property), as defined in section 43-157(p) (1) (C) which is or has been property of a character subject to the allowance for depreciation provided in section ~~43-123(1)~~ 43-123.14, as amended.

(4) **Exceptions and limitations.**

(A) **Gifts.** Subsection (1) shall not apply to a disposition by gift.

(B) **Transfers at death.** Except as provided in section 43-158 (relating to income in respect of a decedent), subsection (1) shall not apply to a transfer at death.

(C) **Certain tax-free transactions.** If the basis of property in the hands of a transferee is determined by reference to its basis in the hands of the transferor by reason of the application of sections 43-152(b) (4), 43-152(b) (5), 43-152(b) (6), 43-152(b) (9), or 43-152(b) (10), and section 43-152(c), 43-152(d) or ~~43-152(e)~~ 43-152(e), then the amount of gain taken into account by the transferor under subsection (1) (A) shall not exceed the amount of gain recognized to the transferor on the transfer of such property (determined without regard to this section). This paragraph shall not apply to a disposition to an organization which is exempt from the tax imposed by this title.

(D) **Like kind exchanges; involuntary conversions.**

(i) **Recognition limit.** If property is disposed of and gain (determined without regard to this section) is not recognized in whole or in part under sections 43-152(b) (1), 43-152 (c), or 43-152(f), then the amount of gain taken into account by the transferor under subsection (1) (A) shall not exceed the greater of the following;

(ii) The amount of gain recognized on the disposition (determined without regard to this section), increased as provided in subparagraph (iv), or

(iii) The amount determined under subparagraph (v).

(iv) **Increase for certain stock.** With respect to any transaction, the increase provided by this subparagraph is the amount equal to the fair market value of any stock purchased in a corporation which (but for this paragraph) would result in nonrecognition of gain under section 43-152(f) (3) (A).

(v) **Adjustment where insufficient section 43-157(q) property is acquired.** With respect to any transaction, the amount determined under this subparagraph shall be the excess of–

(vi) The amount of gain which would (but for this paragraph) be taken into account under subsection (1) (A), over

(vii) The fair market value (or cost in the case of a transaction described in section 43-152(f) (3)) of the section 43-157(q) property acquired in the transaction.

(viii) **Basis of property acquired.** In the case of property purchased by the taxpayer in a transaction described in section 43-152(f) (3), in applying the last sentence of section 43-153(a) (9), such sentence shall be applied–

(ix) First solely to section 43-157(q) properties and to the amount of gain not taken into account under subsection (1) (A) by reason of this paragraph, and

(x) Then to all purchased properties to which such sentence applies and to the remaining gain not recognized on the transaction as if the cost of the section 43-157(q) properties were the basis of such properties computed under clause (ix). In the case of property acquired in any other transaction to which this paragraph applies, rules consistent with the preceding sentence shall be applied under regulations prescribed by the tax commission.

(xi) **Additional depreciation with respect to property disposed of.** In the case of any transaction described in sections 43-152(b) (1), 43-152(c) (1), 43-152(c), or 43-152(f), the additional depreciation in respect of the section 43-157(q) property acquired which is attributable to the section 43-157(q) property disposed of shall be an amount equal to the amount of the gain which was not taken into account under subsection (1) (A) by reason of the application of this paragraph.

(E) **Sections 43-152(m) and 43-152(b) (8) transactions.** Under regulations prescribed by the tax commission, rules consistent with paragraphs (C) and (D) of this subsection and with subsections (5) and (6) shall apply in the case of transactions described in section 43-152(m) (relating to gain from sale or exchange to effectuate policies of F.C.C.) or section 43-152(b) (8) (relating to exchanges in obedience to S.E.C. orders).

(F) **Disposition of principal residence.** Subsection (1) shall not apply to a disposition of property to the extent used by the taxpayer as his principal residence (within the meaning of section 43-152(n), relating to sale or exchange of residence).

(5) **Holding period.** For purposes of determining the applicable percentage under this section, the provisions of section 43-157(h) shall not apply, and the holding period of section 43-157(q) property shall be determined under the following rules:

(A) **Beginning of holding period.** The holding period of section 43-157(q) property shall be deemed to begin—

(i) In the case of property acquired by the taxpayer, on the day after the date of acquisition, or

(ii) In the case of property constructed, reconstructed, or erected by the taxpayer, on the first day of the month during which the property is placed in service.

(B) **Property with transferred basis.** In the basis of property acquired in a transaction described in paragraph (A), (B), (C), or (E) of subsection (4) is determined by reference to its basis in the hands of the transferor, then the holding period of the property in the hands of the transferee shall include the holding period of the property in the hands of the transferor.

(C) **Principal residence.** If the basis of property acquired in a transaction described in paragraph (F) of subsection (4) is determined by reference to the basis in the hands of the taxpayer of other property, then the holding period of the property acquired shall include the holding period of such other property.

(6) **Special rules for property which is substantially improved.**

(A) **Amount treated as ordinary income.** If, in the case of a disposition of section 43-157(q) property, the property is treated as consisting of more than one element by reason of paragraph (C), then the amount taken into account under subsection (1) (A) in respect to such section 43-157(q) property as gain from the sale of exchange of property which is neither a capital asset nor property described in section 43-157(j) shall be the sum of the amounts determined under paragraph (B).

(B) **Ordinary income attributable to an element.** For purposes of paragraph (A), the amount taken into account for any element shall be the amount determined by multiplying–

(i) The amount which bears the same ratio to the lower of the amounts specified in subparagraph (i) or (ii) of subsection (1) (A) for the section 43-157(q) property as the additional depreciation for such element bears to the sum of the additional depreciation for all elements, by

(ii) The applicable percentage for such element. For purposes of this paragraph, determination with respect to any element shall be made as if it were a separate property.

(C) **Property consisting of more than one element.** In applying this subsection in the case of any section 43-157(q) property, there shall be treated as a separate element–

(i) Each separate improvement.

(ii) If, before completion of section 43-157(q) property, units thereof (as distinguished from improvements) were placed in service each such unit of section 43-157(q) property, and

(iii) The remaining property which is not taken into account under subparagraphs (i) and (ii).

(D) **Property which is substantially improved.**

For purposes of this subsection–

(i) **In general.** The term "separate improvement" means each improvement added during the thirty-six month period ending on the last day of any taxable year to the capital account for the property, but only if the sum of the amounts added to such account during such period exceeds the greatest of–

(ii) Twenty-five per cent of the adjusted basis of the property.

(iii) Ten per cent of the adjusted basis of the property, determined without regard to the adjustments provided in paragraph (B) of section 43-153(b) (1), or

(iv) Five thousand dollars.

For purposes of clauses (ii) and (iii), the adjusted basis of the property shall be determined as of the beginning of the first day of such thirty-six month period, or of the holding period of the property (within the meaning of subsection (5)), whichever is the later.

(v) **Exception.** Improvements in any taxable year shall be taken into account for purposes of subparagraph (i) only if the sum of the amounts added to the capital account for the property for such taxable year exceeds the greater of–

(vi) Two thousand dollars, or

(vii) One per cent of the adjusted basis referred to in subparagraphs (i) and (iii), determined, however, as of the beginning of such taxable year.

For purposes of this section, if the amount added to the capital account for any separate improvement does not exceed the greater of clause (ii) or

(iii), such improvement shall be treated as placed in service on the first day, of a calendar month, which is closest to the middle of the taxable year.

(viii) **Improvement.** The term "improvement" means, in the case of any section 43-157(q) property, any addition to capital account for such property after the initial acquisition or after completion of the property.

(7) **Adjustments to basis.** The tax commission shall prescribe such regulations as it may deem necessary to provide for adjustments to the basis of property to reflect gain recognized under subsection (1).

(8) **Application of section.** This section shall apply notwithstanding any other provision of this title.

(r) **Certain reacquisitions of real property.**

(1) **General rules.** If

(A) A sale of real property gives rise to indebtedness to the seller which is secured by the real property sold, and

(B) The seller of such property reacquires such property in partial or full satisfaction of such indebtedness, then, except as provided in subsections (2) and (3), no gain or loss shall result to the seller from such reacquisition, and no debt shall become worthless or partially worthless as a result of such reacquisition.

(2) **Amount of gain resulting.**

(a) **In general.** In the case of a reacquisition of real property to which subsection (1) applies, gain shall result from such reacquisition to the extent that–

(i) The amount of money and the fair market value of other property (other than obligations of the purchaser) received, prior to such reacquisition, with respect to the sale of such property, exceeds

(ii) The amount of the gain on the sale of such property returned as income for periods prior to such reacquisition.

(B) **Limitation.** The amount of gain determined under paragraph (A) resulting from a reacquisition during any taxable year beginning after December 31, 1969 shall not exceed the amount by which the price at

which the real property was sold exceeded its adjusted basis, reduced by the sum of–

(i) The amount of the gain on the sale of such property returned as income for periods prior to the reacquisition of such property, and

(ii) The amount of money and the fair market value or other property (other than obligations of the purchaser received with respect to the sale of such property) paid or transferred by the seller in connection with the reacquisition of such property. For purposes of this paragraph, the price at which real property is sold is the gross sales price reduced by the selling commissions, legal fees, and other expenses incident to the sale of such property which are properly taken into account in determining gain or loss on such sale.

(C) **Gain recognized.** Except as provided in this section, the gain determined under this subsection resulting from a reacquisition to which subsection (1) applies shall be recognized, notwithstanding any other provision of this subtitle.

(3) **Basis of reacquired real property.** If subsection (1) applies to the reacquisition of any real property, the basis of such property upon such reacquisition shall be the adjusted basis of the indebtedness to the seller secured by such property (determined as of the date of reacquisition), increased by the sum of–

(A) The amount of the gain determined under subsection (2) resulting from such reacquisition, and

(B) The amount described in subsection (2) (B) (ii). If any indebtedness to the seller secured by such property is not discharged upon the reacquisition of such property, the basis of such indebtedness shall be zero.

(4) **Indebtedness treated as worthless prior to reacquisition.** If, prior to a reacquisition of real property to which subsection (1) applies, the seller has treated indebtedness secured by such property as having become worthless or partially worthless–

(A) Such seller shall be considered as receiving, upon the reacquisition of such property, an amount equal to the amount of such indebtedness treated by him as having become worthless, and

(B) The adjusted basis of such indebtedness shall be increased (as of the

date of reacquisition) by an amount equal to the amount so considered as received by such seller.

(5) **Principal residences.** If

(A) Subsection (1) applies to a reacquisition of real property with respect to sale of which–

(i) Gain was not recognized under section 43-152(n) (relating to sale or exchange or residence); and

(ii) Within one year after the date of the reacquisition of such property by the seller, such property is resold by him, then, under regulations prescribed by the tax commission, subsections (2), (3), and (4) of this section shall not apply to the reacquisition of such property, and, for purposes of applying section 43-152(n), the resale of such property shall be treated as a part of the transaction constituting the original sale of such property.

(6) The provisions of this subsection shall be effective for all years beginning on or after January 1, 1970.

(s) **Taxation of capital gain dividends of shareholders of regulated investment companies.**

(1) **Treatment of capital gain dividends by shareholders.** A capital gain dividend shall be treated by the shareholders as a gain from the sale or exchange of a capital asset held for more than six months.

(2) **Definition of capital gain dividend.** For purposes of this part, a capital gain dividend is any dividend, or part thereof, which is designated by a federally regulated investment company as a capital gain dividend in a written notice mailed to its shareholders not later than forty-five days after the close of its taxable year. If the aggregate amount so designated with respect to a taxable year of the company (including capital gains dividends paid after the close of the taxable year) is greater than the excess of the net long-term capital gain over the net short-term capital loss of the taxable year, the portion of each distribution which shall be a capital gain dividend shall be only that proportion of the amount so designated which such excess of the net long-term capital gain over the net short-term capital loss bears to the aggregate amount so designated.

(3) **Treatment by shareholders of undistributed capital gains.** Every shareholder of a federally regulated investment company at the close of

the company's taxable year shall include, in computing his long-term capital gains in his return for his taxable year in which the last day of the company's taxable year falls, such amount as the company shall designate in respect of such shares in a written notice mailed to its shareholders at any time prior to the expiration of forty-five days after close of its taxable year, but the amount so includible by any shareholder shall not exceed that part of the amount subjected to the federal income tax imposed on the company which he would have received if all of such amount had been distributed as capital gain dividends by the company to the holders of such shares at the close of its taxable year.

(4) The provisions of this subsection shall be effective for all years beginning on or after January 1, 1970.

Sec. 18. Section 43-158, Arizona Revised Statutes, is amended to read:

43-158. **Gross income and deductions in respect of decedents**

(a) **Inclusions in gross income**

(1) **Decedent's gross income–to whom taxable.** The amount of all items of gross income in respect of a decedent which are not properly includible in respect of the taxable period in which falls the date of his death or a prior period shall be included in the gross income, for the taxable year when received, of:

(A) The estate of the decedent, if the right to receive the amount is acquired by the decedent's estate from the decedent;

(B) The person who, by reason of the death of the decedent, acquires the right to receive the amount, if the right to receive the amount is not acquired by the decedent's estate from the decedent; or

(C) The person who acquires from the decedent the right to receive the amount by bequest, devise, or inheritance, if the amount is received after a distribution by the decedent's estate of such right.

(2) **Income in case of sale.** (A) If a right, described in paragraph (1), to receive an amount is transferred by the estate of the decedent or a person who receives such right by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent, there shall be included in the gross income of the estate or person, as the case may be, for the taxable period in which the transfer occurs, the fair market value of the right at the time of such transfer plus the amount by which any consideration for the transfer exceeds the fair market value.

(B) As used in this paragraph, "transfer" includes sale, exchange, or other disposition, but does not include a transfer to a person pursuant to the right of that person to receive such amount by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent.

(3) **Character of income determined by reference to decedent.** The right, described in paragraph (1), to receive an amount shall be treated, in the hands of the estate of the decedent or any person who acquired such right by reason of the death of the decedent, or by bequest, devise, or inheritance from the decedent, as if it had been acquired by the estate or such person in the transaction by which the decedent acquired that right. The amount includible in gross income under paragraph (1) or (2) shall be considered in the hands of the estate or such person to have the character which it would have had in the hands of the decedent if the decedent had lived and received that amount.

(b) **Deductions attributable to decedent's gross income**

(1) **In general.** The amount of any deduction specified in section ~~43-123(a) (1) and (2), (b), (c) and (d)~~ 43-123.03, SUBSECTIONS A AND B AND SECTIONS 43-123.04, 43-123.05 AND 43-123.06 (relating to deductions for expenses, interest and taxes), in respect of a decedent which is not properly allowable to the decedent in respect of the taxable period in which falls the date of his death, or a prior period, shall be allowed, in the taxable year when paid, to the estate of the decedent. But if the estate of the decedent is not liable to discharge the obligation to which the deduction relates the amount of the deduction shall be allowed to the person who, by reason of the death of the decedent or by bequest, devise, or inheritance acquires, subject to that obligation, from the decedent an interest in property of the decedent.

(2) **Depletion, attributable to decedent's gross income deductibility of.** The amount of any deduction specified in section ~~43-123(m)~~ 43-123.15 (relating to deduction for depletion), in respect of a decedent which is not properly allowable to the decedent in respect of the taxable period in which falls the date of his death, or a prior period, shall be allowed to the person described in subsection (a) (1) (A), (B) or (C) who, in the manner described therein, received the income to which the deduction relates, in the taxable year when the income is received.

(c) **Deduction for estate tax**

(1) **Allowance of deduction.** A person who includes an amount in gross income under subsection (a) shall be allowed, for the same taxable year, as

a deduction an amount which bears the same ratio to the Arizona inheritance tax attributable to the net value for inheritance tax purposes of all items described in subsection (a) (1) as the value for inheritance tax purposes of the items of gross income or portions thereof in respect of which that person included the amount in gross income (or the amount included in gross income, whichever is lower) bears to the value for inheritance tax purposes of all the items described in subsection (a) (1).

(2) **Definition–"inheritance tax".** As used in paragraph (1), the term "inheritance tax" means the tax imposed upon the beneficiary of the decedent under article 1 of chapter 9, Title 42. The net value for inheritance tax purposes of all the items described in subsection (a) (1) shall be the excess of the value for inheritance tax purposes of all the items described in subsection (a) (1) over the deductions from the gross estate in respect of claims which represent the deductions described in subsection (b). The inheritance tax attributable to the net value shall be an amount equal to the excess of the inheritance tax over the inheritance tax computed without including in the gross estate the net value.

Sec. 19. Section 43-159, Arizona Revised Statutes, is amended to read:

43-159. **Deductions from gross income–war losses**

(a) **War losses.** In computing net income there shall be allowed as a deduction losses sustained during the taxable year and not compensated for by insurance or otherwise of property destroyed or seized after December 7, 1941, in the course of military or naval operations by the United States or any other country engaged in war.

(1) Property destroyed or seized on or after December 7, 1941, in the course of military or naval operations by the United States or any other country engaged in war shall be deemed to have been destroyed or seized on a date chosen by the taxpayer in the manner provided in paragraph (4), which falls between–

(A) The latest date, as established to the satisfaction of the tax commission, on which such property may be considered as not destroyed or seized, and

(B) The earliest date, as established to the satisfaction of the tax commission, on which such property may be considered as having already been destroyed or seized.

For the purposes of this paragraph property within an area which comes

under the control of a country at war with the United States after the date war with such country is declared by the United States shall be deemed to have been destroyed or seized in the course of military or naval operations by such country and the date specified in subparagraph (A) shall not be later than the latest date determined by the tax commission as the date on which such area was under the control of the United States or a country not at war with the United States, and the date specified in subparagraph (B) shall not be later than the earliest date determined by the tax commission as the date on which such area may be considered under the control of the country which is at war with the United States.

(2) Property within any country at war with the United States, or within an area under the control of any such country on the date war with such country was declared by the United States, shall be deemed to have been destroyed or seized on the date war with such country was declared by the United States.

(3) Any interest in, or with respect to, property described in paragraph (1) or (2) (including any interest represented by a security) which becomes worthless shall be considered to have been destroyed or seized (and the loss therefrom shall be considered a loss from the destruction or seizure) on the date chosen by the taxpayer which falls between the dates specified in paragraph (1), or on the date prescribed in paragraph (2), as the case may be, when the last property (described in the applicable paragraph) to which the interest relates would be deemed destroyed or seized under the applicable paragraph. This paragraph shall apply only if the interest would have become worthless if the property had been destroyed. For the purpose of this paragraph, an interest shall be deemed to have become worthless notwithstanding the fact that such interest has a value if such value is attributable solely to the possibility of recovery of the property, compensation (other than insurance or similar indemnity) on account of its destruction or seizure, or both. ~~Sections 43-123(g) and 43-123(k) (2)~~ SECTION 43-123.09 AND SECTION 43-123.13, SUBSECTION B shall not apply to any interest which under this section is considered to have been destroyed or seized. Under regulations prescribed by the tax commission, a taxpayer which owns one hundred per cent (excluding qualifying shares) of each class of stock of a corporation may elect to determine the worthlessness of its interest, described in this paragraph, in or with respect to the property of the corporation without regard to the amount of the property of such corporation which would be excluded under subsection (e) (2) (A) in determining the adjusted basis of all the assets of the corporation for the purposes of subsection (e), but such amount shall be treated under subsection (b) (1) as a recovery by the taxpayer in the income year with respect to such interest.

(4) Taxpayer's choice of a date under paragraph (1) or (3) shall be effective only if made within such time and in such manner as may be prescribed by regulations prescribed by the tax commission.

(b) **Extent of loss determined.** In the case of any property or interest in or with respect to property deemed to be destroyed or seized under subsection (a):

(1) The amount of the loss on account of such property or interest shall be determined with regard to any recoveries with respect thereto in the taxable year but without regard to any possibility of recovering such property or interest, or of receiving any compensation (other than insurance or similar indemnity) on account of such property or interest in the taxable year or in any future taxable year.

(2) The taxpayer may choose to decrease the amount of the loss by all obligations or liabilities of the taxpayer with respect to such property or interest discharged or satisfied out of the property or interest upon its destruction or seizure, if the tax commission is satisfied that such obligations or liabilities are so discharged or satisfied in a subsequent income year, or that the taxpayer is unable to determine whether or not such obligations or liabilities are in fact discharged or satisfied.

No loss shall be deemed to have been sustained upon the destruction or seizure of such property or interest to the extent that it is compensated for by the discharge or satisfaction of obligations and liabilities of the taxpayer out of such property or interest in the income year in which such destruction or seizure is deemed to have occurred. The taxpayer's choice under this subsection shall be effective only if made within such time and in such manner as may be prescribed by regulations by the tax commission.

(c) **Recovery of property**

(1) **General rule.** Upon the recovery in the taxable year of any money or property in respect of property considered under subsection (a) as destroyed or seized in any prior taxable year, the amount of such recovery shall be included in gross income to the extent provided in paragraph (2).

(2) **Inclusion in gross income**

(A) The amount of the recovery of any money or property in respect of property considered under subsection (a) as destroyed or seized in any prior taxable year shall be an amount equal to the aggregate of such money and the fair market value of such property, determined as of the date of the recovery.

(B) To the extent that such amount plus the aggregate of the amounts of previous such recoveries do not exceed that part of the aggregate of the allowable deductions in prior taxable years on account of the destruction or seizure of property described in subsection (a) which did not result in a reduction of any tax of the taxpayer under this title, such amount shall not be includible in gross income and shall not be deemed gain upon the involuntary conversion of property as a result of its destruction or seizure. To the extent that such amount plus the aggregate of the amounts of previous such recoveries exceed that part of the aggregate of such deductions which did not result in a reduction of any tax of the taxpayer under this title and do not exceed that part of the aggregate of such deductions which did result in a reduction of any tax of the taxpayer under this title, such amount shall be included in gross income but shall not be deemed a gain upon the involuntary conversion of property as a result of its destruction or seizure. To the extent that such amount plus the aggregate of the amounts of previous such recoveries exceed the aggregate of the allowable deductions in prior income years on account of the destruction or seizure of property described in subsection (a), such amount shall be considered a gain upon the involuntary conversion of property as a result of its destruction or seizure and shall be recognized or not recognized as provided in section 43-152(f). If for any previous taxable year the taxpayer chooses under subsection (b) to treat any obligations and liabilities as discharged or satisfied out of the property or interest described in subsection (a), and if such obligations and liabilities were not so discharged or satisfied, the amount of such obligations and liabilities treated as discharged or satisfied under subsection (b) shall be considered for the purposes of this section as a deduction by reason of this section which did not result in a reduction of any tax of the taxpayer under this title. An allowable deduction for any income year on account of the destruction or seizure of property described in subsection (a), shall, to the extent not allowed in computing the tax of the taxpayer for such income year, be considered an allowable deduction which did not result in a reduction of any tax of the taxpayer under this title.

(3) For the purposes of paragraphs (1) and (2), the restoration in whole or in part of the value of any interest described in subsection (a) (3) by reason of any recovery of money or property in respect of property to which such interest related and which was considered under subsection (a) (1) or (2) as destroyed or seized shall be deemed a recovery of property in respect of property considered under subsection (a) as destroyed or seized.

(d) **Unadjusted basis.** The unadjusted basis of property recovered in respect of property considered destroyed or seized under subsection (a) shall be determined under this section. Such basis shall be an amount equal

to the fair market value of such property, determined as of the date of the recovery, reduced by an amount equal to the excess of the aggregate of such fair market value and the amounts of previous recoveries of money or property in respect of property considered under subsection (a) as destroyed or seized over the aggregate of the allowable deductions in prior income years on account of the destruction or seizure of property described in subsection (a), and increased by that portion of the amount of the recovery which under subsection (c) is treated as a recognized gain from the involuntary conversion of property. Upon application of the taxpayer, the aggregate of the bases (determined under the preceding sentence) of any properties recovered in respect of properties considered under subsection (a) as destroyed or seized may be allocated among the properties so recovered in such manner as the tax commission may determine under regulations prescribed by it, and the amount so allocated to any such property so recovered shall be the unadjusted basis of such property in lieu of the unadjusted basis of such property determined under the preceding sentence.

(e) **Corporate liquidation–fifty per cent owned by taxpayer**

(1) If a taxpayer owns not less than fifty per cent of each class of stock of a corporation, if such corporation has property described in subsection (a) (1) or (2) deemed to be destroyed or seized, the adjusted basis for determining loss of which is at least seventy-five per cent of the adjusted basis for determining loss of all such corporation's property, and if such corporation completely liquidates (by distributing all the assets which it is able to distribute and all its rights to assets which it is not able to distribute, including the right to the recovery of the property described in subsection (a) (1) and (2)) within one year after such property is deemed to be destroyed or seized, or by December 31, 1953, whichever is the later, then that part of the loss by the taxpayer on such liquidation which would be attributable to the destruction or seizure of such property as established to the satisfaction of the tax commission, shall be treated for the purposes of this title as a loss by the taxpayer upon the destruction or seizure of the part of the stock or other interest of the taxpayer to which such loss is allocable. Such part of the stock or other interest of the taxpayer shall be treated for the purposes of subsections (b), (c) and (d) as property described in subsection (a) (3).

(2) For the purposes of paragraph (1)–

(A) In determining the adjusted basis of all the property of the corporation there shall be excluded money in money in the United States, bank deposits, the right to receive money from any person not situated in

a country at war with the United States or in a territory under the control of such a country, and obligations issued or guaranteed as to principal or interest by the United States, except that there shall not be excluded any such property which is destroyed or seized as described in subsection (a) within or before the taxable period.

(B) The adjusted basis of property of such corporation shall be determined as of the date immediately preceding the first date on which any property was destroyed or seized, as described in subsection (a), or as of any later date falling within or before the taxable period, on the basis of which such determination will produce a greater amount.

(f) **Rules and regulations.** The determination as to whether and to what extent an allowable deduction on account of the destruction or seizure of property described in subsection (a) did or did not result in a reduction of any tax of the taxpayer under this title shall be made in accordance with regulations prescribed by the tax commission.

Sec. 20. Section 43-162, Arizona Revised Statutes, is amended to read:

43-162. **Net income of estates and trusts**

(a) **Computation**

(1) **Net income.** Except as otherwise provided in this section as to deductions, the net income of the estate or trust shall be computed in the same manner and on the same basis as in the case of an individual.

(2) **Deduction–charitable contributions.** There shall be allowed as a deduction subject to the provisions of this section (in lieu of the deduction for contributions authorized by section ~~43-123(o) (1)~~ 43-123.17, SUBSECTION A and section 43-125(c)) in computing the net income of the estate or trust, any part of the gross income, without limitation, which pursuant to the terms of the will or deed creating the trust is during the taxable year paid or permanently set aside for the purposes and in the manner specified in those sections or is to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, or for the establishment, acquisition, maintenance, or operation of a public cemetery not operated for profit.

(b) **Additional deduction for amounts currently distributable and nonresident beneficiary.**

(1) **In general.** There shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is to be distributed currently by the fiduciary to the legatees, heirs, or beneficiaries, but the amount so allowed as a deduction shall be included in computing the net income of the legatees, heirs, or beneficiaries whether distributed to them or not.

In the case of a nonresident beneficiary his income derived through such an estate or trust is taxable only to the extent it is derived from sources within this state.

(2) **Definition–amounts currently distributable.** For the purposes of paragraph (1), amounts currently distributable to beneficiaries are distributable out of income of the estate or trust for the taxable year if there is income of the estate or trust for the taxable year out of which such distributions may be made and if, under the terms of the will or trust instrument, distributions may be made out of such income, regardless of the fact that the will or trust instrument provides that the distributions may be made out of the corpus of the estate or trust.

(c) **Deductions–amounts properly paid or credited.** There shall be allowed as an additional deduction in computing the net income of the estate or trust

(1) In the case of income received by estates of deceased persons during the period of administration or settlement of the estate, and

(2) In the case of income which, in the discretion of the fiduciary, may be either distributed to the beneficiary or accumulated, the amount of the income of the estate or trust for its taxable year which is properly paid or credited during such year to any legatee, heir, or beneficiary, but the amount so allowed as a deduction shall be included in computing the net income of the legatee, heir, or beneficiary.

In such cases the income of the legatee, heir or beneficiary, not a resident, shall be taxable only to the extent it is derived from sources within this state.

(d) **Rules for application of subsections (b) and (c).** For the purposes of subsections (b) and (c):

(1) **Amounts distributable out of income or corpus.** In cases where the amount paid, credited, or to be distributed can be paid, credited, or

distributed out of other than income, the amount paid, credited, or to be distributed (except under a gift, bequest, devise, or inheritance not to be paid, credited, or distributed at intervals) during the taxable year of the estate or trust shall be considered as income of the estate or trust which is paid, credited, or to be distributed if the aggregate of such amounts so paid, credited, or to be distributed does not exceed the distributable income of the estate or trust for its taxable year. If the aggregate of such amounts so paid, credited, or to be distributed during the taxable year of the estate or trust in such cases exceeds the distributable income of the estate or trust for its taxable year, the amount so paid, credited, or to be distributed to any legatee, heir, or beneficiary shall be considered income of the estate or trust for its taxable year which is paid, credited, or to be distributed in an amount which bears the same ratio to the amount of such distributable income as the amount so paid, credited, or to be distributed to the legatee, heir, or beneficiary bears to the aggregate of such amounts so paid, credited, or to be distributed to legatees, heirs, and beneficiaries for the taxable year of the estate or trust. For the purposes of this paragraph "distributable income" means either

(A) The net income of the estate or trust computed with the deductions allowed under subsections (b) and (c) in cases to which this paragraph does not apply, or

(B) The income of the estate or trust minus the deductions provided in subsection (b) and (c) in cases to which this paragraph does not apply, whichever is the greater. In computing such distributable income the deductions under subsections (b) and (c) shall be determined without the application of paragraph (2).

(2) **Amounts distributable out of income of prior period.** In cases, other than cases described in paragraph (1), if on a date more than sixty-five days after the beginning of the taxable year of the estate or trust, income of the estate or trust for any period becomes payable, the amount of such income shall be considered income of the estate or trust for its taxable year which is paid, credited, or to be distributed to the extent of the income of the estate or trust for such period, or if such period is a period of more than twelve months, the last twelve months thereof.

(3) **Distribution in first sixty-five days of taxable year**

(A) **General rule.** If within the first sixty-five days of any taxable year of the estate or trust, income of the estate or trust, for a period beginning before the beginning of the taxable year, becomes payable, such income, to the extent of the income of the estate or trust for the part of such

period not falling within the taxable year or, if such part is longer than twelve months, the last twelve months thereof, shall be considered paid, credited, or to be distributed on the last day of the preceding taxable year. This subparagraph shall not apply with respect to any amount to which subparagraph (B) applies.

(B) **Payable out of income or corpus.** If within the first sixty-five days of any taxable year of the estate or trust, an amount which can be paid at intervals out of other than income becomes payable, there shall be considered as paid, credited, or to be distributed on the last day of the preceding taxable year the part of such amount which bears the same ratio to such amount as the part of the interval not falling within the taxable year bears to the period of the interval. If the part of the interval not falling within the taxable year is a period of more than twelve months, the interval shall be considered to begin on the date twelve months before the end of the taxable year.

(4) **Excess deductions.** If for any taxable year of an estate or trust the deductions allowed under subsection (b) or (c) solely by reason of paragraph (2) or (3) (A) in respect of any income which becomes payable to a legatee, heir, or beneficiary exceed the net income of the estate or trust for such year, computed without such deductions, the amount of such excess shall not be included in computing the net income of such legatee, heir, or beneficiary under subsection (b) or (c). In cases where the income deductible solely by reason of paragraph (2) or (3) (A) becomes payable to two or more legatees, heirs, or beneficiaries, the benefit of such exclusion shall be divided among such legatees, heirs, and beneficiaries, in the proportions in which they share in such income. In any case where the estate or trust is entitled to a deduction by reason of paragraph (1), in the determination of the net income of the estate or trust for the purposes of this paragraph the amount of such deduction shall be determined with the application of paragraph (3) (A).

(e) **Deduction–no duplication.** Any amount allowed as a deduction under subsection (b) (1) shall not be allowed as a deduction under subsection (c) in the same or any succeeding taxable year.

(f) **Standard deduction, not allowable.** The standard deduction provided in section ~~43-123 (aa)~~ 43-123.29 shall not be allowed in the case of estates and trusts.

(g) **Rules for application of subsection (a) in the case of trusts**

(1) **Trade or business income.** In computing the deduction allowable

under subsection (a) (2) to a trust for any taxable year beginning after December 31, 1953, no amount otherwise allowable under subsection (a) (2) as a deduction shall be allowed as a deduction with respect to income of the taxable year which is allocable to its unrelated business net income as defined by section 43-149(d).

(2) **"Prohibited transaction"–limitation of deduction**

(A) The amount otherwise allowable under subsection (a) (2) as a deduction shall not exceed fifteen per cent of the net income of the trust (computed without the benefit of subsection (a) (2)) if the trust has engaged in a prohibited transaction, as defined in subparagraph (B) of this paragraph.

(B) For the purposes of this paragraph the term "prohibited transaction" means any transaction after December 31, 1953, in which any trust while holding income or corpus which has been permanently set aside or is to be used exclusively for charitable or other purposes described in subsection (a) (2)–

(i) Lends any part of such income or corpus, without receipt of adequate security and a reasonable rate of interest, to:

(ii) Pays any compensation from such income or corpus, in excess of a reasonable allowance for salaries or other compensation for personal services actually rendered, to;

(iii) Makes any part of its services available on a preferential basis to;

(iv) Uses such income or corpus to make any substantial purchase of securities or any other property, for more than an adequate consideration in money or money's worth, from;

(v) Sells any substantial part of the securities or other property comprising such income or corpus, for less than an adequate consideration in money or money's worth, to;

(vi) Engages in any other transaction which results in a substantial diversion of such income or corpus to; the creator of such trust; any person who has made a substantial contribution to such trust; a member of the family (as defined in section 43-126(b) (2) (D)) of an individual who is the creator of the trust or who has made a substantial contribution to the trust; or a corporation controlled by any such creator or person through the ownership, directly or indirectly, of fifty per cent or more of the total

combined voting power of all classes of stock entitled to vote or fifty per cent or more of the total value or shares of all classes of stock of the corporation.

(C) **Period affected–limitation of deduction.** The amount otherwise allowable under subsection (a) (2) as a deduction shall be limited as provided in subparagraph (A) only for taxable years subsequent to the taxable year during which the trust is notified by the tax commission that it has engaged in such transaction. Provided, however, if such trust has entered into such transaction with the purpose of diverting corpus or income from the purposes described in subsection (a) (2) and such transaction involved a substantial part of such corpus or income, it shall not be allowed the deductions specified in subsection (a) (2) for the taxable year in which the prohibited transaction occurred or prior years or future years.

(D) **Removal of limitation.** If the deduction of any trust under subsection (a) (2) has been limited as provided in this paragraph, such trust, with respect to any taxable year following the taxable year in which notice is received of limitation of deduction under subsection (a) (2), may, under regulations prescribed by the tax commission, file claim for the allowance of the unlimited deduction under subsection (a) (2), and if the tax commission pursuant to such regulations, is satisfied that such trust will not knowingly again engage in a prohibited transaction, the limitation provided in subparagraph (A) shall not be applicable with respect to taxable years subsequent to the year in which such claim is filed.

(E) **"Prohibited transaction"–contributor's deduction disallowed.** No gift or bequest for religious, charitable, scientific, literary, or educational purposes (including the encouragement of art and the prevention of cruelty to children or animals), otherwise allowable as a deduction under sections ~~43-123(o) (2), and 43-123(q) (2),~~ 43-123.17, SUBSECTION B, 43-123.19, SUBSECTION B and 43-162(a) shall be allowed as a deduction if made in trust and, in the taxable year of the trust in which the gift or bequest is made, the deduction allowed the trust under subsection (a) (2) is limited by subparagraph (A). With respect to any taxable year of a trust in which such deductions have been so limited by reason of entering into a prohibited transaction with the purpose of diverting such corpus or income from the purposes described in subsection (a) (2), and such transaction involved a substantial part of such income or corpus, and which taxable year is the same, or prior to the taxable year of the trust in which such prohibited transaction occurred, such deduction shall be disallowed the donor only if such donor or (if such donor is an individual) any member of his family (as defined in section 43-126(b) (2) (D)) was a party to such prohibited transaction.

(F) **Definition–"gift or bequest".** For the purposes of this paragraph the term "gift or bequest" means any gift, contribution, bequest, devise, legacy, or transfer. For disallowance of certain charitable, religious, scientific, literary, or education deductions otherwise allowed under subsection (a) (2) see subparagraph (C).

(3) **Unreasonable or unrelated use.** If the amounts permanently set aside, or to be used exclusively, for the charitable and other purposes described in subsection (a) (2) during the taxable year or any prior taxable year and not actually paid out by the end of the taxable year–

(A) Are unreasonable in amount or duration in order to carry out such purposes of the trust; or

(B) Are used to a substantial degree for purposes other than those described in subsection (a) (2); or

(C) Are invested in such a manner as to jeopardize the interest of the religious, charitable, scientific, literary, or educational beneficiaries, the amount otherwise allowable under subsection (a) (2) as a deduction shall be limited to the amount actually paid out during the taxable year and shall not exceed fifteen per cent of the net income of the trust (computed without the benefit of subsection (a) (2)).

(h) **Taxable year, estate or trust differs from that of beneficiary.** If the taxable year of a legatee, heir or beneficiary is different from that of the estate or trust, the amount which he is required, under subsection (b) (1) and subsection (c), to include in computing his net income shall be based upon the income of the estate or trust for any taxable year of the estate or trust ending within or with his taxable year.

(i) **Information return.** Every trust claiming a charitable, religious, scientific, literary, or educational deduction under subsection (a) (2) for the taxable year shall furnish information with respect to such taxable year, at such time and in such manner as the tax commission may by regulations prescribe, setting forth–

(1) The amount of the charitable, religious, scientific, literary, or educational deduction taken under subsection (a) (2) within such year (showing separately the amount of such deduction which was paid out and the amount which was permanently set aside for charitable, religious, scientific, literary, or educational purposes during such year),

(2) The amount paid out within such year which represents amounts for

which charitable, religious, scientific, literary, or educational deduction under subsection (a) (2) have been taken in prior years,

(3) The amount for which charitable, religious, scientific, literary, or educational deductions have been taken in prior years but which has not been paid out at the beginning of such year,

(4) The amount paid out of principal in the current and prior years for charitable, religious, scientific, literary, or educational purposes,

(5) The total income of the trust within such year and the expenses attributable thereto, and

(6) A balance sheet showing the assets, liabilities, and net worth of the trust as of the beginning of such year.

This subsection shall not apply in the case of a taxable year if all the net income for such year, determined under the applicable principles of the law of trusts, is required to be distributed currently to the beneficiaries.

Sec. 21. Section 43-167, Arizona Revised Statutes, is amended to read:

43-167. **Taxation of estates and trusts–income for benefit of grantor**

(a) **Trusts in the income of which the grantor retains an interest.** Where any part of the income of a trust:

(1) Is, or in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income may be, held or accumulated for future distribution to the grantor; or

(2) may, in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income, be distributed to the grantor; or

(3) is, or in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income may be, applied to the payment of premiums upon policies of insurance on the life of the grantor (except policies of insurance irrevocably payable for the purposes and in the manner specified in sections ~~43-123(c)~~ 43-123.17 and 43-125(c), relating to the so-called "charitable contribution" deduction); then such part of the income of the trust shall be included in computing the net income of the grantor if the grantor is a resident. If the grantor is a nonresident, such income shall be included in

computing his income only to the extent it is derived from sources within this state; the balance of such income shall be taxable either to the trust or to the beneficiaries as provided in sections 43-161 and 43-162.

(b) **Definition–"in the discretion of the grantor".** The term "in the discretion of the grantor" as used in this section, means "in the discretion of the grantor, either alone or in conjunction with any person not having a substantial adverse interest in the disposition of the part of the income in question".

(c) **Minor's trusts, taxability of income.** Income of a trust shall not be considered taxable to the grantor under subsection (a) or any other provision of this title merely because such income, in the discretion of another person, the trustee, or the grantor acting as a trustee or co-trustee, may be applied or distributed for the support or maintenancce of a beneficiary whom the grantor is legally obligated to support or maintain, except to the extent that such income is so applied or distributed. In cases where the amounts so applied or distributed are paid out of corpus or out of other than income for the taxable year, such amounts shall be considered paid out of income to the extent of the income of the trust for such taxable year which is not paid, credited, or to be distributed under section 43-162 and which is not otherwise taxable to the grantor.

(d) **Trusts, lien for tax on trust income.** Upon recordation of an abstract of judgment or a copy thereof by the tax commission with the county recorder of any county for any taxes due from the grantor of a trust on income of the trust which is taxable to the grantor under sections 43-164, 43-166 and 43-167 and upon its giving notice of the recording to the fiduciary of the trust, or in case there is more than one fiduciary of the trust, or in fiduciaries, the amount of the taxes constitutes a lien upon all property of the trust in the county, owned by the trust or afterwards and before the lien expires acquired by the trust. The lien has the force, effect, and priority of a judgment lien.

(e) **Lien notice, service.** The notice required to be given by subsection (d) may be served upon the fiduciary personally, or by mail; if by mail, service shall be made by registered mail and shall be addressed to the fiduciary at his address as it appears in the records of the tax commission.

Sec. 22. Section 43-169, Arizona Revised Statutes, is amended to read:

43-169. **Common trust funds**

(a) **Definitions.** The term "common trust fund" means a fund established and operated in accordance with the provisions of the laws of the

state by a trust company, bank, or other corporation qualified under the laws of the state to engage in the trust business in Arizona. The term "participant" means any trust, guardianship or estate whose moneys have been invested in a common trust fund. The provisions of section 43-161 are applicable in determining the extent of which each participant's proportionate share of the income is taxable to the participant or to the beneficiaries or grantor of the participant.

(b) **Taxation of common trust funds.** A common trust fund shall not be subject to taxation under the provisions of this title, nor shall the income thereof be taxable under the provisions of this title, or otherwise, but the participants therein or the beneficiaries or grantor of such participants shall be subject to taxation as provided in this section.

(c) **Taxability of participant.** Each participant in a common trust fund, if such participant is required by law to file a return, shall include, in computing its net income, whether or not distributed and whether or not distributable.

(1) As a part of its capital gains or losses, its proportionate share of the net capital gain or loss of the common trust fund;

(2) Its proportionate share of the ordinary net income or the ordinary net loss of the common trust fund; both computed as provided in subsection (d). The appropriate or proportionate share of any participant in any income of a common trust fund which would not be taxable by this state or which this state would be prohibited from taxing by the constitution of this state or of the United States if received directly by the participants shall not be taxable to the recipients of such income.

(d) **Computation of income.** The net income of a common trust fund shall be computed in the same manner and on the same basis as in the case of an individual, except that

(1) There shall be segregated the capital gains and losses, and the net capital gain or loss shall be computed in accordance with the provisions of section 43-157(b) and other applicable provisions of this title.

(2) After excluding all items of capital gain or loss, there shall be computed

(A) The ordinary net income which shall consist of the excess of the gross income over the deductions, or

(B) The ordinary net loss which shall consist of the excess of the deductions over the gross income.

(3) The so-called "charitable contributions" deduction provided for in section ~~43-123(o)~~ 43-123.17 shall not be allowed.

(4) The standard exemption provided for in section ~~43-123(aa)~~ 43-123.29 shall not be allowed.

(e) **Admission and withdrawal.** No gain or loss shall be realized by a common trust fund by the admission or withdrawal of a participant. The withdrawal of any participating interest by a participant shall be treated as a sale or exchange of such interest by the participant but any gain or loss realized thereby shall be adjusted by an amount equal to the net aggregate gain or loss previously included in computing such participant's net income under subsection (c) (1).

(f) **Information return.** Every trust company operating a common trust fund shall make a return under penalties of perjury for each taxable year, stating specifically with respect to such fund the items of gross income and the deductions allowed by this section and shall include in the return information sufficient to identify the trusts and estates entitled to share in the net income of the common trust fund and the amount of the proportionate share of each such participant.

(g) **Taxable year, where participant's differ from trust's.** If under the provisions of section 43-131(a) the taxable year of a common trust fund is different from that of a participant, the inclusions with respect to the net income of such common trust fund in computing the net income of the participant for its taxable year shall be based upon the net income of such common trust fund for any taxable year of such common trust fund, ending within or with the taxable year of the participant.

Sec. 23. Section 43-171, Arizona Revised Statutes, is amended to read:

43-171. **Taxation of partnerships**

(a) **Partnership, individual partnership liability.** An individual carrying on business in partnership is liable for income tax only in his individual capacity.

(b) **Partner's distributive share.** In computing net income of each partner, he shall include, whether or not distribution is made to him–

(1) As part of his gains and losses from sales or exchanges of capital assets, his distributive share of the gains and losses of the partnership from sales or exchanges of capital assets, computed as provided in section 43-157(b);

(2) His distributive share of the ordinary net income or the ordinary net loss of the partnership, computed as provided in subsection (c).

(c) **Partnership income.** The net income of the partnership shall be computed in the same manner and on the same basis as in the case of an individual, except as provided in this subsection.

(1) There shall be segregated the gains and losses from sales or exchanges of capital assets.

(2) After excluding all items of gain and loss from sales or exchanges of capital assets, there shall be computed–

(A) An ordinary net income which shall consist of the excess of the gross income over the deductions; or

(B) An ordinary net loss which shall consist of the excess of the deductions over the gross income.

(3) In computing the net income of the partnership, the so-called "charitable contribution" deduction allowed by section ~~43-123(o)~~ 43-123.17, shall not be allowed; but each partner shall be considered as having made payment, within his taxable year, of his distributive portion of any contribution or gift, payment of which was made by the partnership within its taxable year, of the character which would be allowed to the partnership as a deduction under such section if this subsection had not been enacted.

(4) In computing the net income of the partnership the deduction provided in section ~~43-123(aa)~~ 43-123.29 shall not be allowed.

(d) **Partnership return.** Every partnership shall make a return for each taxable year, stating specifically the items of gross income and the deductions allowed by this title. The return shall include the names and addresses of the individuals, whether residents or nonresidents, who would be entitled to share in the net income if distributed and the amount of the distributive share of each individual. The return shall contain or be verified by a written declaration that it is made under the penalties of perjury, signed by one of the partners.

(e) **Taxable year of partnership, different from that of partner.** If the taxable year of a partner is different from that of the partnership, the distributive share of the net income of the partnership to be included in computing the net income of the partner for his taxable year shall be based upon the net income of the partnership for any taxable year of the partnership ending within or with the taxable year of the partner.

Sec. 24. Section 43-184, Arizona Revised Statutes, is amended to read:

43-184. **Overpayments and refunds–claim for refund**

(a) **Refund, when.** If the tax commission believes that there has been an overpayment of tax, penalty, or interest by a taxpayer for any year for any person, the amount of the overpayment shall be credited against any taxes then due from the taxpayer under this title and the balance refunded to the taxpayer, or its successor through reorganization, merger, or consolidation, or to its shareholders upon dissolution.

(b) **Limitation on allowance of refund**

(1) **Refund claim, when to be filed.** No credit or refund shall be allowed or made after four years from the last day prescribed for filing the return provided such return has been filed in the period prescribed by law or after one year from the date of the overpayment, whichever period expires the later, unless before the expiration of the period a claim therefor is filed by the taxpayer, or unless before the expiration of the period the tax commission certifies the overpayment to the ~~commissioner~~ ASSISTANT DIRECTOR FOR THE DIVISION of finance for approval of the refund thereof.

(2) **Refund claim, effect of extension agreements.** The period within which a claim for credit or refund may be filed, or credit or refund allowed or made if no claim is filed, shall be the period within which the tax commission may make an assessment under the same circumstances, if:

(A) The taxpayer has, within the period prescribed in the preceding sentence, agreed in writing, under the provisions of section 43-177, to extend the time within which the tax commission may propose an additional assessment, or

(B) The taxpayer has agreed with the United States commissioner of internal revenue for an extension (or renewals thereof) of the period for proposing and assessing deficiencies in federal income tax for any year.

(3) **Extended period, when applicable.** The provisions of paragraph (1) shall apply to any claim filed, or credit or refund allowed or made, before the execution of an agreement pursuant to paragraph (2).

(4) **Refund claim, seven-year period in connection with bad debts, etc.** Insofar as the claim for credit or refund relates to an overpayment on account of the deductibility, under section ~~43-123(k) (1)~~ 43-123.13, SUBSECTION A, of a debt as one which became worthless, or a loss from worthlessness of a security under section ~~43-123(k) (2)~~ 43-123.13, SUBSECTION B, or section ~~43-123(g)~~ 43-123.09 or an erroneous inclusion of an amount attributable to the recovery of a bad debt, prior tax or delinquency amount, under section 43-112(b) (17) to (21), inclusive, due to an adjustment of a bad debt deduction under section ~~43-123(k) (1)~~ 43-123.13, SUBSECTION A, or a loss deduction from worthlessness of a security under section ~~43-123(k) (2)~~ 43-123.13, SUBSECTION B, or section ~~43-123(g)~~ 43-123.09, in lieu of the period of limitations prescribed in paragraph (1), the period shall be seven years from the date prescribed by law for filing the return for the year with respect to which the claim is made.

(5) **Refund–transfer of items from one year to another.** Notwithstanding any statute of limitations provided in this title, any overpayment due a taxpayer for any year which results from a transfer of items of income or deductions or both to or from another year for the same taxpayer, or for the same year for a related taxpayer described in section 43-181(e), shall be allowed as an offset in computing any deficiency in tax for any year resulting from the transfer of such income or deductions or both, but no refund shall be allowed unless the overpayment is certified to the ~~commissioner~~ ASSISTANT DIRECTOR FOR THE DIVISION of finance, or a claim for refund is filed within the time otherwise provided for in this title.

The offset provided herein, however, shall not be allowed after the expiration of seven years from the due date of the return on which the overpayment is determined.

(c) **Refund claim, effect of denial.** A refund claim upon which action has become final shall not thereafter be considered a refund claim within the meaning of subsection (b) (1), except to the extent it has been allowed.

(d) **Refund claim, form.** Every claim for refund shall be in writing and shall state the specific grounds upon which it is founded.

(e) **Refund claim, notice of denial.** If the tax commission disallows any claim for refund, it shall notify the taxpayer accordingly.

(f) **Refund claim, finality of action.** At the expiration of ninety days from the mailing of the notice, the tax commission's action upon the claim is final unless within the ninety-day period the taxpayer protests in writing to the commission setting forth reasons for protest and requesting a hearing.

(g) **Refund claim may be deemed disallowed after six months.** If the tax commission fails to mail notice of action on any refund claim within six months after the claim is filed, the taxpayer may prior to mailing of notice of action on the refund claim consider the claim disallowed and appeal to the commission.

(h) **Protest to commission, form and mailing.** Protest shall be addressed and mailed to the state tax commission at Phoenix, Arizona.

(i) **Appeals.** Appeals must be addressed and mailed to the state tax commission at Phoenix, Arizona. The tax commission shall hear and determine the same and thereafter shall forthwith notify the taxpayer of its determination. The commission's determination is final upon the expiration of ninety days from the date of mailing notice of determination unless within said ninety days the taxpayer appeals from the action of the tax commission to the superior court of the county wherein the taxpayer resides or, if the taxpayer does not reside in Arizona, to the superior court of Maricopa county.

(j) **Payment of tax–deemed claim for refund.** If, with or after the filing of a protest or an appeal with the tax commission or an appeal to the superior court, a taxpayer pays the tax protested or appealed before the tax commission acts upon the protest or the appeal, or the superior court upon the appeal, the tax commission or superior court shall treat the protest or the appeal as a claim for refund or an appeal from the denial of a claim for refund filed under this section.

(k) **Interest on overpayment**

(1) **Refund claims, interest.** Interest shall be allowed and paid on any overpayment in respect to any tax, at the rate of six per cent per annum as follows:

(A) In the case of a credit, from the date of the overpayment to the date of the allowance of the credit. Any interest allowed on any credit shall first be credited on any taxes due from the taxpayer under this title.

(B) In the case of a refund, from the date of the overpayment to a date

preceding the date of the refund warrant by not more than thirty days, the date to be determined by the tax commission.

(2) **Notice of denial.** If the tax commission disallows interest on any claim for refund, it shall notify the taxpayer accordingly, and thereafter such claim shall be treated, for procedural purposes, as a claim for refund.

(3) **Suit, failure of action.** If the tax commission fails to mail notice of action of disallowance of interest on any refund claim within six months after the interest was claimed, the taxpayer may, prior to mailing notice of action of disallowance of interest on the refund claim, consider the interest disallowed and bring an action against the tax commission on the grounds set forth for interest in such claim for the recovery of the interest.

(4) **Payment, not bona fide.** A payment not made incident to a bona fide and orderly discharge of an actual liability or one reasonably assumed to be imposed by law, is not an overpayment for the purposes of paragraph (1) and interest is not payable thereon.

(5) **Interest limitation–bad debts.** If a credit or refund of any part of an overpayment would be barred under subsection (b) (1), except for the provisions of subsection (b) (4), no interest shall be allowed or paid with respect to such part of the overpayment for any period beginning after the expiration of the period of limitation provided in subsection (b) (1), for filing claim for credit or refund of such part of the overpayment and ending at the expiration of six months after the date on which the claim was filed or, in case no claim was filed and the overpayment was found by the tax commission, ending at the time the appeal was filed with the tax commission.

Sec. 25. **Emergency**

To preserve the public peace, health and safety it is necessary that this act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.

Approved by the Governor–March 6, 1973

Filed in the Office of the Secretary of State–March 6, 1973

LAWS OF ARIZONA

CHAPTER 8

Senate Bill 1158

AN ACT

RELATING TO TAXATION; PROVIDING FOR CERTAIN DISCOUNTED PRICES OF LUXURY TAX STAMPS AND TAX METER STAMPS FOR CIGARETTES, AND AMENDING SECTIONS 42-1207 AND 42-1211, ARIZONA REVISED STATUTES.

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

Section 1. Section 42-1207, Arizona Revised Statutes, is amended to read:

42-1207. **Revenue stamps; specifications; purchase price of stamps**

A. The commission shall prepare and have on hand official adhesive stamps of the various types according to the classifications set forth in sections 42-1204 and 42-1231 of luxuries upon which a tax is imposed by this article, and by article 1.1 of this chapter, and a stamp shall be affixed to each package of cigarettes sold. The stamps shall be of a character so that they cannot be removed when once attached to an article without destroying them.

B. The official stamps shall be printed on durable material, and shall set forth plainly on the face of each stamp the denomination thereof, the facsimile signature of the chairman of the commission at the time of the printing thereof, and the classification of the luxury upon which the stamp is to be affixed.

~~C. The official stamps shall be obtainable from the commission by wholesalers or retailers by purchase at ninety-five per cent of the face price thereof for stamps to be affixed to all malt extracts, or derivatives or combinations thereof and at ninety-eight and one-half per cent of the face value thereof for stamps to be affixed to packages of cigarettes. Any wholesaler or retailer who qualifies may make payment for the official stamps on or before the twentieth day of the month next following a purchase of official stamps. A licensed wholesaler or retailer, to qualify, shall furnish a bond of a surety company qualified to do business within the state, in an amount equal to two and one-half times the amount of the monthly stamp purchases and conditioned upon payment within the time prescribed.~~

C. OFFICIAL STAMPS TO BE AFFIXED TO ALL MALT EXTRACTS, OR DERIVATIVES OR COMBINATIONS THEREOF, SHALL BE OBTAINABLE FROM THE COMMISSIONER BY WHOLESALERS OR RETAILERS BY PURCHASE AT NINETY-FIVE PER CENT OF THE FACE VALUE THEREOF.

D. THE OFFICIAL STAMPS TO BE AFFIXED TO PACKAGES OF CIGARETTES SHALL BE OBTAINABLE FROM THE COMMISSION BY EACH WHOLESALER AND RETAILER BY PURCHASE AT THE FOLLOWING RATES:

1. NINETY-SIX PER CENT OF THE FACE VALUE FOR THE FIRST THIRTY THOUSAND DOLLARS WORTH OF STAMPS PURCHASED BY HIM IN ANY MONTH,

2. NINETY-SEVEN PER CENT OF THE FACE VALUE FOR THE SECOND THIRTY THOUSAND DOLLARS WORTH OF STAMPS PURCHASED BY HIM IN ANY MONTH, AND

3. NINETY-EIGHT PER CENT OF THE FACE VALUE ON ALL STAMPS IN EXCESS OF SIXTY THOUSAND DOLLARS PURCHASED BY HIM IN ANY MONTH.

E. SUBJECT TO THE PROVISIONS OF SECTION 42-1207.01, A LICENSED WHOLESALER OR RETAILER WHO FURNISHES A BOND OF A SURETY COMPANY QUALIFIED TO DO BUSINESS WITHIN THE STATE, IN AN AMOUNT EQUAL TO TWO AND ONE-HALF TIMES THE AMOUNT OF HIS CURRENT MONTHLY STAMP PURCHASES AND CONDITIONED UPON THE PAYMENT WITHIN THE TIME PRESCRIBED, MAY MAKE PAYMENT FOR THE OFFICIAL STAMP ON OR BEFORE THE TWENTIETH DAY OF THE MONTH NEXT FOLLOWING HIS PURCHASE OF AN OFFICIAL STAMP. ALL OTHER WHOLESALERS AND RETAILERS SHALL PAY FOR EACH STAMP AT THE TIME OF PURCHASE.

Sec. 2. Section 42-1211, Arizona Revised Statutes, is amended to read:

42-1211. **Meter stamp machines; prepayment of tax; inspection; redemption**

A. The commission may, if it determines that it is practicable to affix stamps by an impression made by the use of metering machines, in lieu of supplying stamps under the provisions of section 42-1207, authorize a licensed wholesaler or retailer to use any metering machine approved by it.

The machine shall be sealed by the commission before it is used, and it shall be used in accordance with regulations prescribed by the commission. Tax meter stamps imprinted by a metering machine shall set forth plainly the denomination of the stamps and such other legends as may be prescribed by the commission in lieu of facsimile signature as set forth in section 42-1207.

~~B. Any licensed wholesaler or retailer authorized by the commission to affix stamps to packages or individual containers by means of a metering machine shall make a prepayment at ninety eight and one half per cent for cigarette products.~~

B. STAMPS TO BE AFFIXED BY A METERING MACHINE IMPRESSION SHALL BE PAID FOR AT THE SAME RATES AND IN THE SAME MANNER AS STAMPS SOLD PURSUANT TO SECTION 42-1207, AND SHALL BE DEEMED TO HAVE BEEN PURCHASED WHEN REGISTERED ON THE MACHINE. The commission shall cause each metering machine approved by it to be read and inspected at regular quarterly intervals.

C. The commission shall redeem, under regulations approved by it, the unused amount of tax for which any meter is registered, and pay for it from funds collected under this article.

~~D. Any licensed wholesaler or retailer who qualifies may make payment for the amount of tax for which the meter register is set on or before the twentieth day of the month next following the month in which the stamps were affixed by the metering machine. A licensed wholesaler or retailer, to qualify, shall furnish a bond of a surety company qualified to do business within the state, in an amount equal to two and one half times the amount of the monthly amount of tax for which the meter is set and conditioned upon payment within the time prescribed.~~

Sec. 3. **Effective date**

The provisions of this act shall become effective on July 1, 1973.

Approved by the Governor–March 8, 1973

Filed in the Office of the Secretary of State–March 8, 1973

LAWS OF ARIZONA

CHAPTER 9

House Bill 2089

AN ACT

RELATING TO PUBLIC HEALTH; PROVIDING FOR TRANSFER OF THE STATE SANATORIUM PROPERTY TO THE BOARD OF CRIPPLED CHILDREN'S SERVICES TO PROVIDE HOSPITAL CARE FOR STATE CHILDREN'S SERVICES; AMENDING TITLE 36, CHAPTER 6, ARTICLE 6, ARIZONA REVISED STATUTES, BY ADDING SECTION 36-712; AMENDING SECTION 36-718, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 6, ARTICLE 6, ARIZONA REVISED STATUTES, BY ADDING SECTION 36-719; AMENDING SECTION 46-503, ARIZONA REVISED STATUTES; REPEALING TITLE 36, CHAPTER 2, ARTICLE 3, ARIZONA REVISED STATUTES, AND MAKING APPROPRIATIONS.

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

Section 1. Title 36, chapter 6, article 6, is amended by adding section 36-712, to read:

36-712. **Administration by the department**

THE DEPARTMENT SHALL:

1. OWN AND CONTROL ALL PERSONAL PROPERTY OR INTEREST THEREIN WHICH IS DEVOTED AND USED BY THE TUBERCULOSIS CONTROL OFFICER FOR PURPOSES OF THIS ARTICLE.

2. BE THE OFFICIAL CUSTODIAN OF ALL FILES AND RECORDS WHICH BELONG TO OR WERE KEPT AT THE ARIZONA STATE SANATORIUM PRIOR TO THE SANATORIUM BEING CONVERTED TO A HOSPITAL FOR CRIPPLED CHILDREN.

3. BE THE OFFICIAL STATE AGENCY TO RECEIVE FOR DEPOSIT IN AN APPROPRIATE ACCOUNT OF THE PUBLIC HEALTH FUND AND ADMINISTER AND EXPEND ANY FUNDS GRANTED, CONTRIBUTED OR MADE AVAILABLE BY THE FEDERAL GOVERNMENT, APPROPRIATED BY THE STATE OR RECEIVED FROM OTHER SOURCES FOR THE TREATMENT, PREVENTION OR CONTROL OF

TUBERCULOSIS. SUCH FUNDS ARE SUBJECT TO THE PROVISIONS OF TITLE 35, CHAPTER 1, ARTICLE 4, AND PERIODIC REVIEW BY THE JOINT LEGISLATIVE BUDGET COMMITTEE.

Sec. 2. Section 36-718, Arizona Revised Statutes, is amended to read:

36-718. **Contracting for care of tuberculous persons**

The commissioner may, with funds available under section ~~36-262~~ 36-719, contract ~~with any institution~~ for the care ~~in that institution~~ of any tuberculous person. ~~No contracts shall be entered into unless the state sanatorium reaches an average daily patient census of one hundred twenty-five patients on a thirty-day average.~~ SUCH CONTRACTS SHALL PROVIDE THAT THE FUNDS MAY BE UTILIZED ONLY WHEN FUNDS FROM MEDICAL INSURANCE, IF ANY, OF AN INDIVIDUAL PATIENT ARE EXHAUSTED OR INSUFFICIENT TO PURCHASE THE MEDICAL OR INSTITUTIONAL CARE HE REQUIRES.

Sec. 3. Title 36, chapter 6, article 6, Arizona Revised Statutes, is amended by adding section 36-719, to read:

36-719. **Tuberculosis care fund**

THERE IS ESTABLISHED A TUBERCULOSIS CARE FUND CONSISTING OF APPROPRIATIONS AND OTHER MONIES AVAILABLE TO AND DESIGNATED BY THE DEPARTMENT FOR THE PURPOSE OF PROVIDING MEDICAL AND INSTITUTIONAL CARE OF TUBERCULOUS PERSONS. THE ASSISTANT DIRECTOR FOR THE DIVISION OF FINANCE OR HIS SUCCESSOR SHALL RECEIVE FUNDS, INCLUDING FUNDS FROM MEDICAL INSURANCE OF INDIVIDUAL PATIENTS, AND DISBURSE THE MONIES IN THE FUND UPON CLAIMS SIGNED BY SUCH ASSISTANT DIRECTOR OR SUCH OTHER PERSONS DESIGNATED BY HIM. ANY UNEXPENDED BALANCE OF SUCH MONEY SHALL NOT REVERT TO THE GENERAL FUND AT THE END OF THE FISCAL YEAR. FUNDS APPROPRIATED OR OTHERWISE AVAILABLE TO THE DEPARTMENT FOR TUBERCULOSIS CONTROL PURPOSES SHALL NOT BE DEPOSITED IN THE TUBERCULOSIS CARE FUND.

Sec. 4. Section 46-503, Arizona Revised Statutes, is amended to read:

46-503 **Powers and duties**

A. The state board of crippled children's services shall:

1. Employ a full or part-time medical director and a full or part-time administrator who shall have such titles and duties as shall be fixed by the board. Compensation of the medical director and the administrator shall be as determined pursuant to section 38-611.

2. Supervise, control, and establish policies for the state board of crippled children's services.

3. Adopt all rules, regulations and policies for the operation of a crippled children's program.

4. Establish and maintain a uniform classification and compensation plan under which the board shall operate.

5. Employ such medical and other staff as may be needed, including resident physicians at the hospital, whose compensation shall be as determined pursuant to section 38-611.

6. Establish and administer a program of service for children who are crippled or who are suffering from conditions which lead to crippling. The program shall provide for:

(a) Development, extension and improvement of services for locating such children.

(b) Furnishing of medical, surgical, corrective and other services and care.

(c) Furnishing of facilities for diagnosis hospitalization and after care.

(d) Supervision of the administration of services in the program which are not administered directly by the board.

(e) The extension and improvement of any services included in the program of services for crippled children as required by this section.

(f) Cooperation with medical, health, nursing and welfare groups and organizations and with any agency of the state charged with administration of laws providing for vocational rehabilitation of physically handicapped children.

(g) Cooperation with the federal government through its appropriate agency or instrumentality in developing, extending and improving services for crippled children.

(h) Receipt and expenditure of funds made available to the state board for services to crippled children by the federal government, the state or its political subdivisions, or from other sources excluding monies received from parents or guardians for the care of children.

(i) Carrying on of research and compiling of statistics.

(j) Making necessary expenditures in connection with the duties provided herein.

(k) Establishing and maintaining safeguards relating to the confidential aspect of medical records.

(l) Operation of the crippled children's hospital as a part of the essential services to crippled children.

(m) An annual report of the operations and administration of the board not later than four months after the close of the fiscal year.

(n) Acceptance and use of federal funds for crippled children's services at the discretion of the board and subject to any limitations imposed by the annual state appropriation bill.

(o) Such other duties and responsibilities found necessary to the effective operation of a program for crippled children.

7. Deposit in the state general fund all monies received from parents or guardians for the care of children.

B. THE STATE BOARD OF CRIPPLED CHILDREN'S SERVICES MAY, SUBJECT TO AVAILABLE SPACE AND APPROPRIATION THEREFOR, PROVIDE HOSPITAL SERVICES AND CARE FOR CHILD PATIENTS OF OTHER STATE AGENCIES.

Sec. 5. **Repeal**

Title 36, chapter 2, article 3, Arizona Revised Statutes, is repealed.

Sec. 6. **Transfer of equipment and facilities**

A. All equipment, not removed by the state department of health for the treatment and care of tuberculous persons, the facilities previously used as the Arizona state sanatorium and the real property more particularly described as:

A parcel of land in the SW¼ of section 10, T. 1 N., R. 4 E., G.S.R. Meridian, Arizona, more particularly described as follows:

Beginning at a brass cap marking the northwest corner of the SW¼SW¼ of said section 10, thence S o° 21' E, assumed bearing (S 1° 12' E according to GLO supplemental plat of section 9, T. 1 N., R. 4 E. accepted January 14, 1935) along the west line of said section 10, 418.5 feet to a ½ inch iron bar; and the true point of beginning; thence N 55° 49' E, 215.8 feet to a ½ inch iron bar; thence N 61° 49' E, 92.6 feet to a ½ inch iron bar; thence N 32° 09' E, 217.7 feet to a ½ inch iron bar; thence N 40° 42' E, 262.4 feet to a ½ inch iron bar; thence N 38° 14' E, 265.6 feet to a ½ inch iron bar; thence N 8° 44' E, 147.8 feet to a ½ inch iron bar; thence N 66° 51' E, 146.2 feet to a ½ inch iron bar; thence N 47° 19' E, 199.5 feet to a ½ inch iron bar; thence S 64° 08' E, 717.5 feet to a ½ inch iron bar; thence S 26° 40' 30" W, 588.25 feet to a ½ inch iron bar from which a brass cap marking the northeast corner of the SW¼SW¼ of said section 10 bears N 24° 20' 30" W, 186.07 feet distant; thence N 79° 05' 30" W, 178.8 feet to a ½ inch iron bar; thence S 85° 11' W, 212.6 feet to a ½ inch iron bar; thence S 34° 31' W, 431.0 feet to a ½ inch iron bar; thence S 75° 46' W, 511.5 feet to a ½ inch iron bar; thence N 52° 08' W, 341.6 feet to the true point of beginning and containing 22.29 acres, more or less,

shall be transferred to the Arizona state board of crippled children's services on July 1, 1973.

B. All equipment owned by the state board of crippled children's services and presently located in the crippled children's hospital facility at 1825 East Garfield, Phoenix, Arizona, shall be transferred for use by the Arizona state board of crippled children's services to the facility formerly used as the Arizona state sanatorium on or before July 1, 1973.

Sec. 7. **Appropriations; purposes; exemption**

A. Funds available in department of finance account no. 29-235-901-90, tuberculous patients, shall be deposited in the tuberculosis care fund and be available to the department for expenditure under section 36-718, Arizona Revised Statutes.

B. The sum of twenty thousand, nine hundred seventeen dollars is appropriated to the department of health for the purpose of administering the provisions of this act.

C. The sum of two thousand dollars is appropriated to the state department of health for the removal and transfer of patients, records and equipment from the Arizona state sanatorium to other facilities.

D. The sum of six thousand dollars is appropriated to the Arizona state board of crippled children's services for the removal and transfer of patients and equipment from 1825 East Garfield, Phoenix, Arizona, to the facility at 200 North Curry Road, Tempe, Arizona.

E. The appropriations made by this section are exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to the lapsing of appropriations except that any funds from the appropriations made in subsections C and D unexpended and unencumbered at the close of June 30, 1974, shall revert to the state general fund.

Sec. 8. **Reallocation of appropriation; lapsing of appropriation**

A. The sums appropriated to the Arizona state board of crippled children's services under the provision of laws of 1972, chapter 217, subdivision 4, in the following amounts:

Twenty-ton air-conditioner	$ 20,000.00
Five-ton air conditioner	2,000.00
Enlargement of clinic area	253,584.00
Total appropriation	$275,584.00

are reallocated to the Arizona state board of crippled children's services to be available for the conversion of the facility formerly used as the Arizona state sanatorium to a crippled children's hospital. All unexpended and unencumbered funds may be used by the Arizona state board of crippled children's services for such purpose subject to approval of the legislative joint budget committee.

B. The appropriation made in subsection A shall not lapse until the purpose for which the appropriation is made is accomplished or abandoned unless the appropriation stands until July 1, 1976, without an expenditure therefrom or an encumbrance thereon.

Sec. 9. **Emergency**

To preserve the public peace, health and safety it is necessary that this act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.

Approved by the Governor–March 8, 1973

Filed in the Office of the Secretary of State–March 8, 1973

LAWS OF ARIZONA

CHAPTER 10

House Bill 2064

AN ACT

RELATING TO MOTOR VEHICLES; PRESCRIBING FEES FOR MOVEMENT OF EXCESS SIZE AND WEIGHT VEHICLES; PRESCRIBING SIZE LIMITATIONS FOR MOBILE HOMES WHICH CAN BE MOVED ON HIGHWAYS PURSUANT TO EXCESS SIZE PERMIT, AND AMENDING SECTION 28-1011, ARIZONA REVISED STATUTES.

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

Section 1. Section 28-1011, Arizona Revised Statutes, is amended to read:

28-1011. **Permits for excess size and weight; fees**

A. Subject to subsection J of this section, the commission with respect to highways under its jurisdiction and local authorities with respect to highways under their jurisdiction may in their discretion upon application in writing and good cause being shown therefor, issue a special permit in writing authorizing the applicant to operate or move a vehicle or combination of vehicles of a size or weight of vehicle or load exceeding the maximum specified in this article or otherwise not in conformity with the provisions of this chapter upon any highway under the jurisdiction of the party granting the permit and for the maintenance of which the party is responsible. THE PERMIT SHALL BE VALID ONLY FOR A SINGLE TRIP AND LOAD.

B. The application for any such permit shall specifically describe the vehicle or vehicles and load to be operated or moved and the particular highways for which permit to operate is requested. ~~, and whether the permit is requested for a single trip or for continuous operation.~~

C. Subject to subsection J of this section, the commission or local authority is authorized to issue or withhold the permit at its discretion. If the permit is issued, the commission or local authority may ~~limit the number of trips,~~ establish seasonal or other time limitations within which the vehicles described may be operated on the highways indicated or otherwise limit or prescribe conditions of operation of the vehicle or vehicles, when necessary to assure against undue damage to the road

foundations, surfaces or structures, and may require such undertaking or other security as may be deemed necessary to compensate for any injury to any roadway or road structure.

D. When a special permit is required by the commission and by one or more authorities to move a vehicle or combination of vehicles, the applicant for such a permit or permits shall be required to pay a permit fee only to the commission and shall not be required to pay a permit fee to any local authority.

E. When a special permit is required by more than one local authority to move a vehicle or combination of vehicles, and where such permit is not required by the commission, the applicant shall be required to pay a permit fee only to the local authority which has jurisdiction of the streets and highways where the movements of the vehicle or combination of vehicles shall originate.

F. Such a permit shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any police officer or authorized agent of any authority granting the permit, and no person shall violate any of the terms or conditions of the special permit.

G. ~~The following fees~~ A FIVE DOLLAR FEE shall be assessed for each permit issued in accordance with the provisions of this section~~:~~.

~~1. For a single trip and one load, five dollars.~~

~~2. For thirty days, ten dollars.~~

H. No fees shall be assessed for any permit issued in accordance with the provisions of this section for the movement of vehicles or combinations of vehicles owned by the United States government, the state, any county, city or town.

I. The rules and regulations for movement of equipment without a permit for the purpose of repair or for local operation shall be as prescribed by the commission.

J. No permit may be issued under this section for the moving of a mobile home unless the applicant supplies evidence of payment of all ad valorem taxes applicable or a clearance from the assessor of the county in which the mobile home is located. The clearance shall be valid for a period not to exceed thirty days and shall be issued by the assessor when he determines that all fees and ad valorem taxes applicable to the mobile home pursuant

to title 42, chapter 3, article 3 have been paid as of the date of application. THE PROVISIONS OF THIS SUBSECTION SHALL NOT LIMIT THE DISCRETION OF THE COMMISSION OR LOCAL AUTHORITY TO DENY AN APPLICATION FOR A PERMIT FOR THE MOVING OF A MOBILE HOME FOR REASONS OTHER THAN NONPAYMENT OF AD VALOREM TAXES.

K. A PERMIT MAY BE ISSUED, SUBJECT TO THE PROVISIONS OF THIS SECTION, FOR MOVING A MOBILE HOME ON ITS OWN CHASSIS, AXLES AND WHEELS PROVIDED THAT SUCH MOBILE HOME DOES NOT EXCEED FOURTEEN FEET IN WIDTH, THIRTEEN FEET SIX INCHES IN HEIGHT AND SEVENTY FEET IN LENGTH AND IN COMBINATION WITH A TRUCK TRACTOR OR OTHER TOWING VEHICLE DOES NOT EXCEED EIGHTY-FIVE FEET IN LENGTH.

L. THE RULES AND REGULATIONS FOR THE MOVEMENT OF MOBILE HOMES PURSUANT TO A PERMIT ISSUED BY THE COMMISSION OR LOCAL AUTHORITY SHALL BE PRESCRIBED BY THE COMMISSION.

Sec. 2. **Emergency**

To preserve the public peace, health and safety it is necessary that this act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.

Approved by the Governor–March 14, 1973

Filed in the Office of the Secretary of State–March 15, 1973

CHAPTER 11

House Bill 2118

AN ACT

MAKING AN APPROPRIATION TO THE DEPARTMENT OF PUBLIC BUILDINGS MAINTENANCE FOR PURCHASE OF REAL PROPERTY IN TUCSON.

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

Section 1. **Appropriation; purpose**

The sum of five hundred thousand dollars is appropriated to the department of public buildings maintenance, or its successor, to be available to purchase real property situated in the city of Tucson for necessary expansion of state services.

Sec. 2. **Exemption**

The appropriation made in section 1 is exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations.

Sec. 3. **Emergency**

To preserve the public peace, health and safety it is necessary that this act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.

Approved by the Governor–March 16, 1973

Filed in the Office of the Secretary of State–March 16, 1973

CHAPTER 12

House Bill 2039

AN ACT

MAKING A SUPPLEMENTAL APPROPRIATION TO THE DEPARTMENT OF PUBLIC SAFETY.

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

Section 1. **Appropriation; purpose; reversion**

A. In addition to the appropriations made by chapter 32 and chapter 216, subdivision 87, Laws of 1972, the sum of four hundred seventy thousand six hundred dollars is appropriated to the department of public safety, of which three hundred seventy-six thousand five hundred dollars is appropriated from the state highway fund and the sum of ninety-four

thousand one hundred dollars is appropriated from the general fund, to be immediately available for payment of increased employer contributions to the public safety personnel retirement fund required by recently enacted amendments to title 38, chapter 5, article 4, Arizona Revised Statutes.

B. Of the funds appropriated in subsection A, twenty per cent of the funds remaining unexpended and unencumbered on June 30, 1973 shall revert to the state general fund and eighty per cent shall revert to the state highway fund.

Sec. 2. **Emergency**

To preserve the public peace, health and safety it is necessary that this act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.

Approved by the Governor–March 20, 1973

Filed in the Office of the Secretary of State–March 20, 1973

CHAPTER 13

House Bill 2137

AN ACT

MAKING A SUPPLEMENTAL APPROPRIATION TO THE STATE PERSONNEL COMMISSION FOR ADMINISTERING HEALTH AND ACCIDENT INSURANCE PROGRAM.

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

Section 1. **Appropriation; purposes**

In addition to the appropriation made under Laws 1972, chapter 216, subdivision 16, there is appropriated to the state personnel commission the sum of fifty-seven thousand nine hundred dollars to be used to reimburse the state personnel commission for monies expended or encumbered in administering the provisions of section 38-651, Arizona Revised Statutes, relating to health and accident insurance for officers and employees of the state, and to administer the provisions of section 38-651, Arizona Revised Statutes, for the duration of the fiscal year ending June 30, 1973.

Sec. 2. **Emergency**

To preserve the public peace, health and safety it is necessary that this act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.

Approved by the Governor–March 20, 1973

Filed in the Office of the Secretary of State–March 20, 1973

CHAPTER 14

House Bill 2146

AN ACT

MAKING A SUPPLEMENTAL APPROPRIATION TO THE CORPORATION COMMISSION FOR USE OF THE TARIFF AND RATE DIVISION.

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

Section 1. **Appropriation; purposes**

In addition to the appropriation made under Laws 1972, chapter 216, subdivision 49, there is appropriated to the corporation commission, for use of the tariff and rate division, the sum of nine thousand three hundred five dollars to be available for the following purposes in the following amounts:

1. Personal services	$6,060
2. Travel-state	2,070
3. Operating expenditures	915
4. Capital outlay-equipment	260
Total	$9,305

Sec. 2. **Emergency**

To preserve the public peace, health and safety it is necessary that this act

become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.

Approved by the Governor–March 20, 1973

Filed in the Office of the Secretary of State–March 20, 1973

CHAPTER 15

House Bill 2180

AN ACT

MAKING AN APPROPRIATION TO DEPARTMENT OF FINANCE FOR INSTALLATION OF ELEVATORS IN HOUSE AND SENATE WINGS.

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

Section 1. **Appropriation; purpose**

The sum of two hundred thousand dollars is appropriated to the department of finance, or its successor, to be available to install two new overhead traction-type elevators, and related appurtenances, in the house wing and the senate wing. Each elevator is to be installed adjacent to the existing elevator in each building.

Sec. 2. **Lapsing of appropriation**

The appropriation made by this act shall not lapse until the purpose for which the appropriation is made shall have been accomplished or abandoned unless the sum appropriated shall have stood until June 30, 1975 without an expenditure therefrom or an encumbrance thereon.

Sec. 3. **Emergency**

To preserve the public peace, health and safety it is necessary that this act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.

Approved by the Governor–March 20, 1973

Filed in the Office of the Secretary of State–March 20, 1973

LAWS OF ARIZONA

CHAPTER 16

House Bill 2012

AN ACT

RELATING TO PARTNERSHIP; PRESCRIBING REQUIREMENTS FOR FORMATION OF LIMITED PARTNERSHIP, AND AMENDING SECTION 29-302, ARIZONA REVISED STATUTES.

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

Section 1. Section 29-302, Arizona Revised Statutes, is amended to read:

29-302. **Formation**

A. Two or more persons desiring to form a limited partnership shall:

1. Sign and ~~swear to~~ ACKNOWLEDGE a certificate, which shall state:

(a) The name of partnership.

(b) The character of the business.

(c) The location of the principal place of business.

(d) The name and place of residence of each member; general and limited partners being respectively designated.

(e) The term for which the partnership is to exist.

(f) The amount of cash and a description of and the agreed value of the other property contributed by each limited partner.

(g) The additional contributions, if any, agreed to be made by each limited partner and the times at which or events on the happening of which they shall be made.

(h) The time, if agreed upon, when the contribution of each limited partner is to be returned.

(i) The share of the profits or the other compensation by way of income which each limited partner shall receive by reason of his contribution.

(j) The right, if given, of a limited partner to substitute an assignee as contributor in his place, and the terms and conditions of the substitution.

(k) The right, if given, of the partners to admit additional limited partners.

(l) The right, if given, of one or more of the limited partners to priority over other limited partners, as to contributions or as to compensation by way of income, and the nature of such priority.

(m) The right, if given, of the remaining general partner or partners to continue the business on the death, retirement or insanity of a general partner.

(n) The right, if given, of a limited partner to demand and receive property other than cash in return for his contribution.

2. File for record the certificate in the office of the county recorder of the county in which the principal place of business is situated.

B. A limited partnership is formed if there has been substantial compliance in good faith with the requirements of subsection A.

Approved by the Governor–March 20, 1973

Filed in the Office of the Secretary of State–March 20, 1973

CHAPTER 17

House Bill 2086

AN ACT

RELATING TO ARIZONA STATE PARKS BOARD; PROVIDING FOR LAPSING OF CERTAIN APPROPRIATIONS MADE TO ARIZONA STATE PARKS BOARD FOR PURCHASE OF CERTAIN LANDS, AND AMENDING LAWS 1972, CHAPTER 209.

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

Section 1. Laws 1972, chapter 209, section 7, is amended to read:

Sec. 7. **Lapsing of appropriations**

A. The appropriations made by the terms of sections ~~2,~~ 4 and 6 of this act shall not lapse until the purposes for which the appropriations are made have been accomplished or abandoned unless the appropriations have stood until June 30, ~~1973~~ 1975, without an expenditure therefrom or an encumbrance thereon.

B. THE APPROPRIATION MADE BY THE TERMS OF SECTION 2 OF THIS ACT SHALL NOT LAPSE UNTIL THE PURPOSE FOR WHICH THE APPROPRIATION IS MADE HAS BEEN ACCOMPLISHED OR ABANDONED UNLESS THE APPROPRIATION HAS STOOD UNTIL JUNE 30, 1973, WITHOUT AN EXPENDITURE THEREFROM OR AN ENCUMBRANCE THEREON.

Sec. 2. **Emergency**

To preserve the public peace, health and safety it is necessary that this act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.

Approved by the Governor–March 20, 1973

Filed in the Office of the Secretary of State–March 20, 1973

CHAPTER 18

House Bill 2106

AN ACT

RELATING TO MOTOR VEHICLES; PROVIDING FOR QUARTERLY REPORTS AND PAYMENTS BY USERS OF USE FUEL; PRESCRIBING AMOUNT OF SURETY BOND, AND AMENDING SECTIONS 28-1571 AND 40-644, ARIZONA REVISED STATUTES.

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

Section 1. Section 28-1571, Arizona Revised Statutes, is amended to read:

28-1571. **Reports**

A. Every licensee under this article, on or before the twenty-fifth day of each month, shall file with the superintendent, and on forms prescribed by the superintendent, a report stating the amount of use fuel sold or used by the vendor or user during the next preceding calendar month, and other information the superintendent requires. The report shall not be under oath but shall contain or be accompanied by a written declaration that it is made under penalties of perjury. Reports shall be filed with the superintendent for each calendar month, even though no fuel was used, or tax is due, for the calendar month.

B. Failure to receive the authorized report forms does not relieve a licensee from the obligation of submitting a report to the superintendent, but the licensee may make a written report to the superintendent setting forth all information required on the prescribed form. The report, together with remittance payable to the motor vehicle division for the amount of tax, penalty, interest or other fees due shall be filed with the superintendent on or before the due date and will be accepted in lieu of a report on the prescribed form.

C. Any person whose sole use of use fuel is for the propulsion of a privately operated passenger automobile is excused from the filing of a use fuel tax report on the condition that all fuel used in this state, except fuel brought into the state in the fuel tank of the vehicle, is purchased from a vendor in this state who collects the tax from the user when delivering the fuel into the fuel tank of the user's automobile. A privately operated passenger automobile includes a station wagon, but does not include a motor vehicle used for the transportation of persons for hire or for compensation or designed, used, or maintained primarily for the transportation of property. A pickup truck, exempt from registration weight fees under section 28-206 is deemed to be a privately operated passenger automobile for purposes of this section. A user may be relieved of the filing of the use fuel tax report even though he operates more than one passenger automobile using use fuel, whether or not the automobile is, or the automobiles are, used for pleasure or in the business or profession, providing that the user is not also using use fuel in other motor vehicles which are not privately operated passenger automobiles. Notwithstanding that a user's sole use of such fuel is in a privately operated automobile, he shall continue to file the tax report if he is using such fuels from bulk storage of use fuel on which the tax has not been paid at the time of purchase or acquisition.

D. The superintendent may exempt a user from the monthly report requirement if the user holds a valid use fuel tax license, establishes to the

satisfaction of the superintendent that his operations are exclusively intrastate, and that he is not a purchaser of use fuel in bulk or in any other manner whereby payment of the tax is not made to the vendor at the time of purchase, whereupon, the superintendent may issue a special type of cab card, to be displayed in the vehicle or vehicles of the exempt user at all times. The exemption thus granted shall remain in effect until such time as any condition of the exemption no longer prevails. A user who has been granted exemption from the monthly report requirements pursuant to this subsection who leaves the state may, upon his re-entry into the state, be required to purchase a single trip use fuel tax permit, with the fee computed in the same manner as prescribed in section 28-1559 for an unlicensed interstate user.

E. The superintendent, if he deems it necessary in order to insure payment of the tax imposed by this article, or to facilitate the administration of this article, may require reports and payment of the tax to be made for other than, and in addition to monthly periods. A vendor may apply to the superintendent for approval to file reports and pay taxes on a weekly basis, whereupon the superintendent may, notwithstanding the provisions of section 28-1566, subsection A, establish the amount of surety bond required in the sum of approximately six times the highest weekly tax estimated by the superintendent to become due from such vendor.

F. TO FACILITATE ADMINISTRATION OF THIS ARTICLE, THE SUPERINTENDENT MAY PERMIT A LICENSED USER TO FILE REPORTS AND PAY TAXES EVERY THIRD MONTH FOR HIS OPERATIONS AND USE OF FUEL DURING THE PRECEDING THREE CALENDAR MONTHS. WHEN SUCH AN OPTION IS AUTHORIZED, THE AMOUNT OF SURETY BOND REQUIRED IN SECTION 28-1566 MAY BE INCREASED PROPORTIONATELY WITH THE INCREASED LIABILITY ACCRUED BY THE USER.

Sec. 2. Section 40-644, Arizona Revised Statutes, is amended to read:

40-644. **Statement required to be filed by carrier when tax paid; filing copies of reports made to adjoining states**

A. When the taxes prescribed by section 40-641 are paid, a sworn statement shall be filed therewith by each motor carrier on forms prescribed by the superintendent, showing:

1. The receipts of the carrier for each month on business beginning and ending in the state.

2. The gross receipts from all business passing through, into, or out of the state.

3. The number of vehicles operated in the state.

4. Total mileage of operations in the state.

5. Other information the superintendent requires.

B. If any person operates as a common motor carrier of both property and passengers or as a contract motor carrier of both property and passengers, the carrier shall file separate reports on each of the operations.

C. Every motor carrier shall also, within ten days from the date of filing any return or report with any officer of any state adjoining this state on operations as a motor carrier of passengers or property between any such state and this state, file with the superintendent a copy of such return or report.

D. TO FACILITATE ADMINISTRATION OF THIS ARTICLE, THE SUPERINTENDENT MAY PERMIT A MOTOR CARRIER TO FILE REPORTS AND PAY TAXES EVERY THIRD MONTH FOR HIS OPERATIONS DURING THE PRECEDING THREE CALENDAR MONTHS. WHEN SUCH AN OPTION IS AUTHORIZED, THE AMOUNT OF SURETY BOND REQUIRED IN SECTION 40-642 MAY BE INCREASED PROPORTIONATELY WITH THE INCREASED LIABILITY ACCRUED BY THE USER.

Approved by the Governor–March 20, 1973

Filed in the Office of the Secretary of State–March 20, 1973

CHAPTER 19

Senate Bill 1102

AN ACT

RELATING TO AERONAUTICS; PROVIDING THAT ALL MONIES RECEIVED BY DEPARTMENT OF AERONAUTICS BE DEPOSITED FOR USE ON AIRPORTS, AND AMENDING SECTION 2-412, ARIZONA REVISED STATUTES.

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

Section 1. Section 2-412, Arizona Revised Statutes, is amended to read:

2-412. **Distribution of tax**

Monies received from the taxes imposed under the terms of this chapter shall, not later than the fifteenth day of each month, be transmitted by the Arizona department of Aeronautics to the state treasurer who shall ~~promptly distribute the funds as follows:~~

~~1. Twenty-five per cent to the general fund of the state.~~

~~2. Seventy-five per cent to be deposited~~ DEPOSIT SUCH FUNDS in the state aviation fund for use in the construction, development and improvement of airports.

Approved by the Governor–March 22, 1973

Filed in the Office of the Secretary of State–March 22, 1973

CHAPTER 20

House Bill 2093

AN ACT

AMENDING AN APPROPRIATION MADE TO STATE DEPARTMENT OF HEALTH BY LAWS 1972, CHAPTER 196.

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

Section 1. Laws 1972, chapter 196, is amended to read:

Section 1. **Appropriation; purpose**

The sum of one million five hundred thousand dollars is appropriated to the state department of health to become immediately available for allocation as state grants to ~~match contributions required of~~ political subdivisions or other eligible applicants of the state in the construction of water pollution control facilities. ~~Under the grant program provided in the Federal Water Pollution Control Act (33 U.S.C. 466, et seq).~~

Sec. 2. **Exemption; reversion of funds**

The appropriation made by this act is exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations, except that any funds thereof remaining unexpended and unencumbered at the close of June 30, 1974 shall revert to the state general fund.

Sec. 3. **Emergency**

To preserve the public peace, health and safety it is necessary that this act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.

Approved by the Governor–March 23, 1973

Filed in the Office of the Secretary of State–March 23, 1973

CHAPTER 21

Senate Bill 1084

AN ACT

RELATING TO PUBLIC OFFICERS AND EMPLOYEES; PRESCRIBING LIMITATIONS ON TERMS OF OFFICE FOR MEMBERS OF INVESTMENT ADVISORY COUNCIL OF THE STATE RETIREMENT SYSTEM, AND AMENDING SECTION 38-743.05, ARIZONA REVISED STATUTES.

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

Section 1. Section 38-743.05, Arizona Revised Statutes, is amended to read:

38-743.05. **Investment advisory council; qualifications; term; duties**

A. There shall be an investment advisory council consisting of five members to be appointed by the governor. At least two members shall be knowledgeable in equity investments and at least two shall be knowledgeable in fixed-income investments. Each member shall be appointed for a term of two years. Of the members first appointed two shall be appointed

to serve for a term ending January 1, 1971 and three each for a term ending one year thereafter. A member shall not serve more than ~~two consecutive~~ THREE consecutive TWO-YEAR terms. IN DETERMINING THE NUMBER OF CONSECUTIVE TERMS SERVED THE TERM ENDING JANUARY 1, 1971 SHALL NOT BE CONSIDERED.

B. Members shall receive no compensation for performing their duties, but shall receive travel expenses and subsistence as provided by law for other state officers.

C. The council shall meet at least quarterly and at least semi-annually with each of the investment-managers to review the investment portfolio and make recommendations to the investment management.

Sec. 2. **Emergency**

To preserve the public peace, health and safety it is necessary that this act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.

Approved by the Governor–March 26, 1973

Filed in the Office of the Secretary of State–March 26, 1973

CHAPTER 22

Senate Bill 1106

AN ACT

RELATING TO FIDUCIARIES; PRESCRIBING PERMITTED TERMS FOR GEOTHERMAL RESOURCE LEASES BY FIDUCIARIES, AND AMENDING SECTION 14-1052, ARIZONA REVISED STATUTES.

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

Section 1. Section 14-1052, Arizona Revised Statutes, is amended to read:

14-1052. **Hearing on petition to lease; appraisal; order; execution of lease**

A. At the time and place appointed to show cause, or at such time to which the hearing is postponed, the court, after proof of service or publication of the order to show cause, shall entertain the petition and any objection filed thereto, and shall hear witnesses as in other cases.

B. The court may appoint one or more, not exceeding three, disinterested persons to appraise the rental value of the premises.

C. If the court finds that it will be to the advantage of the estate to lease the whole or any portion of the property, an order shall be made directing the executor, administrator or guardian to make the lease. The order may prescribe the minimum rental, the terms and conditions and the term of the lease which, except for leases for oil and gas OR FOR GEOTHERMAL RESOURCES which may be for a longer term, shall not be for more than ten years, but leases, other than oil and gas OR GEOTHERMAL RESOURCE leases, may be entered into for a term longer than ten years if:

1. The executor, administrator or guardian, either alone or in conjunction with another, is the father, mother, son or daughter of the beneficiary or ward, and,

2. The lease includes a provision that reappraisal of the leased property may be made at the end of each ten-year period and, based on such reappraisal, adjustments may be made in the amount of rental payments, and,

3. The lease provides that at no time during the term thereof shall the rental be in an amount less than the rental during the first ten years of the lease.

D. After making the order to lease, the executor, administrator or guardian shall execute and deliver a lease to the premises for the term and period, and with the conditions, specified in the order, reciting in the lease that it is made by authority of the order, and giving the date of the order.

E. The lease demises and lets, at the rent, for the term and upon the conditions therein prescribed, the premises described therein.

F. Jurisdiction of the court to administer the estate of decedent or ward vests the court with jurisdiction to make the order for the lease, and the jurisdiction conclusively inures to the benefit of the lessee, his heirs and assigns.

G. No omission, error or irregularity in the proceedings shall impair or invalidate them, or the lease made in pursuance thereof.

Sec. 2. **Emergency**

To preserve the public peace, health and safety it is necessary that this act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.

Approved by the Governor–March 27, 1973

Filed in the Office of the Secretary of State–March 28, 1973

CHAPTER 23

House Bill 2065

AN ACT

RELATING TO COUNTIES; PROVIDING THAT SUPERVISORS MAY ESTABLISH FEES FOR PERMITS AND INSPECTIONS; EXEMPTING FIRST YEAR ENFORCEMENT COSTS FROM TEN PER CENT BUDGET LIMITATION; AMENDING SECTION 11-863, ARIZONA REVISED STATUTES, AND AMENDING TITLE 11, CHAPTER 6, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 11-867.

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

Section 1. Section 11-863, Arizona Revised Statutes, is amended to read:

11-863. **Contract by county and city for enforcement; rules and regulations; fees for permits**

A. Any county may contract with a city or town to provide for enforcement of such codes or rules and regulations adopted pursuant thereto.

B. The board may adopt necessary rules and regulations for the enforcement of any code adopted under this article, PROVIDED THAT

ANY SUCH RULES OR REGULATIONS RELATING TO INSPECTIONS SHALL REQUIRE THAT SUCH INSPECTIONS BE MADE AT THE EARLIEST REASONABLE TIME.

C. THE BOARD MAY ESTABLISH AND CHARGE REASONABLE FEES FOR PERMITS ISSUED AND INSPECTIONS MADE PURSUANT TO ANY CODE.

Sec. 2. Title 11, chapter 6, article 3, Arizona Revised Statutes, is amended by adding section 11-867, to read:

11-867. **Exemption from limitation**

THE PROVISIONS OF SECTION 42-304, RELATING TO THE TEN PER CENT LIMITATION IN BUDGET EXPENDITURES, SHALL NOT APPLY TO ANY EXPENDITURE BY A COUNTY IN THE FIRST FISCAL YEAR FOR ENFORCEMENT OF A BUILDING CODE ADOPTED PURSUANT TO THIS ARTICLE.

Approved by the Governor–March 30, 1973

Filed in the Office of the Secretary of State–March 30, 1973

CHAPTER 24

House Bill 2104

AN ACT

RELATING TO LIVESTOCK AND ANIMALS; AMENDING STATUTES RELATING TO CONTROL OF BRUCELLOSIS AND TUBERCULOSIS IN DAIRY AND BEEF ANIMALS; AMENDING SECTIONS 3-641, 3-643, 24-741, 24-743 AND 24-745, ARIZONA REVISED STATUTES, AND REPEALING SECTION 24-748, ARIZONA REVISED STATUTES.

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

Section 1. Section 3-641, Arizona Revised Statutes, is amended to read:

3-641. **Definitions**

In this article, unless the context otherwise requires:

1. "Calfhood vaccination" means an official vaccination given to a female dairy OR BEEF type animal at the age prescribed by the livestock sanitary board.

2. "Official vaccination" means a calfhood vaccination, with a vaccine approved by the livestock sanitary board, registered therewith and properly identified as such, given to a dairy type or beef animal at the age prescribed by the livestock sanitary board by an authorized veterinarian.

3. "Person" includes an individual, firm, corporation, company or association.

4. "Reactor" means an animal afflicted with brucellosis as determined by a test approved by the livestock sanitary board, except an officially calfhood vaccinated animal under ~~thirty months of age~~ THE AGE PRESCRIBED BY THE LIVESTOCK SANITARY BOARD.

5. "Ultimate consumer" means the person drinking or consuming milk or milk products.

6. "Dairy herd" means one or more dairy animals.

~~7. "State-designated modified certified brucellosis area" means a county or other areas designated by the livestock sanitary board in which the number of reactors does not exceed one per cent of the area cattle population over six months of age, excluding steers and spayed heifers, and five per cent of the herds.~~

Sec. 2. Section 3-643, Arizona Revised Statutes, is amended to read:

3-643. **Brucellosis test and vaccinations**

A. Female dairy AND BEEF calves ~~shall~~ MAY be officially vaccinated at the age prescribed and as directed by the livestock sanitary board.

B. All dairy herds of cattle and goats shall be tested for brucellosis at intervals as prescribed by the livestock sanitary board.

C. The ~~vaccinations and~~ testing as provided for in ~~subsections A and~~ SUBSECTION B of this section shall be made at the expense of the owner of the stock to the extent of ~~the cost of the vaccine, if there is no state or federal money available for such, and~~ the ordinary labor involved in the

~~vaccination and~~ testing of the cattle. The remainder of expense for veterinary and laboratory services performed by state or federal agencies shall be the obligation of the state or federal government as funds are made available.

Sec. 3. Section 24-741, Arizona Revised Statutes, is amended to read:

24-741. **Federal cooperation and agreements**

A. The livestock sanitary board may, for the purpose of eradicating tuberculosis of cattle in the state, cooperate with the ~~bureau of animal industry~~ ANIMAL AND PLANT HEALTH INSPECTION SERVICE of the United States department of agriculture. The board may, on behalf of the state, accept cooperative agreements promulgated by the ~~bureau~~ AGENCY under authority of the acts of congress to effect the eradication of tuberculosis in cattle.

B. The board may, as necessary to effectuate the terms of cooperative agreements, appoint veterinary inspectors to act with and under direction of the state veterinarian.

Sec. 4. Section 24-743, Arizona Revised Statutes, is amended to read:

24-743. **Determination of value of animal ordered destroyed; agreement by owner and inspector; failure to agree; memorandum**

A. When destruction of an animal ~~infected with tuberculosis~~ REACTING TO THE TUBERCULOSIS TEST is ordered, the inspector and the owner shall attempt to agree upon the value of the animal within the limit prescribed in this article. If agreement is reached, the inspector shall make a memorandum setting forth the date of the order to destroy the animal, a description of the animal, the place from which the animal was taken, from whom it was taken and the value agreed upon. The memorandum shall be signed by the inspector and the owner. One copy of the memorandum shall be delivered to the owner, the ~~bureau of animal industry~~ ANIMAL AND PLANT HEALTH INSPECTION SERVICE and the livestock sanitary board, and one copy shall be retained for record.

B. If an agreement upon the value of the animal is not reached, the inspector shall set the value and execute and deliver a memorandum like the memorandum provided for in subsection A, except that it shall recite the fact that the owner refused to agree to the value, or refused to join in the execution of the memorandum.

Sec. 5. Section 24-745, Arizona Revised Statutes, is amended to read:

24-745. **Right of owner to salvage value plus one third of difference between salvage and appraised value; claim; limitation**

A. After the salvage value has been received from disposition of the carcass, the amount received shall be paid to the owner of the animal and deducted from the appraised value of the animal, and the owner shall have a claim against the state for one third of the balance of the appraised value, subject to the limitations of this article.

B. Claims shall be presented to the livestock sanitary board accompanied by the memorandum of appraisal and the report disclosing the salvage sale and amount received therefrom. Claims shall be verified by the claimant, and paid as other claims against the state are paid.

~~C. No claim shall be allowed in excess of fifty dollars for a purebred animal nor twenty-five dollars for a grade stock animal.~~

C. CLAIMS SHALL BE ALLOWED ACCORDING TO AMOUNTS SCHEDULED BY BOARD REGULATION BUT NONE SHALL BE ALLOWED IN EXCESS OF ONE HUNDRED DOLLARS FOR A PUREBRED ANIMAL NOR FIFTY DOLLARS FOR A GRADE STOCK ANIMAL.

D. Presentation and allowance of a claim against the state shall not deprive the claimant of the right to present a claim for the same animal to the United States.

Sec. 6. **Repeal**

Section 24-748, Arizona Revised Statutes, is repealed.

Approved by the Governor–March 30, 1973

Filed in the Office of the Secretary of State–March 30, 1973

LAWS OF ARIZONA

CHAPTER 25

House Bill 2181

AN ACT

MAKING A SUPPLEMENTAL APPROPRIATION TO THE LIVESTOCK SANITARY BOARD.

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

Section 1. **Appropriation; purposes**

In addition to the appropriation made under Laws 1972, chapter 216, section 1, subdivision 55, the sum of sixteen thousand five hundred dollars is appropriated to the livestock sanitary board to be available for the purpose of publishing and issuing a brand book as provided in section 24-208, Arizona Revised Statutes, and automating the rerecording procedures required pursuant to section 24-204, Arizona Revised Statutes.

Sec. 2. **Exemption**

The appropriation made by this act is exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations, except that any monies of the appropriation remaining unexpended and unencumbered on June 30, 1974, shall revert to the state general fund.

Sec. 3. **Emergency**

To preserve the public peace, health and safety it is necessary that this act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.

Approved by the Governor–March 30, 1973

Filed in the Office of the Secretary of State–March 30, 1973

LAWS OF ARIZONA

CHAPTER 26

House Bill 2183

AN ACT

MAKING A SUPPLEMENTAL APPROPRIATION TO THE ATOMIC ENERGY COMMISSION FOR USE IN SITE INVESTIGATION FOR A PROPOSED NUCLEAR DESALTING PLANT, AND EXTENDING TIME FOR LAPSING OF APPROPRIATION MADE IN LAWS 1972, CHAPTER 3.

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

Section 1. **Appropriation; purposes**

A. In addition to the appropriations made under Laws 1972, chapter 3 and chapter 216, section 1, subdivision 40, the sum of fifty thousand dollars is appropriated to the atomic energy commission.

B. The sum appropriated in subsection A is to be used subject to the same provisions and for the same purposes as provided in Laws 1972, chapter 3, section 1.

Sec. 2. **Exemption**

The appropriation made by this act is exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations, except that any monies of the appropriation remaining unexpended and unencumbered on June 30, 1975, shall revert to the state general fund.

Sec. 3. Laws 1972, chapter 3, section 2, is amended to read:

Sec. 2. **Exemption**

The appropriation made by this act is exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations, except that any monies of the appropriation remaining unexpended and unencumbered on June 30, ~~1973~~ 1975, shall revert to the state general fund.

Sec. 4. **Emergency**

To preserve the public peace, health and safety it is necessary that this act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.

Approved by the Governor–March 30, 1973

Filed in the Office of the Secretary of State–March 30, 1973

CHAPTER 27

House Bill 2246

AN ACT

RELATING TO STATE HOLIDAYS; PRESCRIBING DATE OF MEMORIAL DAY, AND AMENDING SECTION 1-301, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1973, CHAPTER 1, SECTION 2.

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

Section 1. Section 1-301, Arizona Revised Statutes, as amended by Laws 1973, chapter 1, section 2, is amended to read:

1-301. **Holidays enumerated**

A. The following days shall be holidays:

1. Sunday of each week.

2. January 1, "New Year's Day".

3. February 12, "Lincoln Day".

4. February 14, "Admission Day".

5. Third Monday in February, "Washington's Birthday".

6. Second Sunday in May, "Mothers' Day".

7. LAST MONDAY IN May, ~~30,~~ "Memorial Day".

8. Third Sunday in June, "Fathers' Day".

9. July 4, "Independence Day".

10. First Monday in September, "Labor Day".

11. Second Monday in October, "Columbus Day".

12. "General Election Day".

13. November 11, "Veterans' Day".

14. Fourth Thursday in November, "Thanksgiving Day".

15. December 25, "Christmas Day".

B. When any of the holidays enumerated in subsection A falls on a Sunday, the following Monday shall be observed as a holiday, with the exception of the holidays enumerated in paragraphs 1, 6 and 8.

Approved by the Governor–March 30, 1973

Filed in the Office of the Secretary of State–March 30, 1973

CHAPTER 28

House Bill 2293

AN ACT

AUTHORIZING EXTENSION OF TIME FOR WHICH CERTAIN FUNDS ARE AVAILABLE TO BOARD OF REGENTS FOR ESTABLISHMENT OF RADIOTHERAPY CENTER AT THE COLLEGE OF MEDICINE AND HOSPITAL OF THE UNIVERSITY OF ARIZONA, AND AMENDING LAWS 1972, CHAPTER 211, SECTION 2.

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

Section 1. Laws 1972, chapter 211, section 2, is amended to read:

Sec. 2. **Lapsing of appropriation**

The appropriation made in section 1 shall not lapse until the purposes for which the appropriation is made are accomplished or abandoned, unless the appropriation stands until January 1, ~~1974~~ 1976 without an expenditure therefrom or encumbrance thereon.

Approved by the Governor–March 30, 1973

Filed in the Office of the Secretary of State–March 30, 1973

CHAPTER 29

Senate Bill 1060

AN ACT

RELATING TO TAXATION OF INCOME; PROVIDING THAT BUSINESS TRUSTS QUALIFYING AS REAL ESTATE INVESTMENT TRUSTS RECEIVE A DEDUCTION FROM GROSS INCOME FOR CERTAIN DISTRIBUTIONS OF INCOME; PROVIDING FOR TAXATION OF DIVIDENDS OF REAL ESTATE INVESTMENT TRUST; AMENDING SECTIONS 10-508, 43-123.32 AND 43-157, ARIZONA REVISED STATUTES, AND AMENDING TITLE 43, CHAPTER 1, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 43-123.36.

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

Section 1. Section 10-508, Arizona Revised Statutes, is amended to read:

10-508. **Taxation**

Any business trust created under this article or entering this state pursuant to this article shall pay such taxes and fees as are imposed by the laws of this state or any political subdivision thereof on domestic and foreign corporations, respectively, on an identical basis therewith EXCEPT THAT ANY SUCH BUSINESS TRUST WHICH QUALIFIES FOR FEDERAL TAX PURPOSES AS A "REAL ESTATE INVESTMENT TRUST" UNDER SECTIONS 856, 857 AND 858 OF THE UNITED STATES INTERNAL REVENUE CODE OF 1954, AS AMENDED, SHALL BE ENTITLED TO A DEDUCTION FOR INCOME DISTRIBUTED DURING THE INCOME YEAR AS PROVIDED IN SECTION 43-123.03.

Sec. 2. Section 43-123.32, Arizona Revised Statutes, is amended to read:

43-123.32. **Deductions for dividends from Arizona corporations**

Every taxpayer, in reporting income for purposes of taxation, shall be entitled to a deduction for dividends received from a corporation the income of which is subject to taxation under this title, which corporation has filed a report of income as required by this title, and the principal business of which is attributable to Arizona. For the purpose of this section the principal business of a corporation shall be considered attributable to Arizona if fifty per cent or more of the entire net income or loss of the corporation after an adjustment for taxes has been made for the year preceding the payment of such dividends, was used in computing the average taxable income provided by this title. THIS SECTION DOES NOT APPLY TO A DIVIDEND RECEIVED FROM A BUSINESS TRUST WHICH QUALIFIES AS A "REAL ESTATE INVESTMENT TRUST" UNDER SECTIONS 856, 857 AND 858 OF THE UNITED STATES INTERNAL REVENUE CODE OF 1954 AS AMENDED AND WHICH IS ENTITLED TO A DEDUCTION UNDER SECTION 43-123.36.

Sec. 3. Title 43, chapter 1, article 1, Arizona Revised Statutes, is amended by adding section 43-123.36, to read:

43-123.36. **Unincorporated trusts or associations qualifying as "real estate investment trusts" for federal income tax purposes; income distribution deduction**

A. ANY BUSINESS TRUST CREATED UNDER OR ENTERING THIS STATE PURSUANT TO TITLE 10, CHAPTER 1, ARTICLE 18, WHICH QUALIFIES FOR FEDERAL TAX PURPOSES AS A "REAL ESTATE INVESTMENT TRUST" UNDER SECTIONS 856, 857 AND 858 OF THE UNITED STATES INTERNAL REVENUE CODE OF 1954, AS AMENDED, SHALL BE ENTITLED TO A DEDUCTION FOR INCOME DISTRIBUTED DURING THE INCOME YEAR.

B. FOR THE PURPOSES OF THIS SECTION, IF A REAL ESTATE INVESTMENT TRUST:

1. DECLARES A DIVIDEND BEFORE THE TIME PRESCRIBED BY LAW FOR THE FILING OF ITS RETURN FOR AN INCOME YEAR, INCLUDING THE PERIOD OF ANY EXTENSION OF TIME GRANTED FOR FILING SUCH RETURN; AND

2. DISTRIBUTES THE AMOUNT OF SUCH DIVIDEND TO SHAREHOLDERS OR HOLDERS OF BENEFICIAL INTERESTS IN THE

TWELVE-MONTH PERIOD FOLLOWING THE CLOSE OF SUCH INCOME YEAR AND NOT LATER THAN THE DATE OF THE FIRST REGULAR DIVIDEND PAYMENT MADE AFTER SUCH DECLARATION, THE AMOUNT SO DECLARED AND DISTRIBUTED SHALL, TO THE EXTENT THE TRUST ELECTS IN ITS RETURN FILED WITH THE INTERNAL REVENUE SERVICE PURSUANT TO SECTION 858 OF THE UNITED STATES INTERNAL REVENUE CODE OF 1954, AS AMENDED, BE CONSIDERED AS HAVING BEEN PAID DURING SUCH INCOME YEAR, EXCEPT AS PROVIDED IN SUBSECTIONS C AND D OF THIS SECTION:

C. AMOUNTS TO WHICH SUBSECTION B APPLIES SHALL BE TREATED AS RECEIVED BY THE SHAREHOLDER OR HOLDER OF A BENEFICIAL INTEREST IN THE INCOME YEAR IN WHICH THE DISTRIBUTION IS MADE.

D. IN THE CASE OF AMOUNTS TO WHICH SUBSECTION B APPLIES, ANY RETURN TO THE TAX COMMISSION AND ANY NOTICE TO SHAREHOLDERS OR HOLDERS OF BENEFICIAL INTERESTS REQUIRED BY SECTION 43-188, OR REGULATIONS OF THE TAX COMMISSION THEREUNDER WITH RESPECT TO SUCH AMOUNTS SHALL BE MADE AND GIVEN FOR THE INCOME YEAR IN WHICH THE DISTRIBUTION IS MADE.

Sec. 4. Section 43-157, Arizona Revised Statutes, is amended to read:

43-157. **Capital gains or losses**

(a) **Definition–"capital assets"**. "Capital assets" means property held by the taxpayer (whether or not connected with his trade or business), but does not include–

(1) Stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business; or

(2) Property used in the trade or business of a character which is subject to the allowance for depreciation provided in section 43-123 (1) 43-123.14; or

(3) Real property used in the trade or business of the taxpayer; or

(4) A copyright; a literary, musical, or artistic composition; or similar property; held by–

(i) A taxpayer whose personal efforts created such property, or

(ii) A taxpayer in whose hands the basis of such property is determined, for the purpose of determining gain from a sale or exchange, in whole or in part by reference to the basis of such property in the hands of the person whose personal efforts created such property.

(b) **Deduction from gross income.** In the case of any taxpayer other than a corporation, only the following percentages of the gain or loss recognized upon the sale or exchange of a capital asset shall be taken into account in computing net income:

(1) One hundred per cent if the capital asset has been held for not more than six months;

(2) Fifty per cent if the capital asset has been held for more than six months.

(c) **Taxability to employee of termination payments.** Amounts received from the assignment or release by an employee, after more than twenty years' employment, of all his rights to receive, after termination of his employment, and for a period of not less than five years (or for a period ending with his death), a percentage of future profits or receipts of his employer shall be considered an amount received from the sale or exchange of a capital asset held for more than six months, if such rights were included in the terms of the employment of such employee for not less than twelve years, and if the total of the amounts received for such assignment or release are received in one taxable year and after the termination of such employment.

(d) **Limitation on capital losses.**

(1) **Corporations**–In the case of a corporation, losses from sales or exchanges of capital assets shall be allowed only to the extent of, one thousand dollars plus the gains from such sales or exchanges.

(2) **Other taxpayers**–In the case of a taxpayer other than a corporation, losses from the sales or exchanges of capital assets shall be allowed only to the extent of the gains from such sales or exchanges plus–

(A) One thousand dollars for a single individual, head of household, trust, estate, or married individuals filing a joint return.

(B) Five hundred dollars for married individuals filing separate returns.

In the case of the limitations provided for under (A) or (B) above, the amount of the net income as computed without regard to capital gains or losses shall apply as a further limitation.

(e) **Capital loss carry-over.** If, for any taxable year beginning after December 31, 1970, the taxpayer has a net capital loss, the amount thereof shall be a capital loss in each of the succeeding taxable years to the extent that such amount has not been deducted in a prior year.

(f) **Retirement of bonds, etc.** Amounts received by the holder upon the retirement of bonds, debentures, notes, or certificates or other evidences of indebtedness issued by any corporation (including those issued by a government or political subdivision thereof), shall be considered as amounts received in exchange therefor.

(g) **Gains and losses from short sales, etc.** For the purposes of this title–

(1) Gains or losses from short sales of property shall be considered as gains or losses from sale or exchanges of capital assets; and

(2) Gains or losses attributable to the failure to exercise privileges or options to buy or sell property shall be considered as gains or losses from sales or exchanges of capital assets held for not more than six months; and

(3) Gain from the sale or exchange of property, to the extent that the adjusted basis of such property is less than its adjusted basis determined without regard to section 124A of the internal revenue code (relating to amortization deduction), shall be considered as gain from the sale or exchange of property which is neither a capital asset nor property described in subsection (j).

(h) **Determination of period for which held–for the purpose of this section.**

(1) **Holding period.** In determining the period for which the taxpayer has held property received on an exchange, for purposes of subsection (b) of this section, there shall be included the period for which he held the property exchanged if under the provisions of section 43-153 the property received has, for the purpose of determining gain or loss from a sale or exchange, the same basis in whole or in part in his hands as the property exchanged. For the purposes of this paragraph, an involuntary conversion described in section 43-152(f) shall be considered an exchange of the property converted for the property acquired.

(2) **Holding period, where substituted basis.** In determining the period for which the taxpayer has held property, however acquired, for purposes of subsection (b) of this section, there shall be included the period for which the property was held by any other person, if under the provisions of section 43-153 the property has, for the purpose of determining gain or loss from a sale or exchange, the same basis in whole or in part in his hands as it would have in the hands of the other person.

(3) **Holding period for stock or securities, where no gain was recognized under revenue act of 1928 or 1932.** In determining the period for purposes of subsection (b) of this section, for which the taxpayer has held stock or securities received upon a distribution where no gain was recognized to the distributee under the provisions of section 112(g) of the federal revenue act of 1928 or the federal revenue act of 1932, or under the provisions of section 371(c) of the federal revenue act of 1938, there shall be included the period for which he held the stock or securities in the distributing corporation prior to the receipt of the stock or securities upon the distribution.

(4) **Holding period, effect of wash sales.** In determining the period for purposes of subsection (b) of this section, for which the taxpayer has held stock or securities the acquisition of which (or the contract or option to acquire which) resulted in the nondeductibility (under section 43-123(j) 43-123.12, relating to wash sales) of the loss from the sale or other disposition of substantially identical stock or securities, there shall be included the period for which he held the stock or securities the loss from the sale or other disposition of which was not deductible.

(5) **Holding period, of stock acquired through exercise of rights.** In determining the period for purposes of subsection (b) of this section, for which the taxpayer has held stock or securities acquired from a corporation by the exercise of rights to acquire the stock or securities, there shall be included only the period beginning with the date upon which the right to acquire was exercised.

(6) **Holding period, residence acquired under section 43-152(n).** In determining the period for which the taxpayer has held a residence, the acquisition of which resulted under section 43-152(n) in the nonrecognition of any part of the gain realized on the sale, exchange, or involuntary conversion of another residence, there shall be included the period for which such other residence had been held as of the date of such sale, exchange or involuntary conversion.

(7) **Holding period, property transmitted at death under section**

43-153(a) (5). In determining the period for which the taxpayer has held property transmitted at death, within the meaning of section 43-153(a) (5), if–

(A) The basis of such property in the hands of such taxpayer is determined under section 43-153, and

(B) Such property is sold or otherwise disposed of by such taxpayer within six months after the decedent's death, then such taxpayer shall be deemed to have held such property for more than six months.

(i) Gain from sale of certain property between spouses or between an individual and a controlled corporation.

(1) **Treatment of gain as ordinary income.** In the case of a sale or exchange, directly or indirectly, of property described in paragraph (2)–

(A) Between a husband and wife; or

(B) Between an individual and a corporation more than eighty per cent in value of the outstanding stock of which is owned by such individual, his spouse, and his minor children and minor grandchildren; any gain recognized to the transferor from the sale or exchange of such property shall be considered as gain from the sale or exchange of property which is neither a capital asset nor property described in subsection (j).

(2) This subsection shall apply only in the case of a sale or exchange of property by a transferor which in the hands of the transferee is property of a character which is subject to the allowance for depreciation provided in section 43-123(1) 43-123.14.

(j) Gains and losses from involuntary conversion and from the sale or exchange of certain property used in the trade or business.

(1) **Definition of "property used in the trade or business".** For the purposes of this subsection, the term "property used in the trade or business" means property used in the trade or business, of a character which is subject to the allowance for depreciation provided in section 43-123(1) 43-123.14 held for more than six months, and real property used in the trade or business held for more than six months which is not–

(A) Property of a kind which would properly be includible in the inventory of the taxpayer if on hand at the close of the taxable year, or

(B) Property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business, or

(C) A copyright, a literary, musical or artistic composition, or similar property, held by a taxpayer described in subsection (a) (4) of this section.

Such term also includes timber with respect to which subsection (k) (1) or (2) is applicable and unharvested crops to which paragraph (3) is applicable. Such term also includes livestock, regardless of age, held by the taxpayer for draft, breeding, or dairy purposes, and held by him for twelve months or more from the date of acquisition. It does not include poultry.

(2) **Gains and losses from sales of property used in trade or business, treatment of.** If, during the taxable year, the recognized gains upon sales or exchanges of property used in the trade or business, plus the recognized gains from the compulsory or involuntary conversion, as a result of destruction in whole or in part, theft or seizure, or an exercise of the power of requisition or condemnation or the threat or imminence thereof, of property used in the trade or business and capital assets held for more than six months into other property or money, exceed the recognized losses from the sales, exchanges, and conversions, the gains and losses shall be considered as gains and losses from sales or exchanges of capital assets held for more than six months. If the gains do not exceed the losses, the gains and losses shall not be considered as gains and losses from sales or exchanges of capital assets. For the purposes of this paragraph:

(A) In determining under this paragraph whether gains exceed losses, the gains and losses described therein shall be included only if and to the extent taken into account in computing net income except that subsections (b) and (d) shall not apply.

(B) Losses upon the destruction, in whole or in part, theft or seizure, or requisition or condemnation of property used in the trade or business or capital assets held for more than six months shall be considered losses from a compulsory or involuntary conversion.

(3) **Unharvested crop, property used in trade or business.** In the case of an unharvested crop on land used in the trade or business and held for more than six months, if the crop and the land are sold or exchanged (or compulsorily or involuntarily converted as described in paragraph (2)), at the same time and to the same person, the crops shall be considered as "property used in the trade or business".

(k) **Gain or loss in the case of timber.**

(1) If the taxpayer so elects upon his return for a taxable year, the cutting of timber (for sale or for use in the taxpayer's trade or business) during such year by the taxpayer who owns, or has contract right to cut, such timber (providing he has owned such timber or has held such contract right for a period of more than six months prior to the beginning of such year) shall be considered as a sale or exchange of such timber cut during such year. In case such election has been made, gain or loss to the taxpayer shall be recognized in an amount equal to the difference between the adjusted basis for depletion of such timber in the hands of the taxpayer and the fair market value of such timber. Such fair market value shall be the fair market value as of the first day of the taxable year in which such timber is cut, and shall thereafter be considered as the cost of such cut timber to the taxpayer for all purposes for which such cost is a necessary factor. If a taxpayer makes an election under this paragraph, such election shall apply with respect to all timber which is owned by the taxpayer or which the taxpayer has a contract right to cut and shall be binding upon the taxpayer for the taxable year for which the election is made and for all subsequent years, unless the tax commission, on showing of undue hardship, permits the taxpayer to revoke his election; such revocation, however, shall preclude any further elections under this section except with the consent of the tax commission.

(2) In the case of the disposal of timber (held for more than six months prior to such disposal) by the owner thereof under any form or type of contract by virtue of which the owner retains an economic interest in such timber, the difference between the amount received for such timber and the adjusted basis thereof shall be considered as though it were a gain or loss, as the case may be, upon the sale of such timber.

(1) **Short sales.** In the case of a short sale of property made by the taxpayer after the effective date of this title, if substantially identical property has been held by the taxpayer on the date of such short sale for not more than six months (determined without regard to the effect, under paragraph (1) of this subsection, of such short sale on the holding period), or if substantially identical property is acquired by the taxpayer after such short sale and on or before the date of the closing thereof–

(1) Any gain upon the closing of such short sale shall be considered as a gain upon the sale or exchange of a capital asset held for not more than six months (notwithstanding the period of time any property used to close such short sale has been held); and

(2) The holding period of such substantially identical property shall be considered to begin (notwithstanding the provisions of subsection (h)) on the date of the closing of the short sale, or on the date of a sale, gift or other disposition of such property, whichever date occurs first. This subparagraph shall apply to such substantially identical property in the order of the dates of the acquisition of such property, but only to so much of such property as does not exceed the quantity sold short.

For the purpose of this subsection, the acquisition of an option to sell property at a fixed price shall be considered as a short sale, and the exercise or failure to exercise such option shall be considered as a closing of such short sale.

(m) **Collapsible corporations.**

(1) **Treatment of gain to shareholders.** Gain from the sale or exchange (whether in liquidation or otherwise) of stock of a collapsible corporation, to the extent that it would be considered (but for the provisions of this subsection) as gain from the sale or exchange of a capital asset held for more than six months, shall, except as provided in paragraph (3), be considered as gain from the sale or exchange of property which is not a capital asset.

(2) **Definition–"collapsible corporation".**

(A) For the purposes of this subsection, the term "collapsible corporation" means a corporation formed or availed of principally for the manufacture, construction, or production of property, for the purchase of property which (in the hands of the corporation) is property described in subsection (a) (1), or for the holding of stock in a corporation so formed or availed of, with a view to–

(i) The sale or exchange of stock by its shareholders (whether in liquidation or otherwise), or a distribution to its shareholders, prior to the realization by the corporation manufacturing, constructing, producing, or purchasing the property of a substantial part of the net income to be derived from such property, and

(ii) The realization by such shareholders of gain attributable to such property.

(B) For the purposes of subparagraph (A), a corporation shall be deemed to have manufactured, constructed, produced, or purchased property, if–

(i) It engaged in the manufacture, construction, or production of such property to any extent.

(ii) It holds property having a basis determined, in whole or in part, by reference to the cost of such property in the hands of a person who manufactured, constructed, produced, or purchased the property, or

(iii) It holds property having a basis determined, in whole or in part, by reference to the cost of property manufactured, constructed, produced, or purchased by the corporation.

(3) **Limitations on application of subsection.** In the case of gain realized by a shareholder upon his stock in a collapsible corporation–

(A) This subsection shall not apply unless, at any time after the commencement of the manufacture, construction, or production of the property, or at the time of the purchase of the property described in subsection (a) (1), or at any time thereafter, such shareholder (i) owned (or was considered as owning) more than ten per cent in value of the outstanding stock of the corporation, or (ii) owned stock which was considered as owned at such time by another shareholder who then owned (or was considered as owning) more than ten per cent in value of the outstanding stock of the corporation;

(B) This subsection shall not apply to the gain recognized during a taxable year unless more than seventy per cent of such gain is attributable to the property so manufactured, constructed, produced, or purchased; and

(C) This subsection shall not apply to gain realized after the expiration of three years following the completion of such manufacture, construction, production, or purchase.

For the purposes of subparagraph (A), the ownership of stock shall be determined in accordance with the rules prescribed by section 43-126 (b) (2), except that, in addition to the persons prescribed by subparagraph (D) of that paragraph, the family of an individual shall include the spouses of that individual's brothers and sisters (whether by the whole or half blood) and the spouses of that individual's lineal descendants.

(n) **Dealers in securities.**

(1) **Capital gains.** Gain by a dealer in securities from the sale or exchange of any security shall in no event be considered as gain from the sale or exchange of a capital asset unless–

(A) The security was, prior to the expiration of the thirtieth day after the date of its acquisition or after the date of the enactment of this title (whichever is the later), clearly identified in the dealer's records as a security held for investment; and

(B) The security was not, at any time after the expiration of such thirtieth day, held by such dealer primarily for sale to customers in the ordinary course of his trade or business.

(2) Loss by a dealer in securities from the sale or exchange of any security shall in no event be considered as loss from the sale or exchange of property which is not a capital asset if at any time after the thirtieth day following the date of the enactment of this title the security was clearly identified in the dealer's records as a security held for investment.

(3) For the purposes of this subsection the term "security" means any share of stock in any corporation, certificate of stock or interest in any corporation, note, bond, debenture, or evidence of indebtedness, or any evidence of an interest in or right to subscribe to or purchase any of the foregoing.

(o) **Bonds, etc., losses of banks.** For the purpose of this section, in the case of a bank, as defined in section 104(a) of the Internal Revenue Code, (as amended Oct. 20, 1951, 2:07 p. m., E.S.T., C. 521, Title III, Sec. 313(h), 65 Stat. 491), if the losses of the taxable year from sales or exchanges of bonds, debentures, notes, or certificates, or other evidence of indebtedness issued by any corporation (including one issued by a government or political subdivision thereof) with interest coupons or in registered form, exceed the gains of the taxable year from such sales or exchanges, no such sale or exchange shall be considered a sale or exchange of a capital asset.

(p) **Gain from dispositions of certain depreciable property.**

(1) **General rule.**

(A) **Ordinary income.** Except as otherwise provided in this section, if section 43-157(p) property is disposed of during a taxable year beginning after December 31, 1969, the amount by which the lower of–

(i) The recomputed basis of the property, or

(ii) In the case of a sale, exchange, or involuntary conversion, the amount realized, or

(iii) In the case of any other disposition, the fair market value of such property,

Exceeds the adjusted basis of such property shall be treated as gain from the sale or exchange of property which is neither a capital asset nor property described in section 43-157(j). Such gain shall be recognized notwithstanding any other provision of this subtitle.

(B) **Recomputed basis.** For purposes of this section, the term "recomputed basis" means–

(i) With respect to any property referred to in paragraph (C) (i) or (ii), its adjusted basis recomputed by adding thereto all adjustments, attributable to periods after December 31, 1969, or

(ii) With respect to any property referred to in paragraph (C) (v), its adjusted basis recomputed by adding thereto all adjustments, attributable to periods after December 31, 1969, reflected in such adjusted basis on account of deductions (whether in respect of the same or other property) allowed or allowable to the taxpayer or to any other person for depreciation, or for amortization under section 43-123(1) (11). For purposes of the preceding sentence, if the taxpayer can establish by adequate records or other sufficient evidence, that the amount allowed for depreciation, or for amortization under section 43-123(1) (11), for any period was less than the amount allowable, the amount added for such period shall be the amount allowed.

(C) **Section 43-157(p) property.** For purposes of this section the term "section 43-157(p) property" means any property (other than livestock) which is or has been property of a character subject to the allowance for depreciation provided in section 43-123(1) 43-123.14 and is either–

(i) Personal property, or

(ii) Other property (not including a building or its structural components) but only if such other property is tangible and has an adjusted basis in which there are reflected adjustments described in paragraph (B) for a period in which such property (or other property)–

(iii) Was used as an integral part manufacturing production, or extraction or of furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services, or

(iv) Constituted research or storage facilities used in connection with any of the activities referred to in clause (iii), or

(v) An elevator or an escalator.

(2) **Exceptions and limitations.**

(A) **Gifts.** Subsection (1) shall not apply to a disposition by gift.

(B) **Transfer at death.** Except as provided in section 43-158 (relating to income in respect of a decedent), subsection (1) shall not apply to a transfer at death.

(C) **Certain tax-free transactions.** If the basis of property in the hands of a transferee is determined by reference to its basis in the hands of the transferor by reason of the application of any of the following–section 43-152(b) (4), 43-152(b) (5), 43-152(b) (6), 43-152(b) (9), or 43-152(b) (10), and section 43-152(c), 43-152(d), or 43-152(e), then the amount of gain taken into account by the transferor under subsection (1) (A) shall not exceed the amount of gain recognized to the transferor on the transfer of such property (determined without regard to this section). This paragraph shall not apply to a disposition to an organization which is exempt from the tax imposed by this title.

(D) **Like kind exchanges; involuntary conversions.** If property is disposed of and gain (determined without regard to this section) is not recognized in whole or in part under section 43-152(b) (1), 43-152(b) (2), 43-152(c), or 43-152(f), then the amount of gain taken into account by the transferor under subsection (1) (A) shall not exceed the sum of–

(i) The amount of gain recognized on such disposition (determined without regard to this section), plus

(ii) The fair market value of property acquired which is not section 43-157(p) property and which is not taken into account under subparagraph (i).

(E) **Sections 43-152(m) and 43-152(b) (8) transactions.** Under regulations prescribed by the tax commission, rules consistent with paragraphs (C) and (D) of this subsection shall apply in the case of transactions described in section 43-152(m) (relating to gain from sale or exchange to effectuate policies of F.C.C.) or section 43-152(b) (8) (relating to exchange in obedience to S.E.C. orders).

(3) **Adjustments to basis.** The tax commission shall prescribe such regulations as it may deem necessary to provide for adjustments to the basis of property to reflect gain recognized under subsection (1).

(4) **Application of section.** This section shall apply notwithstanding any other provision of this title.

(q) **Gain from dispositions of certain depreciable realty.**

(1) **General rule.**

(A) **Ordinary income.** Except as otherwise provided in this section, if section 43-157(q) property is disposed of after December 31, 1969, the applicable percentage of the lower of–

(i) The additional depreciation (as defined in subsection (2) (A)) in respect of the property, or

(ii) The excess of the amount realized (in the case of a sale, exchange or involuntary conversion) or the fair market value of such property (in the case of any other disposition), over

(iii) The adjusted basis of such property, shall be treated as gain from the sale or exchange of property which is neither a capital asset nor property described in section 43-157(j). Such gain shall be recognized notwithstanding any other provision of this subtitle.

(B) **Applicable percentage.** For purposes of paragraph (A), the term "applicable percentage" means one hundred per cent minus one percentage point for each full month the property was held after the date on which the property was held twenty full months.

(2) **Additional depreciation defined.** For purposes of this section–

(A) **In general.** The term "additional depreciation" means, in the case of any property, the depreciation adjustments in respect of such property; except that, in the case of property held more than one year, it means such adjustments only to the extent that they exceed the amount of the depreciation adjustments which would have resulted if such adjustments had been determined for each taxable year under the straight line method of adjustment. For purposes of the preceding sentence, if a useful life (or salvage value) was used in determining the amount allowed as a deduction for any taxable year, such life (or value) shall be used in determining the depreciation adjustments which would have resulted for such year under the straight line method.

(B) **Property held by lessee.** In the case of a lessee, in determining the depreciation adjustments which would have resulted in respect of any

building erected (or other improvement made) on the leased property, or in respect of any cost of acquiring the lease, the lease period shall be treated as including all renewal periods. For purposes of the preceding sentence–

(i) The term "renewal period" means any period for which the lease may be renewed, extended, or continued pursuant to an option exercisable by the lessee, but

(ii) The inclusion of renewal periods shall not extend the period taken into account by more than two-thirds of the period on the basis of which the depreciation adjustments were allowed.

(C) **Depreciation adjustments.** The term "depreciation adjustments" means, in respect of any property, all adjustments attributable to periods after December 31, 1969, reflected in the adjusted basis of such property on account of deductions (whether in respect of the same or other property) allowed or allowable to the taxpayer or to any other person for exhaustion, wear and tear, obsolescence, or amortization (other than amortization for emergency facilities under section 43-123(1) (11) 43-123.14, SUBSECTION K). For purposes of the preceding sentence, if the taxpayer can establish by adequate records or other sufficient evidence that the amount allowed as a deduction for any period was less than the amount allowable, the amount taken into account for such period shall be the amount allowed.

(3) **Section 43-157(q) property.** For purposes of this section, the term "section 43-157(q) property" means any real property (other than section 43-157(p) property), as defined in section 43-157(p) (1) (C) which is or has been property of a character subject to the allowance for depreciation provided in section 43-123(1), as amended.

(4) **Exceptions and limitations.**

(A) **Gifts.** Subsection (1) shall not apply to a disposition by gift.

(B) **Transfers at death.** Except as provided in section 43-158 (relating to income in respect of a decedent), subsection (1) shall not apply to a transfer at death.

(C) **Certain tax-free transactions.** If the basis of property in the hands of a transferee is determined by reference to its basis in the hands of the transferor by reason of the application of section 43-152(b) (4), 43-152(b) (5), 43-152(b) (6), 43-152(b) (9), or 43-152(b) (10), and section

43-152(c), 43-152(d) or ~~43-152(e)~~ 43-152(e), then the amount of gain taken into account by the transferor under subsection (1) (A) shall not exceed the amount of gain recognized to the transferor on the transfer of such property (determined without regard to this section). This paragraph shall not apply to a disposition to an organization which is exempt from the tax imposed by this title.

(D) **Like kind exchanges; involuntary conversions.**

(i) **Recognition limit.** If property is disposed of and gain (determined without regard to this section) is not recognized in whole or in part under section 43-152(b) (1), 43-152(c), or 43-152(f), then the amount of gain taken into account by the transferor under subsection (1) (A) shall not exceed the greater of the following:

(ii) The amount of gain recognized on the disposition (determined without regard to this section), increased as provided in subparagraph (iv), or

(iii) The amount determined under subparagraph (v).

(iv) **Increase for certain stock.** With respect to any transaction, the increase provided by this subparagraph is the amount equal to the fair market value of any stock purchased in a corporation which (but for this paragraph) would result in non-recognition of gain under section 43-152(f) (3) (A).

(v) **Adjustment where insufficient section 43-157(q) property is acquired.** With respect to any transaction, the amount determined under this subparagraph shall be the excess of–

(vi) The amount of gain which would (but for this paragraph) be taken into account under subsection (1) (A), over

(vii) The fair market value (or cost in the case of a transaction described in section 43-152(f) (3)) of the section 43-157(q) property acquired in the transaction.

(viii) **Basis of property acquired.** In the case of property purchased by the taxpayer in a transaction described in section 43-152(f) (3), in applying the last sentence of section 43-153(a) (9), such sentence shall be applied–

(ix) First solely to section 43-157(q) properties and to the amount of

gain not taken into account under subsection (1) (A) by reason of this paragraph, and

(x) Then to all purchased properties to which such sentence applies and to the remaining gain not recognized on the transaction as if the cost of the section 43-157(q) properties were the basis of such properties computed under clause (ix). In the case of property acquired in any other transaction to which this paragraph applies, rules consistent with the preceding sentence shall be applied under regulations prescribed by the tax commission.

(xi) **Additional depreciation with respect to property disposed of.** In the case of any transaction described in section 43-152(b) (1), 43-152(c) (1), 43-152(c), or 43-152(f), the additional depreciation in respect of the section 43-157(q) property acquired which is attributable to the section 43-157(q) property disposed of shall be an amount equal to the amount of the gain which was not taken into account under subsection (1) (A) by reason of the application of this paragraph.

(E) **Sections 43-152(m) and 43-152(b) (8) transactions.** Under regulations prescribed by the tax commission, rules consistent with paragraphs (C) and (D) of this subsection and with subsections (5) and (6) shall apply in the case of transactions described in section 43-152(m) (relating to gain from sale or exchange to effectuate policies of F.C.C.) or section 43-152(b) (8) (relating to exchanges in obedience to S.E.C. orders).

(F) **Disposition of principal residence.** Subsection (1) shall not apply to a disposition of property to the extent used by the taxpayer as his principal residence (within the meaning of section 43-152(n), relating to sale or exchange of residence).

(5) **Holding period.** For purposes of determining the applicable percentage under this section, the provisions of section 43-157(h) shall not apply, and the holding period of section 43-157(q) property shall be determined under the following rules:

(A) **Beginning of holding period.** The holding period of section 43-157(q) property shall be deemed to begin–

(i) In the case of property acquired by the taxpayer, on the day after the date of acquisition, or

(ii) In the case of property constructed, reconstructed, or erected by the taxpayer, on the first day of the month during which the property is placed in service.

(B) **Property with transferred basis.** If the basis of property acquired in a transaction described in paragraph (A), (B), (C), or (E) of subsection (4) is determined by reference to its basis in the hands of the transferor, then the holding period of the property in the hands of the transferee shall include the holding period of the property in the hands of the transferor.

(C) **Principal residence.** If the basis of property acquired in a transaction described in paragraph (F) of subsection (4) is determined by reference to the basis in the hands of the taxpayer of other property, then the holding period of the property acquired shall include the holding period of such other property.

(6) **Special rules for property which is substantially improved.**

(A) **Amount treated as ordinary income.** If, in the case of a disposition of section 43-157(q) property, the property is treated as consisting of more than one element by reason of paragraph (C), then the amount taken into account under subsection (1) (A) in respect of such section 43-157(q) property as gain from the sale or exchange of property which is neither a capital asset nor property described in section 43-157(j) shall be the sum of the amounts determined under paragraph (B).

(B) **Ordinary income attributable to an element.** For purposes of paragraph (A), the amount taken into account for any element shall be the amount determined by multiplying–

(i) The amount which bears the same ratio to the lower of the amounts specified in subparagraph (i) or (ii) of subsection (1) (A) for the section 43-157(q) property as the additional depreciation for such element bears to the sum of the additional depreciation for all elements, by

(ii) The applicable percentage for such element. For purposes of this paragraph, determinations with respect to any element shall be made as if it were a separate property.

(C) **Property consisting of more than one element.** In applying this subsection in the case of any section 43-157(q) property, there shall be treated as a separate element–

(i) Each separate improvement.

(ii) If, before completion of section 43-157(q) property, units thereof (as distinguished from improvements) were placed in service each such unit of section 43-157(q) property, and

(iii) The remaining property which is not taken into account under subparagraphs (i) and (ii).

(D) **Property which is substantially improved.**

For purposes of this subsection–

(i) **In general.** The term "separate improvement" means each improvement added during the thirty-six month period ending on the last day of any taxable year to the capital account for the property, but only if the sum of the amounts added to such account during such period exceeds the greatest of–

(ii) Twenty-five per cent of the adjusted basis of the property,

(iii) Ten per cent of the adjusted basis of the property, determined without regard to the adjustments provided in paragraph (B) of section 43-153(b) (1), or

(iv) Five thousand dollars.

For purposes of clauses (ii) and (iii), the adjusted basis of the property shall be determined as of the beginning of the first day of such thirty-six-month period, or of the holding period of the property (within the meaning of subsection (5)), whichever is the later.

(v) **Exception.** Improvements in any taxable year shall be taken into account for purposes of subparagraph (i) only if the sum of the amounts added to the capital account for the property for such taxable year exceeds the greater of–

(vi) Two thousand dollars, or

(vii) One per cent of the adjusted basis referred to in subparagraphs (i) and (iii), determined, however, as of the beginning of such taxable year.

For purposes of this section, if the amount added to the capital account for any separate improvement does not exceed the greater of clause (ii) or (iii), such improvement shall be treated as placed in service on the first day, of a calendar month, which is closest to the middle of the taxable year.

(viii) **Improvement.** The term "improvement" means, in the case of any section 43-157(q) property, any addition to capital account for such property after the initial acquisition or after completion of the property.

(7) **Adjustments to basis.** The tax commission shall prescribe such regulations as it may deem necessary to provide for adjustments to the basis of property to reflect gain recognized under subsection (1).

(8) **Application of section.** This section shall apply notwithstanding any other provision of this title.

(r) **Certain reacquisitions of real property.**

(1) **General rules.** If

(A) A sale of real property gives rise to indebtedness to the seller which is secured by the real property sold, and

(B) The seller of such property reacquires such property in partial or full satisfaction of such indebtedness, then, except as provided in subsections (2) and (3), no gain or loss shall result to the seller from such reacquisition, and no debt shall become worthless or partially worthless as a result of such reacquisition.

(2) **Amount of gain resulting.**

(a) **In general.** In the case of a reacquisition of real property to which subsection (1) applies, gain shall result from such reacquisition to the extent that–

(i) The amount of money and the fair market value of other property (other than obligations of the purchaser) received, prior to such reacquisition, with respect to the sale of such property, exceeds

(ii) The amount of the gain on the sale of such property returned as income for periods prior to such reacquisition.

(B) **Limitation.** The amount of gain determined under paragraph (A) resulting from a reacquisition during any taxable year beginning after December 31, 1969 shall not exceed the amount by which the price at which the real property was sold exceeded its adjusted basis, reduced by the sum of–

(i) The amount of the gain on the sale of such property returned as income for periods prior to the reacquisition of such property, and

(ii) The amount of money and the fair market value or other property (other than obligations of the purchaser received with respect to the sale

of such property) paid or transferred by the seller in connection with the reacquisition of such property. For purposes of this paragraph, the price at which real property is sold is the gross sales price reduced by the selling commissions, legal fees, and other expenses incident to the sale of such property which are properly taken into account in determining gain or loss on such sale.

(C) **Gain recognized.** Except as provided in this section, the gain determined under this subsection resulting from a reacquisition to which subsection (1) applies shall be recognized, notwithstanding any other provision of this subtitle.

(3) **Basis of reacquired real property.** If subsection (1) applies to the reacquisition of any real property, the basis of such property upon such reacquisition shall be the adjusted basis of the indebtedness to the seller secured by such property (determined as of the date of reacquisition), increased by the sum of–

(A) The amount of the gain determined under subsection (2) resulting from such reacquisition, and

(B) The amount described in subsection (2) (B) (ii). If any indebtedness to the seller secured by such property is not discharged upon the reacquisition of such property, the basis of such indebtedness shall be zero.

(4) **Indebtedness treated as worthless prior to reacquisition.** If, prior to a reacquisition of real property to which subsection (1) applies, the seller has treated indebtedness secured by such property as having become worthless or partially worthless–

(A) Such seller shall be considered as receiving, upon the reacquisition of such property, an amount equal to the amount of such indebtedness treated by him as having become worthless, and

(B) The adjusted basis of such indebtedness shall be increased (as of the date of reacquisition) by an amount equal to the amount so considered as received by such seller.

(5) **Principal residences.** If

(A) Subsection (1) applies to a reacquisition of real property with respect to sale of which–

(i) Gain was not recognized under section 43-152(n) (relating to sale or exchange or residence); and

(ii) Within one year after the date of the reacquisition of such property by the seller, such property is resold by him, then, under regulations prescribed by the tax commission, subsections (2), (3), and (4) of this section shall not apply to the reacquisition of such property, and, for purposes of applying section 43-152(n), the resale of such property shall be treated as a part of the transaction constituting the original sale of such property.

(6) The provisions of this subsection shall be effective for all years beginning on or after January 1, 1970.

(s) **Taxation of capital gain dividends of shareholders of regulated investment companies AND HOLDERS OF BENEFICIAL INTERESTS OF REAL ESTATE INVESTMENT TRUSTS.**

(1) **Treatment of capital gain dividends by shareholders AND HOLDERS OF BENEFICIAL INTERESTS.** A capital gain dividend shall be treated by the shareholders AND HOLDERS OF BENEFICIAL INTERESTS OF A FEDERALLY REGULATED INVESTMENT COMPANY OR OF A REAL ESTATE INVESTMENT TRUST as a gain from the sale or exchange of a capital asset held for more than six months.

(2) **Definition of capital gain dividend.** For purposes of this part, a capital gain dividend is any dividend, or part thereof, which is designated by a federally regulated investment company, OR BY A BUSINESS TRUST WHICH QUALIFIES AS A "REAL ESTATE INVESTMENT TRUST" UNDER SECTIONS 856, 857 AND 858 OF THE UNITED STATES INTERNAL REVENUE CODE OF 1954, AS AMENDED, as a capital gain dividend in a written notice mailed to its shareholders OR HOLDERS OF BENEFICIAL INTERESTS not later than forty-five days after the close of its taxable year. If the aggregate amount so designated with respect to a taxable year of ~~the~~ SUCH company OR TRUST (including capital gains dividends paid after the close of the taxable year) is greater than the excess of the net long-term capital gain over the net short-term capital loss of the taxable year, the portion of each SUCH distribution which shall be a capital gain dividend shall be only that proportion of the amount so designated which such excess of the net long-term capital gain over the net short-term capital loss bears to the aggregate amount so designated.

(3) **Treatment by shareholders AND HOLDERS OF BENEFICIAL INTERESTS of undistributed capital gains.** Every shareholder AND

EVERY HOLDER OF A BENEFICIAL INTEREST of a federally regulated investment company OR OF A BUSINESS TRUST WHICH QUALIFIES AS A "REAL ESTATE INVESTMENT TRUST" UNDER SECTIONS 856, 857 AND 858 OF THE UNITED STATES INTERNAL REVENUE CODE OF 1954, AS AMENDED, at the close of ~~the~~ SUCH company's OR TRUST'S taxable year shall include, in computing his long-term capital gains in his return for his taxable year in which the last day of ~~the~~ SUCH company's OR TRUST'S taxable year falls, such amount as the company OR TRUST shall designate in respect of such shares OR BENEFICIAL INTERESTS in a written notice mailed to its shareholders OR HOLDERS OF BENEFICIAL INTERESTS at any time prior to the expiration of forty-five days after close of its taxable year, but the amount so includible by any shareholder OR HOLDER OF A BENEFICIAL INTEREST shall not exceed that part of the amount subjected to the federal income tax imposed on the company OR TRUST which he would have received if all of such amount had been distributed as capital gain dividends by the company OR TRUST to the holders of such shares OR BENEFICIAL INTERESTS at the close of its taxable year.

(4) The provisions of this subsection shall be effective for all years beginning on or after January 1, 1970, WITH RESPECT TO SHAREHOLDERS OF FEDERALLY REGULATED INVESTMENT COMPANIES, AND FOR ALL YEARS BEGINNING ON AND AFTER JANUARY 1, 1973 WITH RESPECT TO SHAREHOLDERS AND HOLDERS OF BENEFICIAL INTERESTS OF REAL ESTATE INVESTMENT TRUSTS.

Approved by the Governor–March 30, 1973

Filed in the Office of the Secretary of State–March 30, 1973

CHAPTER 30

House Bill 2022

AN ACT

RELATING TO INSURANCE; PROVIDING FOR EXAMINATION OF STATE COMPENSATION FUND BY DIRECTOR OF INSURANCE, AND AMENDING SECTION 20-156, ARIZONA REVISED STATUTES.

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

Section 1. Section 20-156, Arizona Revised Statutes, is amended to read:

20-156. **Examination of insurers and state compensation fund**

A. The director shall examine the affairs, transactions, accounts, records and assets of each authorized insurer as often as he deems advisable. He shall so examine each domestic insurer not less than once every three years. Examination of an alien insurer shall be limited to its insurance transactions in the United States.

B. The director shall in like manner examine each insurer applying for an initial certificate of authority to do business in this state.

C. In lieu of making his own examination, the director may accept a full report of the last recent examination of a foreign or alien insurer, certified to by the insurance supervisory official of another state, territory, commonwealth or district of the United States.

D. THE DIRECTOR MAY EXAMINE THE AFFAIRS, TRANSACTIONS, ACCOUNTS AND RECORDS OF THE STATE COMPENSATION FUND AS OFTEN AS HE REASONABLY DEEMS ADVISABLE. THE RESULTS OF SUCH EXAMINATION SHALL BE THE BASIS FOR ANY ADVISORY RECOMMENDATIONS WHICH THE DIRECTOR DEEMS NECESSARY REGARDING THE OPERATIONS OF THE STATE COMPENSATION FUND. THE EXPENSE OF SUCH EXAMINATION SHALL BE PAID BY THE FUND AS PROVIDED IN SECTION 20-159.

Approved by the Governor–April 2, 1973

Filed in the Office of the Secretary of State–April 3, 1973

LAWS OF ARIZONA

CHAPTER 31

House Bill 2161

AN ACT

RELATING TO PUBLIC HEALTH AND SAFETY; REQUIRING THE USE OF SAFETY GLAZING MATERIALS IN HAZARDOUS LOCATIONS IN CERTAIN RESIDENTIAL BUILDINGS, AND IN COMMERCIAL AND PUBLIC BUILDINGS, AND AMENDING TITLE 36, CHAPTER 13, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 2.1.

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

Section 1. Title 36, chapter 13, Arizona Revised Statutes, is amended by adding article 2.1, sections 36-1631 through 36-1636, to read:

ARTICLE 2.1. SAFETY GLAZING

36-1631. **Definitions**

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "HAZARDOUS LOCATIONS" MEANS THOSE STRUCTURAL ELEMENTS, GLAZED OR TO BE GLAZED, IN BUILDINGS USED AS DWELLINGS FOR ONE OR MORE FAMILIES OR PERSONS, COMMERCIAL BUILDINGS, INDUSTRIAL BUILDINGS AND PUBLIC BUILDINGS, KNOWN AS INTERIOR AND EXTERIOR DOORS COMPOSED OF OR CONTAINING GLASS OR GLASS PANELS, SLIDING GLASS DOOR UNITS INCLUDING THE FIXED GLAZED PANELS WHICH ARE PART OF SUCH UNITS, STORM OR COMBINATION DOORS, SHOWER DOORS AND SHOWER AND BATHTUB ENCLOSURES, AND THE FIXED GLAZED PANELS IMMEDIATELY ADJACENT TO SUCH DOORS, WHETHER OR NOT THE GLAZING IN SUCH DOORS, PANELS AND ENCLOSURES IS TRANSPARENT.

2. "PANELS IMMEDIATELY ADJACENT TO" MEANS THE FIRST FLAT GLAZED PANEL ON EITHER OR BOTH SIDES OF A DOOR IN A HAZARDOUS LOCATION, WHETHER OR NOT ON THE SAME PLANE, EIGHTEEN INCHES TO FORTY-EIGHT INCHES IN WIDTH, THE NEAREST VERTICAL EDGE OF WHICH IS LOCATED WITHIN THREE FEET HORIZONTALLY OF THE NEAREST VERTICAL EDGE

OF THE DOOR AND, EXCEPT FOR PANELS ADJACENT TO SHOWER DOORS AND SHOWER AND BATHTUB ENCLOSURES, THE BOTTOM EDGE IS LESS THAN EIGHTEEN INCHES ABOVE THE FLOOR LEVEL.

3. "PUBLIC BUILDINGS" MEANS HOTELS, MOTELS, DORMITORIES, HEALTH CARE INSTITUTIONS, THEATRES, STADIUMS, GYMNASIUMS, AMUSEMENT PARK BUILDINGS, SCHOOLS AND OTHER BUILDINGS USED FOR EDUCATIONAL PURPOSES, MUSEUMS, RESTAURANTS, BARS, PLACES OF WORSHIP AND OTHER BUILDINGS OF PUBLIC ASSEMBLY.

4. "SAFETY GLAZING MATERIAL" MEANS ANY GLAZING MATERIAL, INCLUDING, BUT NOT LIMITED TO, TEMPERED GLASS, LAMINATED GLASS, WIRE GLASS OR RIGID PLASTIC WHICH MEETS THE TEST REQUIREMENTS OF THE AMERICAN NATIONAL STANDARDS INSTITUTE (ANSI) STANDARD Z-97.1-1972 AS NOW ESTABLISHED OR AS MAY BE AMENDED FROM TIME TO TIME, AND WHICH IS SO CONSTRUCTED, TREATED OR COMBINED WITH OTHER MATERIALS AS TO MINIMIZE THE LIKELIHOOD OF CUTTING AND PIERCING INJURIES RESULTING FROM HUMAN CONTACT WITH THE GLAZING MATERIAL.

36-1632. **Labeling of safety glazing materials**

A. EACH LIGHT OF SAFETY GLAZING MATERIAL MANUFACTURED, DISTRIBUTED, IMPORTED, FABRICATED OR SOLD FOR USE IN A HAZARDOUS LOCATION, OR INSTALLED IN SUCH A LOCATION, WITHIN THE STATE OF ARIZONA SHALL BE PERMANENTLY LABELED BY SUCH MEANS AS ETCHING, SANDBLASTING, FIRING OF CERAMIC MATERIAL, HOT-DIE STAMPING, TRANSPARENT PRESSURE SENSITIVE LABELS, OR BY OTHER SUITABLE MEANS. THE LABEL SHALL IDENTIFY THE LABELER, WHETHER MANUFACTURER, FABRICATOR, INSTALLER OR OTHER DISTRIBUTOR, THE TYPE OF SAFETY GLAZING MATERIAL, AND THE FACT THAT THE MATERIAL MEETS THE TEST REQUIREMENTS OF THE AMERICAN NATIONAL STANDARDS INSTITUTE (ANSI) STANDARD Z-97.1-1972. THE LABEL SHALL BE LEGIBLE AND VISIBLE AFTER INSTALLATION.

B. SAFETY GLAZING LABELING SHALL NOT BE USED ON OTHER THAN SAFETY GLAZING MATERIALS.

36-1633. **Installation of non-safety glazing materials in hazardous location**

IT SHALL BE UNLAWFUL FOR ANY MATERIAL SUPPLIER, CONTRACTOR, SUBCONTRACTOR OR ANY PERSON OTHER THAN AN EMPLOYEE OF THE FOREGOING, WHO IS RESPONSIBLE FOR INSTALLATION OF GLAZING MATERIALS, TO KNOWINGLY INSTALL, CAUSE TO BE INSTALLED OR CONSENT TO THE INSTALLATION OF GLAZING MATERIALS OTHER THAN SAFETY GLAZING MATERIALS IN ANY HAZARDOUS LOCATION.

36-1634. **Penalty**

ANY PERSON WHO KNOWINGLY VIOLATES ANY PROVISION OF THIS ARTICLE IS GUILTY OF A MISDEMEANOR.

36-1635. **Local ordinances**

THIS ARTICLE DOES NOT SUPERSEDE ANY CITY, TOWN OR COUNTY ORDINANCE WHICH IS GREATER THAN THE STANDARDS PROVIDED IN THIS ARTICLE, NOR DOES THIS ARTICLE PROHIBIT SUCH CITY, TOWN OR COUNTY FROM INSPECTING PURSUANT TO THE PROVISIONS OF THIS ARTICLE OR ITS ORDINANCES, AND OTHERWISE ENFORCING ITS ORDINANCES.

Sec. 2. **Inapplicability of act**

The provisions of this act do not apply to a contract awarded prior to the effective date of this act.

Sec. 3. **Effective date**

The provisions of this act shall become effective on July 1, 1974.

Approved by the Governor—April 2, 1973

Filed in the Office of the Secretary of State—April 3, 1973

LAWS OF ARIZONA

CHAPTER 32

House Bill 2024

AN ACT

RELATING TO BANKING; PRESCRIBING ORGANIZATION OF THE STATE BANKING DEPARTMENT; PRESCRIBING POWERS AND DUTIES; REPEALING TITLE 6, CHAPTER 1, ARIZONA REVISED STATUTES; AMENDING TITLE 6, ARIZONA REVISED STATUTES, BY ADDING A NEW CHAPTER 1, AND AMENDING SECTIONS 6-610 AND 6-711, ARIZONA REVISED STATUTES.

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

Section 1. **Repeal**

Title 6, chapter 1, Arizona Revised Statutes, is repealed.

Sec. 2. Title 6, Arizona Revised Statutes, is amended by adding a new chapter 1, articles 1 through 3, to read:

CHAPTER 1
STATE BANKING DEPARTMENT
ARTICLE 1. DEFINITIONS

6-101. **Definitions**

IN THIS TITLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "BANKING OFFICE" INCLUDES ANY PLACE OF BUSINESS OF THE BANK AT WHICH DEPOSITS ARE RECEIVED OR CHECKS PAID OR MONEY LOANED BUT DOES NOT INCLUDE THE PREMISES USED FOR COMPUTER OPERATIONS, PROOFING, RECORD KEEPING, ACCOUNTING, STORAGE, MAINTENANCE OR OTHER ADMINISTRATIVE OR SERVICE FUNCTIONS.

2. "DEPARTMENT" MEANS THE STATE BANKING DEPARTMENT.

3. "ENTERPRISE" INCLUDES ANY PERSON UNDER THE JURISDICTION OF THE DEPARTMENT OTHER THAN A FINANCIAL INSTITUTION.

4. "FEDERAL DEPOSIT INSURANCE CORPORATION" INCLUDES

ANY SUCCESSOR TO THE CORPORATION OR OTHER AGENCY OR INSTRUMENTALITY OF THE UNITED STATES WHICH UNDERTAKES TO DISCHARGE THE PURPOSES OF THE CORPORATION.

5. "FINANCIAL INSTITUTION" INCLUDES BANKS, TRUST COMPANIES, SAVINGS AND LOAN ASSOCIATIONS, CREDIT UNIONS AND SMALL MONEY LENDERS UNDER THE JURISDICTION OF THE DEPARTMENT.

6. "SUPERINTENDENT" MEANS THE SUPERINTENDENT OF BANKS.

ARTICLE 2. STATE BANKING DEPARTMENT

6-110. **State banking department**

THERE SHALL BE A STATE BANKING DEPARTMENT WHICH SHALL HAVE CHARGE OF THE EXECUTION OF THE LAWS OF THIS STATE RELATING TO FINANCIAL INSTITUTIONS AND ENTERPRISES.

6-111. **Superintendent; appointment; term; qualifications; salary**

A. THE CHIEF OFFICER OF THE DEPARTMENT SHALL BE THE SUPERINTENDENT WHO SHALL BE APPOINTED BY THE GOVERNOR PURSUANT TO SECTION 38-211.

B. THE SUPERINTENDENT IN OFFICE ON THE EFFECTIVE DATE OF THIS SECTION SHALL HOLD OFFICE UNTIL THE EXPIRATION OF HIS TERM. THE TERM OF THE SUPERINTENDENT FIRST APPOINTED AFTER JANUARY 1, 1974 SHALL END JANUARY 17, 1977, AND, THEREAFTER THE TERM OF OFFICE OF THE SUPERINTENDENT SHALL BE FOUR YEARS AND SHALL EXPIRE ON THE THIRD MONDAY IN JANUARY OF THE APPROPRIATE YEAR. THE SUPERINTENDENT MAY BE REMOVED BY THE GOVERNOR FOR CAUSE.

C. ANY PERSON APPOINTED AS SUPERINTENDENT SHALL HAVE HAD, WITHIN FIFTEEN YEARS PRECEDING HIS FIRST APPOINTMENT, AT LEAST FIVE YEARS ACTIVE EXPERIENCE IN THE BANKING BUSINESS AS AN EXECUTIVE OFFICER OR SHALL HAVE SERVED A LIKE PERIOD OF TIME IN A BANK EXAMINING OR SUPERVISORY CAPACITY FOR THIS STATE OR FOR ANY OTHER STATE OR FOR AN AGENCY OR INSTRUMENTALITY OF THE UNITED STATES.

D. THE SALARY OF THE SUPERINTENDENT SHALL BE DETERMINED PURSUANT TO SECTION 38-611.

6-112. **Assistant superintendent; examiners; personnel**

A. THE SUPERINTENDENT SHALL APPOINT AN ASSISTANT SUPERINTENDENT WHO SHALL HAVE THE POWER AND PERFORM THE DUTIES OF THE SUPERINTENDENT DURING A VACANCY IN THE OFFICE OR DURING THE ABSENCE OR INABILITY OF THE SUPERINTENDENT. THE ASSISTANT SUPERINTENDENT SHALL HOLD SUCH APPOINTMENT AT THE WILL AND PLEASURE OF THE SUPERINTENDENT.

B. THE SUPERINTENDENT SHALL APPOINT SUCH EXAMINERS AND OTHER PERSONNEL NECESSARY.

6-113. **Acts prohibited; officers; employees**

A. NEITHER THE SUPERINTENDENT NOR ANY PERSONNEL OF THE DEPARTMENT SHALL DO ANY OF THE FOLLOWING WITH RESPECT TO ANY FINANCIAL INSTITUTION OR ENTERPRISE UNDER THE JURISDICTION OF THE DEPARTMENT:

1. BE INDEBTED, DIRECTLY OR INDIRECTLY, AS BORROWER, ACCOMMODATION ENDORSER, SURETY OR GUARANTOR TO ANY SUCH FINANCIAL INSTITUTION OR ENTERPRISE.

2. BE AN OFFICER, DIRECTOR OR EMPLOYEE OF ANY SUCH FINANCIAL INSTITUTION OR ENTERPRISE.

3. OWN OR DEAL IN, DIRECTLY OR INDIRECTLY, THE SHARES OR OBLIGATIONS OF ANY SUCH FINANCIAL INSTITUTION OR ENTERPRISE.

4. BE INTERESTED IN, DIRECTLY OR INDIRECTLY, OR RECEIVE FROM ANY SUCH FINANCIAL INSTITUTION OR ENTERPRISE, OR ANY OFFICER, DIRECTOR OR EMPLOYEE THEREOF, ANY SALARY, FEE, COMPENSATION OR OTHER VALUABLE THING BY WAY OF GIFT, CREDIT, COMPENSATION FOR SERVICES OR OTHERWISE.

5. BE INTERESTED IN OR ENGAGE IN THE NEGOTIATION OF ANY LOAN TO, OBLIGATION OF, OR ACCOMMODATION FOR ANOTHER PERSON TO OR WITH ANY SUCH FINANCIAL INSTITUTION OR ENTERPRISE.

6. GIVE ANY PRIOR NOTICE OF INTENTION TO VISIT ANY SUCH FINANCIAL INSTITUTION OR ENTERPRISE FOR THE PURPOSE OF MAKING AN INVESTIGATION OR EXAMINATION. THE SUPERINTENDENT MAY MAKE EXCEPTIONS TO THIS PROVISION WHERE IT MAY BECOME NECESSARY TO FACILITATE AN INVESTIGATION OR EXAMINATION.

B. NOTWITHSTANDING THE PROVISIONS OF SUBSECTION A, THE SUPERINTENDENT AND ANY PERSONNEL OF THE DEPARTMENT MAY:

1. MAINTAIN DEMAND, SAVINGS, TIME, SHARE AND TRUST ACCOUNTS IN ANY FINANCIAL INSTITUTION.

2. BECOME A BENEFICIARY OF ANY TRUST OR ESTATE ADMINISTERED BY ANY FIDUCIARY UNDER THE JURISDICTION OF THE DEPARTMENT.

3. BECOME INDEBTED TO, AND OWN AND DEAL IN SHARES AND OBLIGATIONS OF NATIONAL BANKS, FEDERAL SAVINGS AND LOAN ASSOCIATIONS AND FEDERAL CREDIT UNIONS.

ARTICLE 3. POWERS AND DUTIES

6-121. **Examination; supervision**

ALL FINANCIAL INSTITUTIONS AND ENTERPRISES SHALL BE SUBJECT TO EXAMINATION AND SUPERVISION BY THE DEPARTMENT.

6-122. **Superintendent; authority; duties**

THE SUPERINTENDENT HAS THE AUTHORITY AND RESPONSIBILITY FOR THE DISCHARGE OF ALL DUTIES IMPOSED BY LAW ON THE DEPARTMENT. HE SHALL EXAMINE OR CAUSE TO BE EXAMINED EACH FINANCIAL INSTITUTION ANNUALLY AND MORE FREQUENTLY IF HE CONSIDERS IT NECESSARY.

6-123. **Superintendent; powers**

IN ADDITION TO THE OTHER POWERS, EXPRESS OR IMPLIED, THE SUPERINTENDENT MAY:

1. EXERCISE ALL POWERS NECESSARY FOR ADMINISTRATION AND ENFORCEMENT OF THE LAWS RELATING TO FINANCIAL INSTITUTIONS AND ENTERPRISES.

2. MAKE AND PROMULGATE RULES NECESSARY OR APPROPRIATE TO THE POWERS AND DUTIES OF THE DEPARTMENT.

3. REQUIRE APPROPRIATE RECORDS, DOCUMENTS, INFORMATION AND REPORTS FROM ANY FINANCIAL INSTITUTION OR ENTERPRISE.

4. EMPLOY APPRAISERS TO APPRAISE ANY PROPERTY OWNED OR HELD AS SECURITY BY ANY FINANCIAL INSTITUTION. THE REASONABLE EXPENSES AND COMPENSATION OF SUCH APPRAISERS SHALL BE PAID BY THE FINANCIAL INSTITUTION.

5. HOLD MEMBERSHIP IN, PAY DUES TO AND ATTEND THE CONVENTION OF, THE NATIONAL AND REGIONAL ORGANIZATIONS OF STATE OFFICIALS OCCUPYING LIKE OFFICES OR PERFORMING SIMILAR FUNCTIONS.

6-124. **Superintendent and examiners; investigating and examining powers**

THE SUPERINTENDENT AND ANY EXAMINER, IN THE PERFORMANCE OF HIS DUTIES, IS AUTHORIZED TO TAKE EVIDENCE, EXAMINE ON OATH ANY PERSON AND COMPEL THE ATTENDANCE OF WITNESSES AND THE PRODUCTION OF DOCUMENTS, BOOKS AND PAPERS. UPON REFUSAL TO APPEAR OR PRODUCE, THE SUPERINTENDENT MAY APPLY TO THE SUPERIOR COURT TO COMPEL APPEARANCE OR PRODUCTION.

6-125. **Minimum annual examination assessment of financial institutions; other examinations; costs of foreign examination; payment**

A. DURING JULY OF EACH YEAR THE SUPERINTENDENT SHALL ASSESS A CHARGE FOR THE ANNUAL EXAMINATION:

1. UPON BANKS, FIVE HUNDRED DOLLARS PLUS ONE HUNDRED DOLLARS FOR EACH BRANCH BANKING OFFICE OR SIXTY DOLLARS PER ONE MILLION DOLLARS, OR FRACTION THEREOF, OF ITS TOTAL RESOURCES AS SHOWN BY THE LAST REPORT OF THE BANK TO THE SUPERINTENDENT, WHICHEVER IS GREATER.

2. UPON SAVINGS AND LOAN ASSOCIATIONS, FIVE HUNDRED DOLLARS PLUS ONE HUNDRED DOLLARS FOR EACH BRANCH, OR SIXTY DOLLARS PER ONE MILLION DOLLARS, OR FRACTION THEREOF, OF ITS TOTAL RESOURCES AS SHOWN BY THE LAST

REPORT OF THE ASSOCIATION TO THE SUPERINTENDENT, WHICHEVER IS GREATER.

3. UPON SMALL MONEY LENDERS, TWO HUNDRED DOLLARS FOR EACH LICENSED PLACE OF BUSINESS.

4. UPON CREDIT UNIONS, TWENTY-FIVE DOLLARS FOR THE FIRST TWENTY-FIVE THOUSAND DOLLARS OF ASSETS OR FRACTION, SEVENTY-FIVE DOLLARS FOR THE NEXT SEVENTY-FIVE THOUSAND DOLLARS OF ASSETS OR FRACTION, FIFTY DOLLARS FOR EACH ADDITIONAL ONE HUNDRED THOUSAND DOLLARS OR FRACTION THEREOF UP TO ONE MILLION DOLLARS, AND TWENTY-FIVE DOLLARS FOR EACH ADDITIONAL ONE HUNDRED THOUSAND DOLLARS OR FRACTION THEREOF AS SHOWN BY THE LAST REPORT OF THE CREDIT UNION TO THE SUPERINTENDENT.

B. THE SUPERINTENDENT SHALL ASSESS A CHARGE AT THE RATE OF EIGHTY DOLLARS PER DAY FOR EACH EXAMINER EMPLOYED IN THE FOLLOWING EXAMINATIONS:

1. THE ANNUAL EXAMINATION OF A TRUST COMPANY.

2. THE ANNUAL EXAMINATION OF THE TRUST OPERATION OF A BANK.

3. ANY ADDITIONAL EXAMINATION OF A FINANCIAL INSTITUTION ORDERED BY THE SUPERINTENDENT.

4. ANY EXAMINATION OF AN ENTERPRISE ORDERED BY THE SUPERINTENDENT.

C. FOR A FINANCIAL INSTITUTION MAINTAINING AN OFFICE OUTSIDE THIS STATE, IN ADDITION TO THE ANNUAL OR ADDITIONAL EXAMINATION ASSESSMENT, THE SUPERINTENDENT SHALL MAKE AN ASSESSMENT EQUAL TO THE TRAVEL AND SUBSISTENCE EXPENSE INCURRED IN THE EXAMINATION OF THE OFFICE IN THE FOREIGN STATE OR COUNTRY. NOTWITHSTANDING ANY OTHER LIMITATION PRESCRIBED BY LAW, EXAMINERS ENGAGED IN EXAMINATION OF A FOREIGN OFFICE SHALL BE REIMBURSED FOR THEIR NECESSARY TRAVEL AND SUBSISTENCE EXPENSES. REIMBURSEMENT FOR EXAMINERS' EXPENSES SHALL BE CREDITED TO THE APPROPRIATION ACCOUNT OF THE DEPARTMENT.

D. EXAMINATION ASSESSMENTS HEREINABOVE PROVIDED ARE DUE AND PAYABLE TO THE DEPARTMENT WITHIN THIRTY DAYS AFTER NOTICE OF THE ASSESSMENT IS MAILED BY THE DEPARTMENT. A PENALTY ASSESSMENT OF FIFTY DOLLARS IS MADE FOR EACH DAY OF FAILURE TO REMIT FOLLOWING THE THIRTY-DAY PERIOD HEREIN PROVIDED. IN NO EVENT SHALL THE TOTAL PENALTY EXCEED TWENTY-FIVE PER CENT OF THE EXAMINATION ASSESSMENT.

6-126. **Application fees for financial institutions; branches; moves; exceptions**

A. THE FOLLOWING NONREFUNDABLE FEES SHALL BE PAID TO THE DEPARTMENT WITH THE FILING OF THE FOLLOWING APPLICATIONS:

1. TO APPLY FOR A BANKING PERMIT, ONE THOUSAND DOLLARS.

2. TO ESTABLISH AN ADDITIONAL BANKING OFFICE, THREE HUNDRED SEVENTY-FIVE DOLLARS.

3. TO MOVE A BANKING OFFICE TO OTHER THAN AN ESTABLISHED OFFICE OF A BANK, THREE HUNDRED SEVENTY-FIVE DOLLARS.

4. TO APPLY FOR A SAVINGS AND LOAN ASSOCIATION PERMIT, ONE THOUSAND DOLLARS.

5. TO ESTABLISH AN ADDITIONAL SAVINGS AND LOAN ASSOCIATION BRANCH OFFICE, THREE HUNDRED SEVENTY-FIVE DOLLARS.

6. TO MOVE AN OFFICE OF A SAVINGS AND LOAN ASSOCIATION TO OTHER THAN AN ESTABLISHED OFFICE, THREE HUNDRED SEVENTY-FIVE DOLLARS.

7. TO ORGANIZE AND ESTABLISH A CREDIT UNION, TWENTY DOLLARS.

8. TO ORGANIZE AND ESTABLISH ANY OTHER FINANCIAL INSTITUTIONS FOR WHICH AN APPLICATION OR INVESTIGATION FEE IS NOT OTHERWISE PROVIDED BY LAW, TWO HUNDRED FIFTY DOLLARS.

B. NO FEES ARE CHARGEABLE FOR AN EXISTING OFFICE OBTAINED BY MERGER, CONSOLIDATION OR OTHER ACQUISITION.

6-127. **Disposition of revenue**

ALL FEES, CHARGES, FINES AND ASSESSMENTS RECEIVED BY THE DEPARTMENT SHALL BE REMITTED PROMPTLY TO THE STATE TREASURER AND PLACED BY HIM IN THE GENERAL FUND.

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

THE EXAMINATION OF A FINANCIAL INSTITUTION MAY BE MADE IN COORDINATION WITH ANY AUTHORIZED FEDERAL EXAMINATION. THE SUPERINTENDENT IN HIS DISCRETION MAY ACCEPT THE EXAMINATION REPORT OF A FEDERAL REGULATORY AUTHORITY IN LIEU OF ANY EXAMINATION AUTHORIZED OR REQUIRED BY THE LAWS OF THIS STATE. ACCEPTANCE OF EXAMINATION REPORTS SHALL NOT BE A WAIVER OF THE EXAMINATION ASSESSMENTS PROVIDED BY LAW.

6-129. **Records; disclosure and limitations on disclosure; evidentiary effect**

A. THE RECORDS OF THE DEPARTMENT SHALL NOT BE PUBLIC DOCUMENTS NOR SHALL THEY BE OPEN FOR INSPECTION BY THE PUBLIC AND NEITHER THE SUPERINTENDENT NOR ANY MEMBER OF HIS STAFF SHALL DISCLOSE ANY INFORMATION OBTAINED IN THE DISCHARGE OF HIS OFFICIAL DUTIES TO ANY PERSON NOT CONNECTED WITH THE DEPARTMENT, EXCEPT THAT THE SUPERINTENDENT MAY DISCLOSE SUCH INFORMATION:

1. TO REPRESENTATIVES OF FEDERAL AGENCIES INSURING ACCOUNTS IN THE FINANCIAL INSTITUTION.

2. TO REPRESENTATIVES OF FEDERAL AGENCIES, OTHER STATES AND FOREIGN COUNTRIES HAVING SUPERVISORY AUTHORITY OVER THE ACTIVITIES OF THE FINANCIAL INSTITUTION OR ENTERPRISE OR SIMILAR FINANCIAL INSTITUTIONS OR ENTERPRISES IF SUCH REPRESENTATIVES ARE PERMITTED TO AND DO UPON REQUEST OF THE SUPERINTENDENT, DISCLOSE SIMILAR INFORMATION RESPECTING THOSE FINANCIAL INSTITUTIONS OR ENTERPRISES UNDER THEIR SUPERVISION.

3. TO THE ATTORNEY GENERAL OF THIS STATE.

4. TO A SELECT COMMITTEE OF THE LEGISLATURE OF THIS STATE APPOINTED FOR THE PURPOSE OF INSPECTING SUCH RECORDS, BUT THIS PARAGRAPH SHALL NOT PERMIT DISCLOSURE OF INFORMATION AS TO THE CONDITION OF ANY PARTICULAR FINANCIAL INSTITUTION OR ENTERPRISE, OR DISCLOSURE OF INFORMATION AS TO ANY PARTICULAR TRANSACTION OR TRANSACTIONS OF A FINANCIAL INSTITUTION OR ENTERPRISE, OR DISCLOSURE OF INFORMATION WHICH HAS BEEN DISCLOSED TO A FINANCIAL INSTITUTION OR ENTERPRISE BY OR ON BEHALF OF ANY PERSON IN CONNECTION WITH A TRANSACTION OR PROPOSED TRANSACTION WITH SUCH FINANCIAL INSTITUTION OR ENTERPRISE.

B. THE SUPERINTENDENT MAY:

1. DISCLOSE THE FACT OF FILING OF APPLICATIONS BY FINANCIAL INSTITUTIONS AND ENTERPRISES, GIVE NOTICE OF HEARING, IF ANY, OF SUCH APPLICATIONS, AND ANNOUNCE HIS ACTION THEREON.

2. PREPARE AND CIRCULATE REPORTS REFLECTING THE ASSETS AND LIABILITIES OF FINANCIAL INSTITUTIONS, INCLUDING SUCH OTHER INFORMATION CONSIDERED PERTINENT TO THE PURPOSE OF EACH REPORT FOR GENERAL STATISTICAL INFORMATION.

3. PREPARE AND CIRCULATE REPORTS PROVIDED BY LAW.

C. EVERY OFFICIAL REPORT OF THE DEPARTMENT IS PRIMA FACIE EVIDENCE OF THE FACTS THEREIN STATED IN ANY ACTION OR PROCEEDING WHEREIN THE SUPERINTENDENT IS A PARTY.

6-130. **Limitation of personal liability**

NO OFFICER OR EMPLOYEE OF THE DEPARTMENT SHALL BE LIABLE IN ANY CIVIL ACTION FOR DAMAGES FOR ANY ACT DONE OR OMITTED IN GOOD FAITH IN PERFORMING THE FUNCTIONS OF THE DEPARTMENT.

6-131. **Right to sue and defend in actions; liability limitation**

THE SUPERINTENDENT IS EMPOWERED TO SUE AND PROSECUTE OR DEFEND IN ANY ACTION OR PROCEEDING IN ANY COURT OF THIS STATE OR ANY OTHER STATE OR TERRITORY AND IN ANY COURT OF THE UNITED STATES FOR THE ENFORCEMENT OR PROTECTION OF ANY RIGHT OR PURSUIT OF ANY REMEDY NECESSARY OR PROPER IN CONNECTION WITH THE MATTERS COMMITTED TO HIM FOR ADMINISTRATION OR IN CONNECTION WITH ANY FINANCIAL INSTITUTION OR ENTERPRISE UNDER HIS SUPERVISION, OR THE RIGHTS, LIABILITIES, PROPERTY OR ASSETS THEREOF. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO RENDER THE SUPERINTENDENT AS SUCH SUPERINTENDENT OR OTHERWISE LIABLE TO SUIT EXCEPT AS ANY OTHER DEPARTMENT OR AGENCY OF THE STATE MAY BE LIABLE UNDER THE GENERAL LAW.

Sec. 3. Section 6-610, Arizona Revised Statutes, is amended to read:

6-610. **Issuance of license; requirements; denial**

A. The superintendent shall enter an order granting the application and file his findings of fact with the department and forthwith issue and deliver a license to the applicant if he finds:

1. That the financial responsibility, experience, character and general fitness of the applicant are such as to command the confidence of the public and to warrant the belief that the business will be operated lawfully, honestly, fairly and efficiently within the purposes of this article.

2. That the applicant has available for use in the business assets of ten thousand dollars when the application is for location in a community with a population of seventy-five hundred or less, or that he has available for use in the business assets of twenty-five thousand dollars when the application is for location in a community with a population of more than seventy-five hundred.

B. If the superintendent finds that the requirements of subsection A of this section have not been met by the applicant, he shall enter an order denying the application and notifying the applicant of the denial, and shall return the annual license fee and retain the investigation fee. Within ten days after the entry of such order the superintendent shall file his order and findings of fact with respect thereto, together with a transcript of the evidence and the reasons supporting the denial, with the department and shall forthwith deliver a copy of such order and findings to the applicant.

C. The transcript of the hearing and evidence introduced at the hearing before the superintendent and the findings of fact filed by the superintendent shall be a public record and open to inspection at all reasonable times and exempt from the provisions of ~~sections 6-128 and 6-130~~ SECTION 6-129.

Sec. 4. Section 6-711, Arizona Revised Statutes, is amended to read:

6-711. **Examinations**

A. The superintendent may examine without notice the condition and affairs of each licensee. In connection with any examination, the superintendent may examine on oath any licensee, and any director, officer, employee, customer, creditor or stockholder of a licensee concerning the affairs and business of the licensee. The superintendent shall ascertain whether the licensee transacts its business in the manner prescribed by law and the rules and regulations of the department. In the investigation of the alleged violations of this article, the superintendent may compel the attendance of any person or the production of any books, accounts, records and files used, and may examine under oath all persons in attendance.

B. The licensee shall pay the cost of examination which shall be such sums as are provided by section 6-125.~~, subsection A, paragraph 5.~~

C. Failure to pay the examination fee within thirty days of receipt of demand from the superintendent shall automatically suspend the license until the fee is paid.

Approved by the Governor–April 2, 1973

Filed in the Office of the Secretary of State–April 3, 1973

CHAPTER 33

Senate Bill 1065

AN ACT

RELATING TO MOTOR VEHICLES; PROVIDING FOR CHANGE IN DEFINITION OF MOBILE HOME; PROVIDING FOR NULLIFICATION OF ANNUAL REGISTRATION OF MOBILE HOMES;

PROVIDING FOR LICENSE TAX IN LIEU OF AD VALOREM PROPERTY TAX ON CERTAIN CLASS OF TRAILER, AND AMENDING SECTIONS 42-641, 42-642 AND 42-643, ARIZONA REVISED STATUTES.

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

Section 1. Section 42-641, Arizona Revised Statutes, is amended to read:

42-641. **Definitions**

In this article, unless the context otherwise requires:

1. "Department" means the department of property valuation.

2. "Mobile home" means any vehicle, other than a self-propelled motor vehicle, ~~which was originally designed to be drawn by a motor vehicle and which is used for human occupancy~~ DESIGNED FOR HUMAN HABITATION AND BUILT ON A CHASSIS DESIGNED FOR BEING DRAWN UPON THE HIGHWAYS BY A MOTOR VEHICLE, AND WHICH IS IN EXCESS OF EIGHT FEET IN WIDTH OR FORTY FEET IN LENGTH, OR WHICH IS, REGARDLESS OF SIZE, USED AS A PLACE OF RESIDENCE OR FOR A COMMERCIAL PURPOSE AND WHICH HAS NOT BEEN ASSESSED PURSUANT TO SECTION 42-642, PARAGRAPH E.

Sec. 2. Section 42-642, Arizona Revised Statutes, is amended to read:

42-642. **Taxation of mobile homes; exemption**

A. Each mobile home shall be subject to ad valorem property tax to be assessed and collected in the same manner and at the same time as other personal property included in paragraph 3 or 4 of subsection B of section 42-227 and paragraph 3 or 4 of section 42-136, subject to the provisions of subsection B of this section.

B. If application for ~~registration~~ TITLE is made after the last day of March for any mobile home not previously required to ~~be registered~~ HAVE A TITLE in this state, the ad valorem tax for such year on such mobile home shall be reduced by one-fourth for each full calendar quarter of such year already expired.

C. The department shall establish the method of determining the valuation of each mobile home to be set by the county assessor.

D. The provisions of this article shall not apply to mobile homes properly licensed in another state which are owned by a bona fide tourist in this state. The provisions of this article shall apply to the owner of a mobile home or trailer located in this state who is a resident of this state. For the purpose of determining whether or not a mobile home ~~or trailer~~ in this state is subject to the tax provisions and the requirements regarding ~~registration or~~ titling~~, or both,~~ under the provisions of this article, "resident" includes, but is not limited to, the following:

1. Any person, except a tourist or out-of-state student, who owns, leases or rents a dwelling within the state and occupies it as a place of residence, or any person who, regardless of domicile, remains in the state for a consecutive period of six months or more.

2. Any person who engages in a trade, profession or occupation in this state or who accepts employment in other than seasonal agricultural work.

3. Any person placing children in a public school without payment of nonresident tuition.

4. Any person who declares himself to be a resident of this state for the purpose of obtaining at resident rates a state license or tuition fees at an educational institution maintained by public funds.

5. Any individual, partnership, company, firm, corporation or association which maintains a main office, branch office or warehouse facilities in the state, and which bases and operates motor vehicles in the state.

E. THE PROVISIONS OF THIS ARTICLE SHALL NOT APPLY TO ANY TRAILER WHICH IS EIGHT FEET OR LESS IN WIDTH AND FORTY FEET OR LESS IN LENGTH AND WHICH IS NOT USED AS A PLACE OF RESIDENCE OR FOR A COMMERCIAL PURPOSE. A LICENSE TAX IN LIEU OF ALL AD VALOREM PROPERTY TAXES SHALL BE ASSESSED ON ALL SUCH TRAILERS IN THE SAME MANNER AS SUCH TAXES ARE ASSESSED ON OTHER VEHICLES.

Sec. 3. Section 42-643, Arizona Revised Statutes, is amended to read:

42-643. **Certificate of title; exceptions; penalty fee**

A. All mobile homes customarily kept in this state shall be ~~registered~~ TITLED with the state highway department through the superintendent of motor vehicle division or his agents designated for such purpose ~~annually on or before the last day of February~~ and the ~~registration~~ fee required under title 28, shall be paid except for:

1. Mobile homes owned and held by a dealer solely for purposes of sale.

2. Mobile homes owned and operated exclusively in the public service by the federal government, by the state or by any political subdivision thereof, which mobile homes shall be ~~registered~~ TITLED but no tax ~~or registration fee~~ shall be paid thereon.

~~B. A penalty fee of six dollars twenty five cents shall be assessed for failure to register any mobile home as provided in subsection A of this section, on or before the last day of February of any year, except that the provisions of subsection B of section 28-318 relating to a refund of the penalty for nonuse on the highways shall not be applicable to this section.~~

~~C. The provisions of section 28-301 and subsection B of section 28-208 relating to the remittance, deposit, credit and disbursement of monies shall be applicable to monies collected by the county assessor under the provisions of this section.~~

~~D.~~ B. The issuance of a certificate of title for a mobile home shall be as provided by law for the titling of motor vehicles, except that in the case of a mobile home that consists of two or more separate sections, each such section shall have a separate certificate of title.

~~E. The registration for a mobile home as required in subsection A of this section shall be as provided by law for the registration of motor vehicles, except that in the case of a mobile home that consists of two or more separate sections each such section shall have a separate registration and license.~~

~~F.~~ C. All mobile homes as defined in this article shall be subject to all applicable provisions of title 28, EXCEPT THOSE PROVISIONS RELATING TO REGISTRATION AND except as otherwise provided in this article.

Sec. 4. **Effective date**

The provisions of this act shall become effective from and after December 31, 1973.

Approved by the Governor–April 4, 1973

Filed in the Office of the Secretary of State–April 4, 1973

LAWS OF ARIZONA

CHAPTER 34

Senate Bill 1089

AN ACT

RELATING TO TRADE AND COMMERCE; PROVIDING THAT CERTAIN MOTOR VEHICLES BE INCLUDED IN MOTOR VEHICLE TIME SALES DISCLOSURE PROVISIONS; PROVIDING THAT CERTAIN MOTOR VEHICLES BE EXCLUDED FROM RETAIL INSTALLMENT SALES TRANSACTIONS PROVISIONS; DEFINING THE TERM MOTOR VEHICLE, AND AMENDING SECTIONS 44-281 AND 44-6001, ARIZONA REVISED STATUTES.

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

Section 1. Section 44-281, Arizona Revised Statutes, is amended to read:

44-281. **Definitions**

In this article, unless the context otherwise requires:

1. "Administrator" means superintendent of banks.

2. "Cash sale price" means the price stated in a retail installment contract for which the seller would have sold to the buyer, and the buyer would have bought from the seller, the motor vehicle which is the subject matter of the retail installment contract, if such sale had been a sale for cash instead of a retail installment transaction. The cash sale price may include charges for accessories and their installation and for delivery, and servicing, repairing or improving the motor vehicle, and for charges for other costs necessary or incidental to the transaction which the seller furnishes or agrees to pay on behalf of the buyer, including taxes, license fees, and fees for filing, recording or otherwise perfecting or releasing a reserved title or lien, and may include a reasonable charge for seller's services in connection therewith.

3. "Dealer" means any person who in any year sells three or more motor vehicles at retail.

4. "Holder" of a retail installment contract means the retail seller of the motor vehicle under or subject to the contract or, if the contract is

purchased by a sales finance company or other assignee, the sales finance company or other assignee.

5. "Motor vehicle" means any SELF-PROPELLED device ~~propelled or drawn by any power other than muscular power~~ in, ~~which,~~ upon ~~which,~~ or by which any person or property is or may be transported or drawn on a public highway, ~~but excepting all tractors, buses, trucks, power shovels, road machinery, agricultural machinery and other machinery not designed primarily for highway transportation, but which may incidentally transport persons or property on a public highway, and excepting such devices which move upon or are guided by a track or travel through the air.~~ EXCEPT:

(a) DEVICES WHICH MOVE UPON OR ARE GUIDED BY A TRACK OR TRAVEL THROUGH THE AIR, AND

(b) THE FOLLOWING, IF NOT DESIGNED PRIMARILY FOR HIGHWAY TRANSPORTATION, BUT WHICH MAY INCIDENTALLY BE OPERATED ON A PUBLIC HIGHWAY:

(i) TRACTORS.

(ii) BUSES.

(iii) TRUCKS.

(iv) POWER SHOVELS.

(v) ROAD MACHINERY.

(vi) AGRICULTURAL MACHINERY.

6. "Person" means an individual, partnership, association, trust, corporation, or other legal entity.

7. "Retail buyer" or "buyer" means a person who buys a motor vehicle from a retail seller, not for the purpose of resale, and who executes a retail installment contract in connection therewith.

8. "Retail installment contract" or "contract" means an agreement, entered into in this state, pursuant to which the title to, or a lien upon the motor vehicle, which is the subject matter of a retail installment transaction, is retained or taken by a retail seller from a retail buyer as security, for the buyers obligation. The term includes a conditional sales

contract and a contract for the bailment or leasing of a motor vehicle by which the bailee or lessee contracts to pay as compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed that the bailee or lessee is bound to become, or has the option of becoming, the owner of the motor vehicle upon full compliance with the provisions of the contract.

9. "Retail installment transaction" means any transaction evidenced by a retail installment contract entered into between a retail buyer and a retail seller wherein the retail buyer buys a motor vehicle from the retail seller at a time price payable in one or more deferred installments. The cash sale price of the motor vehicle, the amount included for insurance if a separate charge is made therefor, and the time price differential shall together constitute the time price.

10. "Retail seller" or "seller" means a person who sells a motor vehicle to a retail buyer for purposes other than resale under or subject to a retail installment contract.

11. "Sales finance company" means a person engaged, in whole or in part, in the business of purchasing retail installment contracts from one or more retail sellers. The term also includes a retail seller engaged, in whole or in part, in the business of creating and holding retail installment contracts which exceed a total aggregate outstanding indebtedness of twenty-five thousand dollars. The term does not include the pledgee of an aggregate number of retail installment contracts to secure a bona fide loan thereon.

12. "Time price differential" means the amount agreed upon between the buyer and the seller, as limited herein, which in determining the price is added to the aggregate of the following: The cash sale price and the amount, if any, included for insurance and other benefits where a separate cost is assigned thereto.

Sec. 2. Section 44-6001, Arizona Revised Statutes, is amended to read:

44-6001. **Definitions**

In this chapter, unless the context otherwise requires:

1. "Cash sale price" means the price stated in a retail installment contract or other memorandum furnished by a retail seller to a retail buyer in connection with a retail charge account agreement, for which the seller would have sold and the buyer would have bought the goods or services

which are the subject matter of a retail installment transaction, if the sale had been a sale for cash. The cash sale price may include any taxes and charges for delivery, installation, servicing, repairs, alterations or improvements.

2. "Goods" means all tangible chattels, except motor vehicles, money, things in action or intangible personal property other than merchandise certificates or coupons as described in this chapter. The term includes chattels which are to be affixed to real property as to become a part of it whether or not severable from it and merchandise certificates or coupons, issued by a retail seller, not redeemable in cash and to be used in the face amount instead of cash for goods or services sold by such seller.

3. "Holder" means:

(a) The retail seller of goods or services under a retail installment contract or retail charge account agreement.

(b) A person to whom a retail buyer owes an obligation arising from a retail installment transaction, whether directly or by assignment or other transfer.

(c) Any person entitled to the rights of a retail seller under a retail installment contract or retail charge account agreement.

4. "Motor vehicle" means any self-propelled device in, upon or by which any person or property is or may be transported or drawn on a public highway, except: ~~tractors, buses, trucks, power shovels, road machinery, agricultural machinery and other machinery not designed primarily for highway transportation, but which may incidentally be operated on a public highway, and devices which move upon or are guided by a track or travel through the air.~~

(a) DEVICES WHICH MOVE UPON OR ARE GUIDED BY A TRACK OR TRAVEL THROUGH THE AIR, AND

(b) THE FOLLOWING, IF NOT DESIGNED PRIMARILY FOR HIGHWAY TRANSPORTATION, BUT WHICH MAY INCIDENTALLY BE OPERATED ON A PUBLIC HIGHWAY:

(i) TRACTORS.

(ii) BUSES.

(iii) TRUCKS.

(iv) POWER SHOVELS.

(v) ROAD MACHINERY.

(vi) AGRICULTURAL MACHINERY.

5. "Official fees" means the amount of the fees prescribed by law for filing, recording or otherwise perfecting and releasing or satisfying a retained title, lien or other security interest created by a retail installment transaction.

6. "Principal balance" means the cash sale price of the goods or services which are the subject matter of a retail installment contract plus any amounts included, if a separate identified charge is made and stated in the contract, for insurance and official fees, less the amount of the buyer's down payment in money, goods or both.

7. "Retail buyer" or "buyer" means a person who buys goods or services from a retail seller.

8. "Retail charge account agreement" means an arrangement prescribing the terms of retail installment transactions which may be made from time to time in which a retail buyer purchases goods or services and in which a time price differential or delinquency charge may be computed in relation to the buyer's balance in the account.

9. "Retail installment contract" means an arrangement for a retail installment transaction except a retail charge account agreement or memorandum reflecting a sale made pursuant to such agreement. "Retail installment contract" may include a chattel mortgage, a conditional sale contract, any security agreement or contract in the form of a bailment or lease if the bailee or lessee contracts to pay as compensation for the use of the bailed or leased goods a sum substantially equivalent to or in excess of the value of the goods and if it is agreed that the bailee or lessee is bound to or has the option of becoming the owner of the goods for no other or a nominal consideration upon full compliance with the provisions of the bailment or lease.

10. "Retail installment transaction" means any transaction in which a retail buyer purchases goods or services from a retail seller pursuant to a retail installment contract or a retail charge account agreement and under which the buyer agrees to pay for the goods and services in one or more installments.

11. "Retail seller" or "seller" means a person regularly and principally engaged in the business of selling goods or services to retail buyers.

12. "Services" means work, labor, or services of any kind.

13. "Time price differential", however denominated or expressed, means the amount payable by the buyer for the privilege of purchasing goods or services under a retail installment transaction. It does not include the amount, if any, charged for insurance premiums, delinquency charges, attorneys' fees, court costs or official fees.

Approved by the Governor–April 4, 1973

Filed in the Office of the Secretary of State–April 4, 1973

CHAPTER 35

House Bill 2182

AN ACT

RELATING TO POWER; PRESCRIBING COMPENSATION FOR MEMBERS OF THE ARIZONA ATOMIC ENERGY COMMISSION, AND AMENDING SECTION 30-653, ARIZONA REVISED STATUTES.

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

Section 1. Section 30-653, Arizona Revised Statutes, is amended to read:

30-653. **Arizona atomic energy commission; qualifications; terms**

A. There shall be an Arizona atomic energy commission which shall consist of the executive director of the department of economic planning and development, the commissioner of the state department of health and ten additional members who shall be appointed by the governor. The ten additional members shall be appointed from among persons possessing not less than four years of education or experience in the use or control of atomic energy or radiation. Such members shall also be associated with one or more of the following fields: Medicine including radiology, radiation protection, higher education, nuclear services, manufacturing,

electric power generation, agriculture, mining or other commerce. No more than two members shall be appointed as representatives of any one of the fields named in this subsection.

B. The term of office of each appointed member shall be five years. Of the members first appointed two shall serve for terms ending January 1, 1965, and two each for terms ending one, two, three and four years thereafter. A vacancy caused other than by expiration of the terms shall be filled in the same manner as the original appointments, but shall be only for the balance of the unexpired term.

C. Members of the commission shall receive compensation ~~for~~ AS DETERMINED PURSUANT TO SECTION 38-611 IN LIEU OF subsistence ~~and travel as allowed by law for other state officers,~~ while attending meetings or performing their powers or duties under the provisions of this chapter. The executive director of the department of economic planning and development and the commissioner of the state department of health shall receive no compensation for their service under this chapter, but shall be reimbursed for travel and other necessary expenses incurred in the performance of official duties as provided by law for other state officers.

D. A majority of the membership of the commission shall constitute a quorum for the transaction of business. The commission shall elect from among its membership a chairman and such other officers it deems necessary, to serve for such terms as the commission determines.

Sec. 2. **Emergency**

To preserve the public peace, health and safety it is necessary that this act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.

Approved by the Governor—April 6, 1973

Filed in the Office of the Secretary of State—April 6, 1973

LAWS OF ARIZONA

CHAPTER 36

House Bill 2200

AN ACT

RELATING TO STATE GOVERNMENT; PROVIDING THAT EMERGENCY MEDICAL SERVICES EMPLOYEES BE SUBJECT TO CLASSIFICATION BY THE LAW ENFORCEMENT MERIT SYSTEM COUNCIL, AND AMENDING SECTION 41-1833, ARIZONA REVISED STATUTES.

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

Section 1. Section 41-1833, Arizona Revised Statutes, is amended to read:

41-1833. **Powers and duties of the director; additional compensation**

A. The director shall:

1. Subject to the ~~personnel commission~~ LAW ENFORCEMENT MERIT SYSTEM COUNCIL classifications and pay scales, appoint, define the duties and prescribe the terms and conditions of employment of all employees of the division.

2. Promulgate rules and regulations necessary for the operation of the division and for carrying out the purposes of this chapter.

3. Cooperate with and assist the personnel of emergency receiving facilities and other health care institutions in preparing a plan to be followed by such facilities and institutions in the event of a major disaster.

4. Cooperate with the state director of emergency services when a state of emergency or a state of war emergency has been declared by the governor.

B. The director may:

1. Request the cooperation of utilities, communications media and public and private agencies to aid and assist in the implementation and maintenance of a statewide emergency medical services system.

2. Cooperate with any agency or group which provides a similar program of emergency medical services in a contiguous state.

3. Enter into contracts and agreements for the acquisition and purchase of any equipment, tools, supplies and materials necessary in the administration of this chapter.

4. Enter into contracts with emergency receiving facilities and ambulance services, and may establish emergency medical services, including emergency receiving facilities, where necessary to assure the availability and quality of such services. Such contracts shall not provide for annual payments in excess of twenty thousand dollars for each facility or five thousand dollars for each ambulance service.

5. Accept and expend federal funds and private grants, gifts, contributions and bequests to assist in carrying out the purposes of this chapter. Such funds shall not revert to the state general fund at the close of a fiscal year.

C. For the additional duties assigned to him by this chapter, the director shall receive five thousand dollars additional compensation annually.

Approved by the Governor–April 6, 1973

Filed in the Office of the Secretary of State–April 6, 1973

CHAPTER 37

House Bill 2206

AN ACT

MAKING A SUPPLEMENTAL APPROPRIATION TO THE AUDITOR GENERAL FOR OFFICE RENTAL CHARGES.

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

Section 1. **Appropriation; purpose**

In addition to the appropriation made by Laws 1972, chapter 216, section 1, subdivision 12, and allocated to the auditor general, the sum of nine thousand five hundred ninety-seven dollars is appropriated to the auditor general to be available for office rental charges during the fiscal year ending June 30, 1973.

Sec. 2. **Emergency**

To preserve the public peace, health and safety it is necessary that this act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.

Approved by the Governor–April 6, 1973

Filed in the Office of the Secretary of State–April 6, 1973

CHAPTER 38

House Bill 2207

AN ACT

MAKING A SUPPLEMENTAL APPROPRIATION TO THE DEPARTMENT OF FINANCE OR ITS SUCCESSOR.

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

Section 1. **Appropriation; purpose**

In addition to the appropriation made by Laws 1972, chapter 216, section 1, subdivision 15, the sum of twenty-five thousand dollars is appropriated to the department of finance, or its successor, for the division of accounts and controls to be used for the following purposes in the following amounts:

Personal services	$21,100.00
Employee related expenditures	3,900.00
Total	$25,000.00

Sec. 2. **Emergency**

To preserve the public peace, health and safety it is necessary that this act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.

Approved by the Governor–April 6, 1973

Filed in the Office of the Secretary of State–April 6, 1973

LAWS OF ARIZONA

CHAPTER 39

House Bill 2135

AN ACT

MAKING AN APPROPRIATION TO THE DEPARTMENT OF ECONOMIC SECURITY TO INCREASE AMOUNT IN REVOLVING FUND.

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

Section 1. **Appropriation; purpose**

The sum of ten thousand dollars is appropriated to the department of economic security for the purpose of increasing the amount in the governor-on-the-job training revolving fund, account numbered 13-290-901, created by Laws 1947, chapter 108.

Sec. 2. **Exemption**

The appropriation made under section 1 of this act is exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations.

Sec. 3. **Emergency**

To preserve the public peace, health and safety it is necessary that this act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.

Approved by the Governor–April 6, 1973

Filed in the Office of the Secretary of State–April 6, 1973

LAWS OF ARIZONA

CHAPTER 40

Senate Bill 1104

AN ACT

RELATING TO WATERS; PROVIDING FOR FLOOD CONTROL ASSISTANCE; PRESCRIBING METHODS AND MEANS WHEREBY THE STATE MAY COOPERATE WITH THE UNITED STATES IN THE CONSTRUCTION OF FLOOD CONTROL PROJECTS; AMENDING TITLE 45, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 14, AND MAKING APPROPRIATIONS.

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

Section 1. **Legislative intent**

The growth of the state of Arizona, in terms of population, commerce and industry, makes it essential that damages from floods be controlled to the greatest extent possible so as to avoid damages to life and property, while at the same time protecting the natural environment and ecology. It is hereby declared that the people of the state have a primary interest in the control and conservation of flood waters, prevention of damage by flood waters, the washing away of river and stream banks by floods and in the determination of the manner in which flood waters shall be controlled for the protection of life and property in the control, storage and use of the state's water resources in the general public interest.

It is hereby declared that recurrent floods on streams, rivers and other waterways of the state, causing loss of life and property, disruption of commerce, interruption of transportation and communications and wasting of water, are detrimental to the peace, health, safety and welfare of the people of the state. Support of the control, storage and full beneficial use of flood waters, and the prevention of damages by flood waters and the washing away of river and stream banks by floods in cooperation with counties, cities, state agencies and public districts and the United States, or any of its departments or agencies, is a proper function of the state.

The legislature intends that from time to time allocations from the general fund for flood control projects will be made to pay for not to exceed one-half of the cost of all lands, easements and rights of way necessary for the flood control purposes of projects adopted and authorized pursuant to federal law and recommended by the Arizona water commission and

approved by the legislature concurrent with the availability of federal funds for their construction.

Notwithstanding any provision hereof to the contrary, it is neither the intent nor the purpose of this act to transfer any of the duties of the state land department imposed by title 45 of the Arizona code to the Arizona water commission, nor is it the intent to supersede those duties of the state land department.

Sec. 2. Title 45, Arizona Revised Statutes, is amended by adding chapter 14, article 1, to read:

CHAPTER 14
FLOOD CONTROL ASSISTANCE
ARTICLE 1. GENERAL PROVISIONS

45-2701. **Definitions**

IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "COMMISSION" MEANS THE ARIZONA WATER COMMISSION.

2. "DESIGN FLOOD" MEANS A SELECTED FLOOD AGAINST WHICH PROTECTION IS PROVIDED, OR EVENTUALLY WILL BE PROVIDED, BY MEANS OF FLOOD PROTECTIVE OR CONTROL WORKS. WHEN A FEDERAL SURVEY HAS BEEN AUTHORIZED THE DESIGN FLOOD WILL BE DETERMINED BY THE APPROPRIATE FEDERAL AGENCY AND IN ALL OTHER CASES IT WILL BE DETERMINED BY THE RESPONSIBLE PUBLIC AGENCY. IT IS THE BASIS FOR DESIGN AND OPERATION OF A PARTICULAR PROJECT AFTER FULL CONSIDERATION OF FLOOD CHARACTERISTICS, FREQUENCIES, AND POTENTIALS AND ECONOMIC AND OTHER PRACTICAL CONSIDERATIONS.

3. "DESIGNATED FLOODWAY" MEANS THE CHANNEL OF A STREAM AND THAT PORTION OF THE ADJOINING FLOOD PLAIN REQUIRED TO REASONABLY PROVIDE FOR THE CONSTRUCTION OF A PROJECT FOR PASSAGE OF THE DESIGN FLOOD, INCLUDING LANDS NECESSARY FOR CONSTRUCTION OF PROJECT LEVEES.

4. "FLOOD CONTROL PROJECT" MEANS ANY PROJECT REQUIRING LOCAL COOPERATION FOR FLOOD CONTROL PURPOSES AUTHORIZED PURSUANT TO FEDERAL LAW AND ON WHICH CONSTRUCTION COMMENCES AFTER THE EFFECTIVE DATE OF THIS CHAPTER.

5. "LANDS, EASEMENTS AND RIGHTS OF WAY" MEANS:

(a) LANDS AND RIGHTS OF INTEREST IN LANDS NECESSARY FOR FLOOD CONTROL STORAGE, CHANNEL IMPROVEMENTS AND CHANNEL RECTIFICATIONS.

(b) LANDS, RIGHTS OR INTERESTS IN LANDS NECESSARY IN CONNECTION WITH THE CONSTRUCTION, OPERATION OR MAINTENANCE OF SUCH STORAGE, CHANNEL IMPROVEMENTS AND RECTIFICATIONS, INCLUDING THOSE NECESSARY FOR FLOWAGE PURPOSES, SPOIL AREAS, BORROW PITS OR FOR ACCESS ROADS.

(c) THE COST OF THE RELOCATION, RECONSTRUCTION OR REPLACEMENT OF EXISTING IMPROVEMENTS, STRUCTURES OR UTILITIES RENDERED NECESSARY BY SUCH CHANNEL IMPROVEMENTS AND RECTIFICATIONS.

6. "PUBLIC AGENCY" MEANS ANY STATE AGENCY OR POLITICAL SUBDIVISION OF THE STATE.

45-2702. **Investigation and certification by commission**

AT SUCH TIMES AS THE FEDERAL GOVERNMENT BUDGETS FUNDS FOR THE CONSTRUCTION OF ANY FLOOD CONTROL PROJECT IN THIS STATE, ANY PUBLIC AGENCY AFFECTED MAY REQUEST THE COMMISSION TO INVESTIGATE SUCH PROJECT AND REPORT TO THE LEGISLATURE THE RESULTS OF ITS INVESTIGATION, AND THE COMMISSION SHALL CERTIFY TO THE LEGISLATURE THE DATE STATE FUNDS SHOULD BE APPROPRIATED TO PAY THE COST OF STATE PARTICIPATION IN SUCH PROJECT AND THE ESTIMATED AMOUNT.

45-2703. **Limitation on expenditure of funds**

THE COMMISSION SHALL NOT DISBURSE ANY FUNDS FOR A FLOOD CONTROL PROJECT UNTIL THE LEGISLATURE HAS APPROPRIATED FUNDS TO CONTRIBUTE TOWARD THE LOCAL COST OF LAND, EASEMENTS AND RIGHTS OF WAY FOR THAT PROJECT. THE COMMISSION SHALL NOT UNDERTAKE THE CONSTRUCTION OF FLOOD CONTROL PROJECTS.

45-2704. **Flood plain regulations; effect of failure to adopt**

THE COMMISSION SHALL NOT DISBURSE ANY MONIES PURSUANT TO THIS CHAPTER TO PAY ANY COSTS OF LANDS, EASEMENTS

AND RIGHTS OF WAY FOR A FLOOD CONTROL PROJECT FOR WHICH THE APPROPRIATE PUBLIC AGENCY FAILS TO ESTABLISH, WITHIN A REASONABLE TIME AFTER NOTIFICATION BY THE COMMISSION, THE NECESSARY FLOOD PLAIN REGULATIONS FOR THE AREA CLASSIFIED AS A DESIGNATED FLOODWAY BY THE COMMISSION UPON REVIEW OF THE COMPLETE FEDERAL OR FEDERALLY ASSISTED PROJECT REPORT.

45-2705. **Limit of financial assistance**

FOR A PERIOD OF FIFTEEN YEARS FROM THE DATE OF THIS CHAPTER, THE STATE MAY CONTRIBUTE FUNDS NOT TO EXCEED ONE-HALF OF THE NON-FEDERALLY SUPPORTED COST SOLELY FOR LANDS, EASEMENTS AND RIGHTS OF WAY NECESSARY IN CONNECTION WITH THE CONSTRUCTION OF ANY FEDERAL OR FEDERALLY ASSISTED FLOOD CONTROL PROJECT RECOMMENDED BY THE COMMISSION, SUBJECT TO APPROPRIATION OF MONIES BY THE LEGISLATURE.

45-2706. **Time for determining costs; change of determination**

A. THE STATE'S PORTION OF THE COSTS OF LANDS, EASEMENTS AND RIGHTS OF WAY SHALL BE DETERMINED BY THE COMMISSION AT OR PRIOR TO THE TIME THE COMMISSION SUBMITS ITS REPORT TO THE LEGISLATURE RECOMMENDING AN APPROPRIATION FOR SUCH PROJECT.

B. THE STATE'S PORTION OF SUCH COSTS SHALL NOT BE CHANGED UNLESS THERE ARE MAJOR PROJECT CHANGES MADE IN THE PLAN OF IMPROVEMENT, IN WHICH CASE THE COMMISSION, PRIOR TO THE NEXT APPROPRIATION OF STATE FUNDS FOR THE PROJECT, SHALL REVIEW THE PROJECT AND MAKE SUCH REPORTS AND RECOMMENDATIONS TO THE LEGISLATURE AS IT DEEMS JUSTIFIED BY THE PROJECT CHANGES.

45-2707. **State held harmless**

THE COMMISSION SHALL NOT DISBURSE ANY MONIES APPROPRIATED TO IT PURSUANT TO THIS CHAPTER UNLESS AND UNTIL A PUBLIC AGENCY HAS IN WRITING ASSUMED THE OBLIGATIONS OF MAINTENANCE AND PROVIDED THE FEDERAL GOVERNMENT AND THE STATE WITH WRITTEN INDEMNIFICATION FROM DAMAGES DUE TO THE CONSTRUCTION OF FLOOD CONTROL PROJECTS.

45-2708. **Disbursement to public agencies**

MONEY APPROPRIATED TO THE COMMISSION FOR FLOOD CONTROL PROJECTS SHALL BE DISBURSED TO PUBLIC AGENCIES UPON ORDER OF THE COMMISSION AFTER APPLICATION BY SUCH AGENCIES SHOWING THE NECESSITY, PURPOSE AND USE TO BE MADE OF SUCH MONIES AND THE AVAILABILITY OF ALL LOCAL MONIES NECESSARY FOR THE PROJECT OR BY THE SHOWING THAT SUCH AGENCIES, SUBSEQUENT TO APRIL 1, 1973, HAVE MADE NECESSARY ADVANCES OR INCURRED OBLIGATIONS FOR THE PURPOSE OF EXPEDITING PROJECTS FOR WHICH SUCH MONIES ARE REQUIRED AND GIVING SUCH OTHER INFORMATION AS THE COMMISSION MAY REQUIRE. IN ADDITION TO THE INFORMATION REQUIRED ON THE APPLICATION, THE COMMISSION MAY REQUIRE INTERIM REPORTS DETAILING EXPENDITURES OF DISBURSED SUMS AND CONTAINING SUCH ADDITIONAL INFORMATION AS REQUIRED BY THE COMMISSION. THE COMMISSION MAY REFUSE TO MAKE ANY DISBURSEMENT OF ANY OF THE MONIES AVAILABLE IF THE PROVISIONS OF THIS CHAPTER ARE VIOLATED.

45-2709. **Report to legislature**

THE COMMISSION SHALL REPORT TO THE LEGISLATURE, WITHIN FIFTEEN DAYS AFTER THE COMMENCEMENT OF EACH REGULAR SESSION, ON THE DISBURSAL OR REFUSAL TO DISBURSE MONEY APPROPRIATED TO IT BY THE LEGISLATURE FOR PURPOSES OF THIS CHAPTER.

45-2710. **Consideration of water uses in studying flood control projects**

IN STUDYING FLOOD CONTROL PROJECTS, THE COMMISSION SHALL GIVE FULL CONSIDERATION TO ALL BENEFICIAL USES OF THE STATE'S WATER AND OTHER NATURAL RESOURCES, INCLUDING, BUT NOT LIMITED TO, IRRIGATION, GENERATION OF ELECTRIC ENERGY, MUNICIPAL AND INDUSTRIAL CONSUMPTION OF WATER AND POWER, RECHARGE OF GROUND WATER BASINS, PRESERVATION AND DEVELOPMENT OF FISH AND WILDLIFE RESOURCES AND RECREATIONAL FACILITIES IN ORDER THAT RECOMMENDATIONS MAY BE MADE AS TO THE FEASIBILITY OF SUCH PROJECTS AND THE METHOD OF FINANCING FEASIBLE PROJECTS. NOTHING IN THIS CHAPTER SHALL AFFECT EXISTING WATER RIGHTS.

45-2711. **Powers and duties of commission**

A. THE COMMISSION, OR ITS DULY AUTHORIZED REPRESENTATIVE, MAY CALL, CONDUCT, ATTEND OR OTHERWISE PARTICIPATE IN CONFERENCES OR HEARINGS, OFFICIAL OR UNOFFICIAL, WITHIN OR WITHOUT THIS STATE, WITH INTERESTED PERSONS, AGENCIES OR OFFICERS OF THIS OR ANY OTHER STATE OR THE FEDERAL GOVERNMENT, CONCERNING FLOOD CONTROL AND FLOOD PLAIN MANAGEMENT.

B. THE COMMISSION SHALL KEEP ITSELF INFORMED AS TO ANY ACTIVITIES, REQUIREMENTS OR PROCEDURES OF THE FEDERAL GOVERNMENT, OR ANY OF ITS DEPARTMENTS OR AGENCIES, AFFECTING ANY PROPOSED FLOOD CONTROL PROJECTS WITHIN THE SCOPE OF THIS CHAPTER.

C. THE COMMISSION SHALL:

1. COLLECT AND FILE DATA.

2. MAKE NECESSARY STUDIES AND SURVEYS.

3. MAKE INVESTIGATIONS.

4. PREPARE PLANS AND ESTIMATES FOR COSTS AND BENEFITS OF ALL PROPOSED WATER DEVELOPMENT PROJECTS.

5. DETERMINE THE DAMAGE CREATED BY FLOOD WATERS.

6. ENCOURAGE THE CREATION AND DEVELOPMENT OF FLOOD CONTROL AND WATER CONSERVATION PLANS AND ACTIVITIES OF THE SEVERAL COUNTIES, CITIES, STATE AGENCIES AND PUBLIC DISTRICTS.

7. COOPERATE WITH THE FEDERAL GOVERNMENT OR ANY OF ITS DEPARTMENTS OR AGENCIES, COUNTIES, CITIES, STATE AGENCIES OR PUBLIC DISTRICTS, IN CARRYING OUT MEASURES FOR CONTROL, STORAGE OR USE OF WATERS IN STREAMS, RIVERS OR OTHER WATERWAYS, AND THE WATERSHEDS THEREOF WITHIN THIS STATE.

8. ADOPT RULES AND REGULATIONS FOR THE DISPENSING OF FUNDS APPROPRIATED BY THE LEGISLATURE PURSUANT TO THIS CHAPTER.

Sec. 3. **Appropriations; purposes; exemption**

A. The sum of two million four hundred fifty thousand dollars is appropriated to the Arizona water commission to carry out the provisions of this act, to be available for flood control projects, in the amounts stated, as follows:

1.	Williams–Chandler watershed	$1,350,000.00
2.	Buckhorn Mesa watershed	1,000,000.00
3.	Wickenburg watershed	25,000.00
4.	Foote Wash watershed	75,000.00
	Total	$2,450,000.00

B. The sum of $25,000.00 is appropriated to the Arizona water commission for the administration of the act.

C. The appropriations made in this section are exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations.

Sec. 4. **Emergency**

To preserve the public peace, health and safety it is necessary that this act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.

Approved by the Governor–April 9, 1973

Filed in the Office of the Secretary of State–April 10, 1973

CHAPTER 41

House Bill 2074

AN ACT

RELATING TO PUBLIC LANDS; AUTHORIZING LAND DEPARTMENT TO PERMIT CONSTRUCTION AND MAINTENANCE OF CERTAIN FLOOD CONTROL AND SOIL PROTECTIVE SYSTEMS ON STATE LANDS; PRESCRIBING CONDITIONS AND LIMITATION THEREFOR; PROVIDING THAT DUE COMPENSATION SHALL BE PROVIDED FOR THE OWNERS OF

IMPROVEMENTS ON LANDS AFFECTED BY SUCH FLOOD CONTROL AND SOIL PROTECTIVE SYSTEMS, AND AMENDING SECTION 37-461, ARIZONA REVISED STATUTES.

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

Section 1. Section 37-461, Arizona Revised Statutes, is amended to read:

37-461. **Grants of rights of way and sites for public uses; authorizing certain construction; limitation**

A. The state land department may grant rights of way for any purpose it deems necessary, and sites for reservoirs, dams and power or irrigation plants, or other purposes, on and over state lands, subject to terms and conditions the department imposes. The department may make rules and regulations respecting the granting and maintenance of such rights of way and sites.

B. When grant of a right of way or site amounts to the disposition of or conveys a perpetual right to the use of the surface of the land, it shall be disposed of after approval by the department of the application for the right of way or sites in conformity with the requirements of law, and the department may, if the best interest of the state requires, state in the notice of sale that the sale is subject to approval by the state land department, and in such case the purchaser shall not be entitled to the right of way or site until his purchase is confirmed.

C. THE DEPARTMENT MAY PERMIT THE USE OF STATE LANDS BY A GOVERNMENTAL AGENCY FOR THE CONSTRUCTION AND MAINTENANCE OF FLOOD CONTROL AND SOIL PROTECTIVE SYSTEMS, WITHOUT COST TO THE CONSTRUCTING AGENCY, WHERE IT IS DETERMINED BY THE DEPARTMENT THAT BY SUCH USE BENEFITS WHICH ARE EQUAL TO OR IN EXCESS OF THE VALUE OF THE STATE LANDS TO BE SO USED WILL ACCRUE TO OTHER STATE LANDS OR WILL BE IN THE BEST INTERESTS OF THE BENEFICIARIES OF TRUST LANDS. AUTHORITY FOR SUCH USE BY A GOVERNMENTAL AGENCY SHALL BE IN EFFECT ONLY SO LONG AS THE LANDS ARE USED FOR THE PURPOSE FOR WHICH PERMISSION WAS GRANTED. DUE COMPENSATION SHALL BE PROVIDED FOR THE OWNERS OF IMPROVEMENTS ON THE LANDS AFFECTED BY SUCH FLOOD CONTROL AND SOIL PROTECTIVE SYSTEMS.

Approved by the Governor–April 9, 1973

Filed in the Office of the Secretary of State–April 10, 1973

LAWS OF ARIZONA

CHAPTER 42

House Bill 2121

AN ACT

RELATING TO LABOR; PROVIDING INDUSTRIAL COMMISSION WITH AUTHORITY TO SET STANDARDS FOR CERTAIN REPAIRMEN OR INSPECTORS, AND AMENDING TITLE 23, CHAPTER 2, ARTICLE 10, ARIZONA REVISED STATUTES, BY ADDING SECTION 23-431.

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

Section 1. Title 23, chapter 2, article 10, Arizona Revised Statutes, is amended by adding section 23-431, to read:

23-431. **Standards of competency**

THE COMMISSION MAY ESTABLISH REQUIREMENTS AND STANDARDS OF COMPETENCY FOR INDIVIDUALS INVOLVED IN INSPECTING, CONSTRUCTING, RELOCATING, ALTERING, DISMANTLING, MAINTAINING OR REPAIRING ELEVATORS, DUMBWAITERS, ESCALATORS, MOVING WALKS, BOILERS AND PRESSURE VESSELS.

Approved by the Governor–April 9, 1973

Filed in the Office of the Secretary of State–April 10, 1973

CHAPTER 43

House Bill 2131

AN ACT

RELATING TO MINERALS, OIL AND GAS; PROVIDING FOR NOTICE OF TRANSFER OF WELL RIGHTS; PROVIDING FOR REPRODUCTIVE AND HEARING FEES, AND AMENDING SECTIONS 27-506, 27-515 AND 27-517, ARIZONA REVISED STATUTES.

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

Section 1. Section 27-506, Arizona Revised Statutes, is amended to read:

27-506. **Regulation of drilling in pools; notice of sale, transfer or purchase**

A. The commissioner shall, upon notice and hearing, regulate drilling and location of wells in any pool and the production therefrom to prevent reasonably avoidable net drainage from each developed unit so that each owner in a pool shall have the right and opportunity to recover his fair and equitable share of recoverable oil and gas in the pool.

B. A rule, regulation or order of the commissioner made under the provisions of this section shall not be of such effect as to:

1. Make it necessary for a producer from, or an owner of, a tract of land in a pool, in order to obtain his just and equitable share of the production of the pool, to drill and operate a well on the tract in addition to such wells as may without waste produce his share.

2. Occasion net drainage unless wells are drilled and operated on the tract in addition to such wells thereon as can without waste produce the tract's just and equitable share of the production of the pool.

C. ANY OWNER OF A WELL, ANY OWNER OF LAND UPON WHICH A WELL IS LOCATED, OR ANY LESSOR OR LESSEE OF LAND UPON WHICH A WELL IS LOCATED SHALL NOTIFY THE COMMISSION, IN WRITING AND ON SUCH FORM AS THE COMMISSION MAY PRESCRIBE, OF THE SALE, ASSIGNMENT, TRANSFER, CONVEYANCE OR EXCHANGE OF SUCH WELL, LAND OR LEASE. SUCH NOTICE SHALL BE MADE WITHIN TEN DAYS OF SUCH SALE, ASSIGNMENT, TRANSFER, CONVEYANCE OR EXCHANGE AND SHALL CONTAIN:

1. THE NAME AND ADDRESS OF THE PERSON TO WHOM SOLD, ASSIGNED, TRANSFERRED, CONVEYED OR EXCHANGED.

2. THE NAME AND LOCATION OF THE WELL.

3. THE DATE OF SALE, ASSIGNMENT, TRANSFER, CONVEYANCE OR EXCHANGE.

D. ANY PERSON WHO ACQUIRES OWNERSHIP OR OPERATION OF ANY WELL, OWNERSHIP OF ANY LAND UPON WHICH A WELL

IS LOCATED OR ANY LEASE RIGHTS TO LAND ON WHICH A WELL IS LOCATED, WHETHER BY PURCHASE, ASSIGNMENT, TRANSFER, CONVEYANCE, EXCHANGE OR OTHERWISE, SHALL, WITHIN TEN DAYS AFTER ACQUIRING SUCH WELL, LAND OR LEASE RIGHTS, NOTIFY THE COMMISSION, IN WRITING AND ON SUCH FORM AS THE COMMISSION MAY PRESCRIBE, OF HIS OWNERSHIP OR OPERATION. SUCH NOTICE SHALL CONTAIN:

1. THE NAME AND ADDRESS OF THE PERSON FROM WHOM ACQUIRED.

2. THE NAME AND LOCATION OF THE WELL.

3. THE DATE OF ACQUISITION.

4. THE DATE WHEN OPERATIONS ARE ASSUMED OR RESUMED BY NEW OWNER.

Sec. 2. Section 27-515, Arizona Revised Statutes, is amended to read:

27-515. **Powers and duties of commissioner; fees; compensation of personnel**

A. The commissioner shall have jurisdiction and authority over all persons and property deemed necessary to administer and enforce the provisions of this article and other laws relating to conservation of oil and gas. The commissioner or his representative or employee may, at any time, enter upon property and inspect wells drilled for oil or gas, and well records, and shall control property, machinery and appliances necessary to gauge the wells.

B. The commissioner may, with the approval of the governor, employ personnel necessary to enforce this article. He may:

1. Administer oaths to a witness in any hearing, investigation or proceeding held under this article or other law relating to conservation of oil and gas.

2. Issue subpoenas requiring attendance and testimony of witnesses and production of books, papers and records deemed material or necessary, and direct service of subpoenas by a sheriff or other officer authorized by law to serve process.

3. Prescribe rules and regulations and do all acts necessary or advisable to carry out the provisions of this article.

4. COLLECT SUCH FEES AS WILL COVER THE COSTS OF SUCH SERVICES AS, BUT NOT LIMITED TO, REPRODUCTION OF RECORDS OR ANY PORTION THEREOF, PUBLICATION OF TECHNICAL MAPS, COPIES OF RULES AND REGULATIONS AND ANY OTHER FORMS OF PUBLICATIONS BY THE COMMISSION. THE MONIES SO COLLECTED SHALL NOT BE SUBJECT TO THE PROVISIONS OF SECTION 27-523, BUT SHALL BE DEPOSITED BY THE COMMISSION WITH THE STATE TREASURER TO THE FUND FROM WHICH THE EXPENDITURE WAS ORIGINALLY MADE.

C. The commissioner may enter into cooperative agreements with agencies of the United States government for the purpose of protection of the fresh water supplies of the state from contamination or pollution brought about by the drilling of any well.

D. Personnel employed under the provisions of this article shall receive compensation as determined pursuant to section 38-611.

Sec. 3. Section 27-517, Arizona Revised Statutes, is amended to read:

27-517. **Hearings; reporter; fees**

A. Any interested person shall, by written request, have the right to have the commissioner call a hearing for the purpose of taking action in respect to any matter within the jurisdiction of the commissioner. Hearings shall be held at the time and place the commissioner directs, and any person having an interest in the subject matter of the hearing may appear and be heard. Upon receipt of the request, the commissioner shall promptly call a hearing, and, not more than thirty days thereafter shall take action with regard to the matter as he deems appropriate. THE REQUEST FOR HEARING SHALL BE ACCOMPANIED BY A FEE OF FIFTY DOLLARS.

B. The commissioner shall prescribe rules of order and procedure in hearings or other proceedings held under this article. ~~and shall, upon request, promptly furnish without charge copies thereof.~~ The commissioner shall appoint a competent shorthand reporter to be present throughout all public hearings. The reporter shall be sworn by the commissioner faithfully to perform the duties of a reporter. The commissioner shall have the same control and authority over the reporter as the judge of a superior court exercises over a court reporter, and the duties of the reporter shall, insofar as applicable, be the same as those fixed by law for a court reporter.

C. AS SOON AS POSSIBLE FOLLOWING THE HEARING THE COMMISSION SHALL BILL THE PERSON REQUESTING THE HEARING FOR THE TOTAL COST OF PUBLICATION FOR THE NOTICES OF SUCH HEARING AND THE TOTAL COST OF THE COURT REPORTER'S FEES LESS THE ORIGINAL FIFTY DOLLAR FEE. THE REQUESTING PARTY SHALL WITHIN TEN DAYS AFTER RECEIPT OF THE BILLING BY THE COMMISSION REIMBURSE THE COMMISSION THE AMOUNT OF MONEY SO BILLED OR BE SUBJECT TO THE PENALTIES AS PRESCRIBED IN SUBSECTION A OF SECTION 27-527. THE MONEY SO COLLECTED BY THE COMMISSION SHALL NOT BE SUBJECT TO THE PROVISION OF SECTION 27-523 BUT SHALL BE DEPOSITED BY THE COMMISSION WITH THE STATE TREASURER TO THE FUND FROM WHICH THE EXPENDITURE WAS ORIGINALLY MADE.

Approved by the Governor–April 9, 1973

Filed in the Office of the Secretary of State–April 10, 1973

CHAPTER 44

Senate Bill 1022

AN ACT

RELATING TO TAXATION; PROVIDING THAT COUNTY ASSESSOR SHALL NOTIFY PROPERTY OWNER IF ASSESSED VALUATION OF THE PROPERTY IS INCREASED OR CLASSIFICATION OF SUCH PROPERTY IS CHANGED FROM THE PRECEDING YEAR, AND AMENDING SECTION 42-221, ARIZONA REVISED STATUTES.

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

Section 1. **Purpose**

The purpose of this act is to provide that if there is a material change in assessed valuation or a change in classification of a parcel of property from the preceding year, the county assessor shall notify the property owner at the last known mailing address as to:

1. The full cash value placed on the property by the assessor for the current year and the previous year.

2. The valuation for assessment purposes placed on the property by the assessor for the current year and the previous year.

3. The classification given the property.

4. The percentage rate by which the market value is multiplied to determine the assessed valuation.

5. The final date for filing an appeal from the valuation for the current year.

Sec. 2. Section 42-221, Arizona Revised Statutes, is amended to read:

42-221. **Ascertainment of property subject to taxation**

A. Each county assessor is hereby designated as a deputy director of the department for the purpose of determining the valuation of property within his county for state property tax purposes.

B. On January 1 each year the county assessor shall ascertain by diligent inquiry and examination all property in his county subject to taxation, and not otherwise provided by law to be valued by the department. He shall determine the names of all persons owning, claiming or having possession or control thereof and determine through the use of the manuals furnished and procedures prescribed by the department the full cash value of all such property and he shall list such property together with the valuation found for use on the roll.

C. ~~Any~~ EVERY person ~~owning, claiming or having possession or control~~ WHO IS THE OWNER OF RECORD OR WHO IS THE PURCHASER UNDER A DEED OF TRUST OR AN AGREEMENT OF SALE of property which by law is ~~to be~~ valued by the assessor for placement on the roll ~~may, between January 1 and March 10, inquire of and be advised~~ SHALL, ON OR BEFORE MARCH 1, BE NOTIFIED AT THE LAST KNOWN MAILING ADDRESS IN WRITING by the assessor as to the valuation TO BE USED FOR ASSESSMENT PURPOSES of such property found by the assessor for placement on the rolls IF SUCH VALUATION IS INCREASED FROM THE PRECEDING YEAR OR THE CLASSIFICATION GIVEN SUCH PROPERTY PURSUANT TO SECTION 42-136 IS CHANGED FROM THE PRECEDING YEAR. ~~At the time such person is advised of his valuation~~ The assessor shall ~~give him written~~ INCLUDE IN THE notice ~~of~~ the VALUATION USED FOR ASSESSMENT PURPOSES FOUND BY THE ASSESSOR FOR SUCH PROPERTY FOR THE PREVIOUS YEAR, THE CLASSIFICATION GIVEN THE PARCEL OF

PROPERTY PURSUANT TO SECTION 42-136, THE PERCENTAGE RATE BY WHICH THE MARKET VALUE IS MULTIPLIED TO DETERMINE THE ASSESSED VALUATION FOR TAX PURPOSES AND THE last date upon which ~~he~~ THE OWNER may file his appeal from the valuation or classification assigned to his property. ANY PERSON OWNING, CLAIMING OR HAVING POSSESSION OR CONTROL OF PROPERTY WHICH BY LAW IS TO BE VALUED BY THE ASSESSOR FOR PLACEMENT ON THE ROLL MAY, BETWEEN JANUARY 1 AND MARCH 10, INQUIRE OF AND BE ADVISED BY THE ASSESSOR AS TO THE VALUATION OF SUCH PROPERTY FOUND BY THE ASSESSOR FOR PLACEMENT ON THE ROLLS.

D. On or before March 15, any owner of property which in his opinion has been valued too high or otherwise improperly valued or listed on the roll by the assessor may file a petition with the assessor on a form prescribed by the department setting forth in writing the owner's opinion of what is a just valuation and facts upon which the assessor should base a reduction or correction of the valuation. If the assessor finds any particular in the matter complained of to be erroneous, the assessor shall submit the necessary correction to the department for approval within fifteen days after filing of the petition.

E. The assessor may hold informal hearings regarding petitions filed under this section.

F. The assessor shall rule on every petition filed under this section within thirty days after the filing thereof. In such cases where the request of the petitioner is denied, in whole or in part, the assessor shall, on the date of the ruling, mail to the petitioner at his address shown on the roll written notice of the grounds of the refusal to make the change requested together with a copy of the petition.

G. No person owning, controlling or possessing property valued by the assessor may appear before the county board or the state board without first having filed a petition with the assessor as provided by this section, except as otherwise provided in this article.

Sec. 3. **Effective date**

The provisions of this act shall be effective from and after December 31, 1973.

Approved by the Governor–April 11, 1973

Filed in the Office of the Secretary of State–April 11, 1973

LAWS OF ARIZONA

CHAPTER 45

Senate Bill 1118

AN ACT

RELATING TO TAXATION OF INCOME; PROVIDING THAT PENALTY ON LATE FILING OF RETURN SHALL BE BASED ON BALANCE OF TAX REMAINING DUE, AND AMENDING SECTION 43-180, ARIZONA REVISED STATUTES.

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

Section 1. Section 43-180, Arizona Revised Statutes, is amended to read:

43-180. **Payments and assessments–penalties**

(a) **Failure to file return, penalty.** If any taxpayer fails to make and file a return required by this title on or before the due date of the return or the due date as extended by the tax commission, then, unless it is shown that the failure is due to reasonable cause and not due to willful neglect, five per cent of the tax FOUND TO BE REMAINING DUE shall be added to the tax for each thirty days or fraction thereof elapsing between the due date of the return and the date on which filed, but the total penalty shall not exceed twenty-five per cent of the tax FOUND TO BE REMAINING DUE. The penalty so added to the tax shall be due and payable upon notice and demand from the tax commission.

(b) **Failure to file return, penalty where demand made.** If any taxpayer, upon notice and demand by the tax commission, fails or refuses to make and file a return required by this title, the tax commission, notwithstanding the provisions of section 43-178(h), may estimate the net income and compute and levy the amounts of the tax due from any available information. In such case twenty-five per cent of the tax, in addition to the penalty added under subsection (a), shall be added to the tax and shall be due and payable upon notice and demand from the tax commission.

(c) **Failure to furnish information requested, penalty.** If any taxpayer fails or refuses to furnish any information requested in writing by the tax commission, the tax commission may add a penalty of twenty-five per cent of the amount of any deficiency tax assessed by the tax commission concerning the assessment of which the information was required.

(d) **Negligence, penalty.** If any part of any deficiency is due to negligence, or intentional disregard of rules and regulations but without intent to defraud, five per cent of the total amount of the deficiency, in addition to the deficiency and other penalties provided in this section, shall be assessed, collected and paid in the same manner as if it were a deficiency.

(e) **Fraud, penalty.** If any part of any deficiency is due to fraud with intent to evade tax, fifty per cent of the total amount of the tax, in addition to the deficiency and other penalties provided in this section, shall be assessed, collected, and paid in the same manner as if it were a deficiency.

Sec. 2. **Effective date**

The provisions of this act shall become effective with the taxable year beginning from and after December 31, 1973.

Approved by the Governor–April 13, 1973

Filed in the Office of the Secretary of State–April 13, 1973

CHAPTER 46

Senate Bill 1120

AN ACT

RELATING TO TAXATION OF INCOME; PERMITTING THE USE OF WHOLE DOLLAR VALUES ON TAX RETURNS, AND AMENDING SECTION 43-102, ARIZONA REVISED STATUTES.

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

Section 1. Section 43-102, Arizona Revised Statutes, is amended to read:

43-102. **Imposition of tax**

(a) **Taxes and rates–individuals, estates and trusts.** There shall be levied, collected, and paid for each taxable year upon the entire net income of

every estate or trust taxable under this title and of every resident of this state and upon the entire net income of every nonresident which is derived from sources within this state, taxes in the following amounts and at the following rates upon the amount of net income in excess of credits against net income provided in sections 43-127 and 43-128.

On the first one thousand dollars or any part thereof, two per cent.

On the second one thousand dollars or any part thereof, three per cent.

On the third one thousand dollars or any part thereof, four per cent.

On the fourth one thousand dollars or any part thereof, five per cent.

On the fifth one thousand dollars or any part thereof, six per cent.

On the sixth one thousand dollars or any part thereof, seven per cent.

On the seventh one thousand dollars or any part thereof, and all taxable income in excess of seven thousand dollars, eight per cent.

(b) **Taxes and rates–corporations.** There shall be levied, collected, and paid for each taxable year upon the entire net income of every corporation, except as otherwise provided in this title or by law, taxes in the following amounts and at the following rates:

Upon net income not in excess of one thousand dollars, two per cent of such net income.

Twenty dollars upon net income of one thousand dollars; and upon net income in excess of one thousand dollars and not in excess of two thousand dollars, three per cent in addition of such excess.

Fifty dollars upon net income of two thousand dollars; and upon net income in excess of two thousand dollars and not in excess of three thousand dollars, four per cent in addition of such excess.

Ninety dollars upon net income of three thousand dollars; and upon net income in excess of three thousand dollars, and not in excess of four thousand dollars, five per cent in addition of such excess.

One hundred forty dollars upon net income of four thousand dollars; and upon net income in excess of four thousand dollars and not in excess of five thousand dollars, six per cent in addition of such excess.

Two hundred dollars upon net income of five thousand dollars; and upon net income in excess of five thousand dollars and not in excess of six thousand dollars, seven per cent in addition of such excess.

Two hundred seventy dollars upon net income of six thousand dollars; and upon net income in excess of six thousand dollars, eight per cent in addition of such excess.

(c) **Optional tax.**

(1) In lieu of the tax imposed under subsection (a), there shall be levied, collected and paid for each taxable year upon the gross income of each individual whose gross income for such year is less than five thousand dollars and who has elected to pay the tax imposed by this subsection for such year, the tax shown in the following table:

Gross Income		Single Person or Married Person Filing Separately	Married Couple Filing Jointly or Single Person-Head of Household
At Least	But Less Than		
$1,100.00	$1,150.00	$ .25	$ 0
1,150.00	1,200.00	1.15	0
1,200.00	1,250.00	2.05	0
1,250.00	1,300.00	2.95	0
1,300.00	1,350.00	3.85	0
1,350.00	1,400.00	4.75	0
1,400.00	1,450.00	5.65	0
1,450.00	1,500.00	6.55	0
1,500.00	1,550.00	7.45	0
1,550.00	1,600.00	8.35	0
1,600.00	1,650.00	9.25	0
1,650.00	1,700.00	10.15	0
1,700.00	1,750.00	11.05	0
1,750.00	1,800.00	11.95	0
1,800.00	1,850.00	12.85	0
1,850.00	1,900.00	13.75	0
1,900.00	1,950.00	14.65	0
1,950.00	2,000.00	15.55	0
2,000.00	2,050.00	16.45	0
2,050.00	2,100.00	17.35	0
2,100.00	2,150.00	18.25	0
2,150.00	2,200.00	19.15	0
2,200.00	2,250.00	20.07	.05
2,250.00	2,300.00	21.42	.95

Gross Income		Single Person or Married Person Filing Separately	Married Couple Filing Jointly or Single Person-Head of Household
At Least	But Less Than		
$2,300.00	$2,350.00	$ 22.77	$ 1.85
2,350.00	2,400.00	24.12	2.75
2,400.00	2,450.00	25.47	3.65
2,450.00	2,500.00	26.82	4.55
2,500.00	2,550.00	28.17	5.45
2,550.00	2,600.00	29.52	6.35
2,600.00	2,650.00	30.87	7.25
2,650.00	2,700.00	32.22	8.15
2,700.00	2,750.00	33.57	9.05
2,750.00	2,800.00	34.92	9.95
2,800.00	2,850.00	36.27	10.85
2,850.00	2,900.00	37.62	11.75
2,900.00	2,950.00	38.97	12.65
2,950.00	3,000.00	40.32	13.55
3,000.00	3,050.00	41.67	14.45
3,050.00	3,100.00	43.02	15.35
3,100.00	3,150.00	44.37	16.25
3,150.00	3,200.00	45.72	17.15
3,200.00	3,250.00	47.07	18.05
3,250.00	3,300.00	48.42	18.95
3,300.00	3,350.00	49.75	19.85
3,350.00	3,400.00	51.50	20.75
3,400.00	3,450.00	53.30	21.65
3,450.00	3,500.00	55.10	22.55
3,500.00	3,550.00	56.90	23.45
3,550.00	3,600.00	58.70	24.35
3,600.00	3,650.00	60.50	25.25
3,650.00	3,700.00	62.30	26.15
3,700.00	3,750.00	64.10	27.05
3,750.00	3,800.00	65.90	27.95
3,800.00	3,850.00	67.70	28.85
3,850.00	3,900.00	69.50	29.75
3,900.00	3,950.00	71.30	30.65
3,950.00	4,000.00	73.10	31.55
4,000.00	4,050.00	74.90	32.45
4,050.00	4,100.00	76.70	33.35
4,100.00	4,150.00	78.50	34.25
4,150.00	4,200.00	80.30	35.15
4,200.00	4,250.00	82.10	36.05
4,250.00	4,300.00	83.90	36.95

Gross Income		Single Person or Married Person Filing Separately	Married Couple Filing Jointly or Single Person-Head of Household
At Least	But Less Than		
$4,300.00	$4,350.00	$ 85.70	$37.85
4,350.00	4,400.00	87.50	38.75
4,400.00	4,450.00	89.30	39.65
4,450.00	4,500.00	91.37	40.82
4,500.00	4,550.00	93.62	42.17
4,550.00	4,600.00	95.87	43.52
4,600.00	4,650.00	98.12	44.87
4,650.00	4,700.00	100.37	46.22
4,700.00	4,750.00	102.62	47.57
4,750.00	4,800.00	104.87	48.92
4,800.00	4,850.00	107.12	50.27
4,850.00	4,900.00	109.37	51.62
4,900.00	4,950.00	111.62	52.97
4,950.00	5,000.00	113.87	54.32

In applying the above table to determine the tax of such individual, there shall be subtracted from his gross income the amount of the federal income tax paid during the taxable year.

In applying the above table to determine the tax of a taxpayer with one or more dependents, there shall be subtracted from his gross income six hundred dollars for each dependent, except that in the case of a "head of household" the deduction for dependents shall be permitted only for those dependents in excess of one.

(2) For the purpose of this subsection:

(A) "Married person" means a married person on the last day of the taxable year.

(B) "Dependent" means a person who is dependent under section 43-127(c).

(C) An individual, who is not a head of a family or a married person, shall be treated as a single person.

(D) "Head of household" means a head of household on the last day of the taxable year, unless such person dies during the taxable year, in which case such determination shall be made as of the date of death.

(E) In the case of a joint return of a husband and wife filed pursuant to section 43-141(a) (2), the tax imposed under subsection (a) shall be twice the tax that would be determined if the net income and credits against net income provided by sections 43-127 and 43-128 were reduced by one-half.

(3) This subsection shall not apply to an estate or trust, an individual filing a return for a period of less than twelve months on account of a change in the accounting period, or to a married individual whose spouse files a return and computes the tax without regard to this section or section ~~43-123(aa) (1)~~ 43-123.29, SUBSECTION A.

(d) **Effect of changes in rates during a taxable year.**

If any rate of tax imposed by this chapter changes, and if the taxable year includes the effective date of the change (unless that date is the first day of the taxable year), then

(1) Tentative taxes shall be computed by applying the rate for the period before the effective date of the change, and the rate for the period on and after such date, to the taxable income for the entire taxable year; and

(2) The tax for such taxable year shall be the sum of that proportion of each tentative tax which the number of days in each period bears to the number of days in the entire taxable year.

(e) IN THE PREPARATION OF ANY RETURN UNDER THIS TITLE, THE TAXPAYER MAY ELECT TO ELIMINATE THE FRACTIONAL DOLLAR BY ROUNDING OUT THE FRACTIONAL DOLLAR TO THE NEAREST WHOLE DOLLAR.

Sec. 2. **Effective date**

The provisions of this act shall become effective with the taxable year beginning from and after December 31, 1973.

Approved by the Governor–April 13, 1973

Filed in the Office of the Secretary of State–April 13, 1973

LAWS OF ARIZONA

CHAPTER 47

Senate Bill 1140

AN ACT

RELATING TO MOTOR VEHICLES; PRESCRIBING THAT CERTAIN DOCUMENTS AND WRITINGS ARE PUBLIC RECORDS; ESTABLISHING FEES; PROVIDING FOR DESIGNATION OF RECORDS CUSTODIANS; PROVIDING FOR CERTIFICATION AND AUTHENTICATION OF SUCH RECORDS AND AMENDING TITLE 28, CHAPTER 2, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 28-210.

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

Section 1. Title 28, chapter 2, article 1, Arizona Revised Statutes, is amended by adding section 28-210, to read:

28-210. **Public records; fees; records custodians; subpoenaing of records custodians**

A. ANY APPLICATION FOR A LICENSE, PERMIT, TITLE OR REGISTRATION MADE TO THE DIVISION, ALONG WITH ANY DOCUMENT REQUIRED BY LAW OR BY THE DIVISION TO ACCOMPANY SUCH APPLICATION, SHALL BE A PUBLIC RECORD.

B. WHEN THE VEHICLE DIVISION OR DEPARTMENT IS REQUIRED OR AUTHORIZED TO REVOKE, SUSPEND OR CANCEL ANY DRIVER'S LICENSE OR TO SUSPEND VEHICLE REGISTRATIONS PURSUANT TO CHAPTER 7 OF THIS TITLE, IT SHALL NOTIFY THE HOLDER THEREOF BY A NOTICE IN WRITING WHICH SHALL INCLUDE A CITATION TO THE STATUTE, RULE OR REGULATION UNDER WHICH SUCH ACTION IS AUTHORIZED OR REQUIRED. A COPY OF SUCH NOTICE SHALL BE RETAINED BY THE VEHICLE DIVISION OR DEPARTMENT AND SUCH COPY SHALL BE A PUBLIC RECORD. SUCH COPY SHALL ALSO CONTAIN A CERTIFICATION THAT THE ORIGINAL THEREOF WAS MAILED BY REGISTERED OR CERTIFIED MAIL WITH INSTRUCTION TO DELIVER TO ADDRESSEE ONLY AND THE DATE OF MAILING THEREOF. IF SUCH COPY IS ADDRESSED TO A LICENSEE AT THE ADDRESS LAST SHOWN ON THE VEHICLE DIVISION'S RECORDS, AS EVIDENCED BY THE PERSON'S DRIVER LICENSE APPLICATION OR SUBSEQUENT WRITTEN NOTIFICATION BY SUCH PERSON OF

A DIFFERENT ADDRESS, AND A CERTIFIED COPY OF THE NOTICE OF REVOCATION, SUSPENSION OR CANCELLATION IS ACCOMPANIED BY A RECORDS CUSTODIAN'S STATEMENT THAT THE ORIGINAL THEREOF HAD NOT BEEN RETURNED TO THE DIVISION OR DEPARTMENT, IT SHALL BE PRESUMED UNLESS OTHERWISE SHOWN BY CLEAR AND CONVINCING EVIDENCE THAT THE PERSON TO WHOM THE NOTICE WAS ADDRESSED RECEIVED THE ORIGINAL NOTICE.

C. THE DIVISION MAY PLACE SUCH NOTES, DATE STAMPS, IDENTIFYING NUMBERS OR OTHER INFORMATION ON ANY APPLICATION, RECORD OF CONVICTION OR OTHER RECORD AS IS NECESSARY TO INSURE THE ACCURACY OF SUCH RECORD AND TO EXPEDITE ITS HANDLING. SUCH INFORMATION SHALL NOT AFFECT THE VALIDITY OF ANY RECORD, EXCEPT SUCH MARKINGS SHALL NOT BE CONSIDERED A PART OF THE RECORD FOR EVIDENTIARY PURPOSES UNLESS PROVEN ACCURATE BY OTHER RECORDS OF THE DEPARTMENT OR OTHER COMPETENT EVIDENCE.

D. CERTIFIED COPIES OF PUBLIC RECORDS DESIGNATED IN THIS SECTION SHALL BE FURNISHED TO ANY PERSON UPON PAYMENT OF A FEE OF TWO DOLLARS. NO FEE SHALL BE CHARGED FOR CERTIFIED COPIES FURNISHED TO THE STATE OR ANY OF ITS DEPARTMENTS, AGENCIES OR POLITICAL SUBDIVISIONS, TO ANY COURT, OR TO THE FEDERAL GOVERNMENT OR ANY OF ITS AGENCIES.

E. THE SUPERINTENDENT MAY DESIGNATE AS CUSTODIAN OF THE DIVISION'S PUBLIC RECORDS SO MANY EMPLOYEES OF THE DIVISION AS HE DEEMS NECESSARY. WHEN A PUBLIC RECORD OF THE DEPARTMENT HAS BEEN CERTIFIED BY A RECORDS CUSTODIAN AND AUTHENTICATED AS REQUIRED UNDER PROOF OF RECORDS (RECORDS OF PUBLIC OFFICIALS), RULES OF CIVIL PROCEDURE, IT SHALL BE ADMISSIBLE IN EVIDENCE WITHOUT FURTHER FOUNDATION.

F. THE DESIGNATION OF THOSE DOCUMENTS ENUMERATED IN THIS SECTION AS PUBLIC RECORDS SHALL NOT AFFECT THE STATUS OF OTHER DOCUMENTS OR RECORDS OF THE DEPARTMENT WHICH ARE OTHERWISE PUBLIC RECORDS.

Approved by the Governor—April 13, 1973

Filed in the Office of the Secretary of State—April 13, 1973

LAWS OF ARIZONA

CHAPTER 48

Senate Bill 1099

AN ACT

RELATING TO EDUCATION; ELIMINATING MINIMUM AGE FOR DISCRETIONARY ENROLLMENT IN SCHOOL FOR DEAF AND BLIND, AND AMENDING SECTION 15-833.01, ARIZONA REVISED STATUTES.

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

Section 1. Section 15-833.01, Arizona Revised Statutes, is amended to read:

15-833.01. **Authority for enrollment of persons to six years of age; location of programs**

A. The board of directors may enroll a person OF SUITABLE CAPACITY, UP TO THE AGE OF SIX YEARS in the school for the deaf and the blind without charge when he is a resident of the state, ~~between the ages of four and six years, of suitable capacity~~ and is:

1. Blind or blind to an extent that he would benefit from a specialized program, or

2. Deaf or deaf to an extent that he would benefit from a specialized program, or

3. So defective in speech that he would benefit from a specialized program.

B. The board may provide for administering programs authorized under the provisions of subsection A of this section in such locations within the state as may be determined by the board.

Sec. 2. **Emergency**

To preserve the public peace, health and safety it is necessary that this act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.

Approved by the Governor–April 13, 1973

Filed in the Office of the Secretary of State–April 16, 1973

LAWS OF ARIZONA

CHAPTER 49

Senate Bill 1147

AN ACT

RELATING TO TRADE AND COMMERCE; PROVIDING THAT WAIVERS OF BUYER CANCELLATION RIGHTS IN HOME SOLICITATION SALES ARE VOID, PRESCRIBING NOTICE TO BUYER, AND AMENDING SECTIONS 44-5002 AND 44-5004, ARIZONA REVISED STATUTES.

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

Section 1. **Purpose**

The purpose of this act is to make void any attempt to waive buyer cancellation rights in home solicitation sales.

Sec. 2. Section 44-5002, Arizona Revised Statutes, is amended to read:

44-5002. **Cancellation period; method of cancellation; intent; waiver void**

A. In addition to any right otherwise to revoke an offer, the buyer may cancel a home solicitation sale until midnight of the ~~second~~ THIRD calendar day after the day on which the buyer signs an agreement subject to the provisions of this chapter, except that if the signing is on a Friday, the notice of cancellation shall be posted not later than midnight of the ~~Monday~~ TUESDAY immediately following.

B. Cancellation shall occur when the buyer gives written notice of cancellation to the seller at the address specified for notice of cancellation provided by the seller or when such written notice bearing such address is deposited in a mail box by:

1. Ordinary mail at the time and place stamped on a receipt received from the United States post office on form 3817.

2. Registered mail, return receipt requested, at the time and place stamped on a receipt received from the United States post office on form 3806-S.

C. Notice of cancellation given by the buyer shall be effective if it

indicates the intention on the part of the buyer not to be bound by the home solicitation sale.

D. ANY PROVISION OF A CONTRACT, OFFER OR AGREEMENT THAT WAIVES A BUYER'S RIGHT OF CANCELLATION UNDER THIS SECTION SHALL BE VOID AND HAVE NO EFFECT.

Sec. 3. Section 44-5004, Arizona Revised Statutes, is amended to read:

44-5004. **Agreement requirement**

No agreement of the buyer in a home solicitation sale shall be effective unless it is dated, signed by the buyer and contains a conspicuous notice as follows:

NOTICE TO BUYER

1. Do not sign this agreement if any of the spaces intended for the agreed terms to the extent of then available information are left blank.

2. You are entitled to a copy of this agreement at the time you sign it.

3. You may pay off the full unpaid balance due under this agreement at any time, and in so doing you may receive a full rebate of the unearned finance and insurance charges.

4. You may cancel this agreement if it has been signed in your home without prior negotiations at the seller's place of business or without having made the sale pursuant to your preexisting account with the seller, provided you notify the seller, at his main office or branch office shown in the agreement, by ordinary mail using United States post office form 3817 or, by registered mail, return receipt requested, which shall be posted not later than midnight of the ~~second~~ THIRD calendar day after the day on which the buyer signs the agreement, except that if it is signed on a Friday, the notice of cancellation shall be posted not later than midnight of the ~~Monday~~ TUESDAY immediately following.

5. It shall not be legal for the seller to enter your premises unlawfully or commit any breach of the peace to repossess goods purchased under this agreement.

Approved by the Governor—April 13, 1973

Filed in the Office of the Secretary of State—April 16, 1973

LAWS OF ARIZONA

CHAPTER 50

Senate Bill 1315

AN ACT

RELATING TO CHILDREN; ALLOWING ADOPTION CONSENT TO BE DULY ACKNOWLEDGED BEFORE AN OFFICER AUTHORIZED TO TAKE ACKNOWLEDGMENTS BY THE PERSON GIVING CONSENT, AND AMENDING SECTION 8-107, ARIZONA REVISED STATUTES.

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

Section 1. Section 8-107, Arizona Revised Statutes, is amended to read:

8-107. **Time and contents of consent**

A. All consents to adoption shall be in writing and signed by the person giving the consent and witnessed by two or more credible witnesses who are at least eighteen years of age and who subscribe their names in the presence of the person giving the consent OR SHALL BE DULY ACKNOWLEDGED BEFORE AN OFFICER AUTHORIZED TO TAKE ACKNOWLEDGMENTS BY THE PERSON GIVING CONSENT.

B. A consent given before seventy-two hours after the birth of the child is invalid.

C. The consent shall be dated and shall sufficiently identify the party giving the consent and the child to whose adoption the consent is given.

D. The consent shall designate either of the following:

1. An agency or the division as authorized by the party giving the consent to place the child for adoption.

2. The particular person or persons authorized to adopt the child by the person giving the consent. The true names of the adopting person or persons shall be used, except that fictitious names may be used if the consent also truthfully states that the adopting person or persons are currently certified as acceptable to adopt the child, that the consenting party knows that the names used are fictitious and does not wish to know

the true names and that the consenting party has been furnished with all information which the consenting party wishes to know about the adopting person or persons.

E. A consent other than to an agency or the division which does not designate a particular person or persons, or which purports to permit a third person to locate or nominate an adoptive parent, is invalid.

Approved by the Governor–April 13, 1973

Filed in the Office of the Secretary of State–April 16, 1973

CHAPTER 51

Senate Bill 1316

AN ACT

RELATING TO PUBLIC HEALTH AND SAFETY; PROVIDING FOR NEW CERTIFICATES OF BIRTH WITHOUT THE PLACE OF BIRTH, AND AMENDING SECTION 36-326, ARIZONA REVISED STATUTES.

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

Section 1. Section 36-326, Arizona Revised Statutes, is amended to read:

36-326. **New certificates of birth following adoption, legitimation, paternity determination and surgical alterations**

A. The state registrar shall establish a new certificate of birth for a person born in this state when he receives any of the following:

1. An adoption report as provided in section 36-325, or a certified copy of the decree of adoption together with the information necessary to identify the original certificate of birth and to establish a new certificate of birth, except that a new certificate of birth shall not be established in those cases where the court decreeing the adoption, the adoptive parents, or the adopted person so requests.

2. A certificate of adoption or a certified copy of the decree of adoption duly executed in a court of competent jurisdiction in any state, commonwealth or possession of the United States or Canada decreeing the adoption of a child born in Arizona together with the information necessary to establish a new certificate except that a new certificate of birth shall not be established in those cases where the court decreeing the adoption, the adoptive parents, or the adopted person so requests.

3. A request that a new certificate be established and such evidence as required by regulation proving that such a person has been legitimated, or that a court of competent jurisdiction has determined the paternity of such a person.

4. A sworn statement from a licensed physician in good standing that he has performed a surgical operation or a chromosomal count on a person and that by reason of this operation or count the sex of the person has been established as different from that in the original document. The state registrar may reserve the right to require further proof if deemed necessary, or to seek independent professional evaluation of the evidence offered before creating a new certificate.

B. When a new certificate is established, the actual place and date of birth shall be shown, EXCEPT THAT IF ADOPTIVE PARENTS SO REQUEST, THE NAME OF THE FACILITY OR STREET ADDRESS OF A HOME BIRTH MAY BE OMITTED AND THE SPACE LEFT BLANK. It shall be substituted in the active files for the original certificate of birth. Thereafter, the original certificate together with the evidence of adoption, legitimation, paternity, surgical alteration or chromosomal count shall be placed in a special file and not opened to further inspection or right of access except as provided by regulations of the state board of health or upon order of a court of competent jurisdiction. Upon receipt of notice that an adoption has been annulled, the original certificate of birth shall be restored to its proper place in the active files and the new certificate and the evidence on which it was based shall be retired to the special file and not opened to further inspection or right of access except as provided by regulation.

C. If no original certificate of birth exists for the person for whom a new certificate is to be established under this section, a delayed certificate shall be filed with the state registrar as provided in section 36-324 before a new certificate of birth is established, except that when the date and place of birth and parentage have been established in the adoption proceedings, a delayed certificate of birth shall not be required.

D. When a new certificate of birth is established by the state registrar, all copies of the original certificate in the custody of any local official shall be closed to inspection and forwarded to the state registrar or otherwise disposed of as he may direct. The state registrar shall furnish a copy of the new certificate to a local registrar upon request.

Approved by the Governor–April 13, 1973

Filed in the Office of the Secretary of State–April 16, 1973

CHAPTER 52

House Bill 2045

AN ACT

RELATING TO PUBLIC BUILDINGS; PRESCRIBING REQUIREMENTS FOR PLACES OF PUBLIC ACCOMMODATION TO MAKE SUCH BUILDINGS MORE ACCESSIBLE TO THE PHYSICALLY HANDICAPPED; PROVIDING FOR INCORPORATION OF STANDARDS INTO BUILDING CODES; AMENDING SECTIONS 34-402 AND 34-403, ARIZONA REVISED STATUTES; AMENDING TITLE 34, CHAPTER 4, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 34-411.

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

Section 1. Section 34-402, Arizona Revised Statutes, is amended to read:

34-402. **Definitions**

In this article, unless the context otherwise requires:

1. "Aging" means those manifestations of the aging processes that significantly reduce mobility, flexibility, coordination, and perceptiveness but are not accounted for in the categories included in paragraphs 3, 6, 8, ~~10 and~~ 11 AND 12.

2. "Appropriate number" means the number of a specific item that would be reasonably necessary, in accordance with the purpose and

function of a building or facility, to accommodate persons with specific disabilities in proportion to the anticipated number of persons with disabilities who would use a particular building or facility.

3. "Disabilities of incoordination" means faulty coordination or palsy from brain, spinal or peripheral nerve injury.

4. "Fixed turning radius, front structure to rear structure" means the turning radius of a ~~wheel chair~~ WHEELCHAIR, left front-foot platform to right rear wheel, or right front-foot platform to left rear wheel, when pivoting on a spot.

5. "Fixed turning radius, wheel to wheel" means the tracking of the caster wheels and large wheels of a ~~wheel-chair~~ WHEELCHAIR when pivoting on a spot.

6. "Hearing disabilities" means deafness or hearing handicaps that might make a person insecure in public areas because he is unable to communicate or hear warning signals.

7. "Involved" or "involvement" means a portion or portions of the human anatomy or physiology, or both, that have a loss or impairment of normal function as a result of genesis, trauma, disease, inflamation or degeneration.

8. "Nonambulatory disabilities" means impairments that, regardless of cause or manifestation, for all practical purposes, confine persons to ~~wheel chairs~~ WHEELCHAIRS.

9. "PLACES OF PUBLIC ACCOMMODATION" MEANS ALL PUBLIC PLACES OF ENTERTAINMENT, AMUSEMENT OR RECREATION, ALL PUBLIC PLACES WHERE FOOD OR BEVERAGES ARE SOLD FOR CONSUMPTION ON THE PREMISES, ALL PUBLIC PLACES WHICH ARE CONDUCTED FOR THE LODGING OF TRANSIENTS OR FOR THE BENEFIT, USE OR ACCOMMODATION OF THOSE SEEKING HEALTH OR RECREATION AND ALL ESTABLISHMENTS WHICH CATER OR OFFER THEIR SERVICES, FACILITIES OR GOODS TO OR SOLICIT PATRONAGE FROM THE MEMBERS OF THE GENERAL PUBLIC. ANY RESIDENTIAL HOUSE, OR RESIDENCE IN WHICH LESS THAN FIVE ROOMS ARE RENTED, OR ANY PRIVATE CLUB, OR ANY PLACE WHICH IS IN ITS NATURE DISTINCTLY PRIVATE IS NOT A PLACE OF PUBLIC ACCOMMODATION.

~~9.~~ 10. "Ramps" or "ramps with gradients" means ramps with gradients, or ramps with slopes, that deviate from what would otherwise be considered the normal level. An exterior ramp, as distinguished from a "walk", shall be considered an appendage to a building leading to a level above or below existing ground level. As such, a ramp shall meet certain requirements similar to those imposed upon stairs.

~~10.~~ 11. "Semiambulatory disabilities" means impairments that cause persons to walk with difficulty or insecurity. Persons using braces or crutches, amputees, ~~arthritis~~ ARTHRITICS, spastics, and those with pulmonary and cardiac ills may be semiambulatory.

~~11.~~ 12. "Sight disabilities" means total blindness or impairments affecting sight to the extent that the person functioning in public areas is insecure or exposed to danger.

~~12.~~ 13. "Standard" means that when this term appears in small letters it is descriptive and means typical type.

~~13.~~ 14. "Walk" means a predetermined, prepared-surface, exterior pathway leading to or from a building or a facility, or from one exterior area to another, placed on the existing ground level and not deviating from the level of the existing ground immediately adjacent.

Sec. 2. Section 34-403, Arizona Revised Statutes, is amended to read:

34-403. **Article applicable to certain public buildings**

The standards and specifications set forth in this article shall apply to all buildings and facilities used by the public which are constructed in whole or in part by the use of state funds, or the funds of any political subdivision of the state AND TO ALL PLACES OF PUBLIC ACCOMMODATION. All such buildings and facilities constructed in this state from any one of such funds or any combination thereof AND ALL PLACES OF PUBLIC ACCOMMODATION shall conform to each of the standards and specifications prescribed in this article. ~~, except where the authority responsible for the proper construction for the particular governmental department, agency or unit concerned determines, after taking all circumstances into consideration, that full compliance with any particular standard or specification is impracticable.~~ This article shall apply to temporary or emergency construction as well as permanent buildings.

Sec. 3. Title 34, chapter 4, article 1, Arizona Revised Statutes, is amended by adding section 34-411, to read:

34-411. **Incorporation of standards in building codes**

THE STANDARDS AND SPECIFICATIONS SET FORTH IN THIS ARTICLE SHALL BE INCORPORATED IN ANY BUILDING CODE IN EXISTENCE ON OR ADOPTED SUBSEQUENT TO THE EFFECTIVE DATE OF THIS SECTION BY THE STATE OR ANY AGENCY, DEPARTMENT OR POLITICAL SUBDIVISION OF THE STATE. SUCH STANDARDS AND SPECIFICATIONS SHALL APPLY ONLY TO NEW CONSTRUCTION AND SHALL NOT APPLY TO EXISTING BUILDINGS OR PORTIONS OF EXISTING BUILDINGS WHICH DO NOT MEET THE STANDARDS AND SPECIFICATIONS ON THE EFFECTIVE DATE OF THIS ARTICLE.

Approved by the Governor–April 13, 1973

Filed in the Office of the Secretary of State–April 16, 1973

CHAPTER 53

House Bill 2063

AN ACT

RELATING TO LABOR; PRESCRIBING THAT CERTAIN OCCUPATIONAL DISEASES BE INCLUDED WITHIN PROVISIONS RELATING TO WORKMEN'S COMPENSATION; ELIMINATING PROVISIONS RELATING TO OCCUPATIONAL DISEASE DISABILITY; AMENDING SECTION 23-901, ARIZONA REVISED STATUTES; AMENDING TITLE 23, CHAPTER 6, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 23-901.01 THROUGH 23-901.05; AMENDING TITLE 23, CHAPTER 6, ARTICLE 9, ARIZONA REVISED STATUTES, BY ADDING SECTION 23-1073, AND REPEALING TITLE 23, CHAPTER 7, ARIZONA REVISED STATUTES.

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

Section 1. Section 23-901, Arizona Revised Statutes, is amended to read:

23-901. **Definitions**

In this chapter, unless the context otherwise requires:

1. "Award" means the finding or decision of a hearing officer or the commission as to the amount of compensation or benefit due an injured employee or the dependents of a deceased employee.

2. "Commission" means the industrial commission of Arizona.

3. "Compensation" means the compensation and benefits provided by this chapter.

4. "Employee", "workmen" and "operative" means:

(a) Every person in the service of the state, a county, city, town, municipal corporation or school district, including regular members of lawfully constituted police and fire departments of cities and towns, whether by election, appointment or contract of hire.

(b) Every person in the service of any employer subject to the provisions of this chapter, including aliens and minors legally or illegally permitted to work for hire, but not including a person whose employment is casual and not in the usual course of trade, business or occupation of the employer.

(c) Lessees of mining property and their employees and contractors engaged in the performance of work which is a part of the business conducted by the lessor and over which the lessor retains supervision or control are within the meaning of this paragraph employees of the lessor, and deemed to be drawing such wages as are usually paid employees for similar work. The lessor may deduct from the proceeds of ores mined by the lessees the premium required by this chapter to be paid for such employees.

(d) Regular members of volunteer fire departments organized pursuant to article 1, chapter 9 of title 9, volunteer firemen serving as members of a fire department of any incorporated city or town without pay or without full pay and on a part-time basis, and voluntary policemen serving as such in any incorporated city or town without pay or without full pay and on a

part-time basis, are deemed to be employees, but for the purposes of this chapter, the basis for computing wages for premium payments and compensation benefits for such regular members of volunteer fire departments, volunteer firemen, and volunteer policemen, shall be the salary equal to the beginning salary of the same rank or grade in the full-time service with the city, town or volunteer fire department, provided if there is no such full-time equivalent then the salary equivalent shall be as determined by resolution of the governing body of the city, town or volunteer fire department.

(e) Regular members of the Arizona highway patrol reserve, organized pursuant to section 41-1744, are deemed to be employees, but for the purposes of this chapter, the basis for computing wages for premium payments and compensation benefits for a member of the Arizona highway patrol reserve shall be the salary received by officers of the Arizona highway patrol for their first month of regular patrol duty as an officer.

(f) Any person being evaluated or trained in vocational activities or who performs service for an employer as a trainee under the auspices of vocational rehabilitation division is deemed to be an employee of the vocational rehabilitation division, but, for the purposes of this chapter, the basis for computing wages for premium payments and compensation benefits for such person shall be two hundred dollars per month.

(g) Regular members of a volunteer sheriff's reserve, which may be established by resolution of county board of supervisors, to assist the sheriff in the performance of his official duties. A roster of the current members shall monthly be certified to the clerk of the board of supervisors by the sheriff and shall not exceed the maximum number authorized by the board. Certified members of an authorized volunteer sheriff's reserve shall be deemed to be employees of the county for the purpose of coverage under the Arizona workmen's compensation laws and occupational disease disability laws and shall be entitled to receive the benefits of such laws for any compensable injuries or disabling conditions which arise out of and occur in the course of the performance of duties authorized and directed by the sheriff. Compensation benefits and premium payments shall be based upon a wage of four hundred dollars per month for each certified member of a volunteer sheriff's reserve. This subdivision shall not be construed to provide compensation coverage for any member of a sheriff's posse who is not a certified member of an authorized volunteer sheriff's reserve.

5. "General order" means and includes an order applied generally throughout the state to all persons under jurisdiction of the commission.

6. "Insurance carrier" means the state compensation fund and every insurance carrier duly authorized by the director of insurance to write workmen's compensation or occupational disease compensation insurance in the state of Arizona.

7. "Interested party" means the employer, the employee; or if the employee is deceased, the surviving spouse or dependents; the commission, the insurance carrier or their representative.

8. "Order" means and includes any rule, regulation, direction, requirement, standard, determination or decision other than an award or a directive by the commission or a hearing officer relative to any entitlement to compensation benefits, or to the amount thereof, and any procedural ruling relative to the processing or adjudicating of a compensation matter.

9. "Personal injury by accident arising out of, and in the course of employment" ~~includes an injury caused by the wilful act of a third person directed against an employee because of his employment, but does not include a disease unless resulting from the injury.~~ SHALL BE DEFINED AS:

(a) PERSONAL INJURY BY ACCIDENT ARISING OUT OF, AND IN THE COURSE OF EMPLOYMENT, OR

(b) AN INJURY CAUSED BY THE WILFUL ACT OF A THIRD PERSON DIRECTED AGAINST AN EMPLOYEE BECAUSE OF HIS EMPLOYMENT, BUT DOES NOT INCLUDE A DISEASE UNLESS RESULTING FROM THE INJURY, OR

(c) AN OCCUPATIONAL DISEASE WHICH IS DUE TO CAUSES AND CONDITIONS CHARACTERISTIC OF AND PECULIAR TO A PARTICULAR TRADE, OCCUPATION, PROCESS OR EMPLOYMENT, AND NOT THE ORDINARY DISEASES TO WHICH THE GENERAL PUBLIC IS EXPOSED, AND SUBJECT TO THE PROVISIONS OF SECTION 23-901.01.

10. "Special order" means and includes an order other than a general order.

11. State compensation fund" includes the state compensation fund, accident benefit fund and occupational disease compensation fund in existence upon the effective date of this section and shall thereafter include all funds under the jurisdiction of the board of directors of the state compensation fund which have been derived from the assessment of premiums, interest, penalties and investment earnings for the payment of all workmen's compensation and occupational disease compensation benefits.

Sec. 2. Title 23, chapter 6, article 1, Arizona Revised Statutes, is amended by adding sections 23-901.01, 23-901.02, 23-901.03, 23-901.04 and 23-901.05 to read:

23-901.01. **Occupational disease; proximate causation**

THE OCCUPATIONAL DISEASES AS DEFINED BY SECTION 23-901, PARAGRAPH 9, SUBDIVISION (c) SHALL BE DEEMED TO ARISE OUT OF THE EMPLOYMENT ONLY IF ALL OF THE FOLLOWING SIX REQUIREMENTS EXIST:

1. THERE IS A DIRECT CAUSAL CONNECTION BETWEEN THE CONDITIONS UNDER WHICH THE WORK IS PERFORMED AND THE OCCUPATIONAL DISEASE.

2. THE DISEASE CAN BE SEEN TO HAVE FOLLOWED AS A NATURAL INCIDENT OF THE WORK AS A RESULT OF THE EXPOSURE OCCASIONED BY THE NATURE OF THE EMPLOYMENT.

3. THE DISEASE CAN BE FAIRLY TRACED TO THE EMPLOYMENT AS THE PROXIMATE CAUSE.

4. THE DISEASE DOES NOT COME FROM A HAZARD TO WHICH WORKMEN WOULD HAVE BEEN EQUALLY EXPOSED OUTSIDE OF THE EMPLOYMENT.

5. THE DISEASE IS INCIDENTAL TO THE CHARACTER OF THE BUSINESS AND NOT INDEPENDENT OF THE RELATION OF EMPLOYER AND EMPLOYEE.

6. THE DISEASE AFTER ITS CONTRACTION APPEARS TO HAVE HAD ITS ORIGIN IN A RISK CONNECTED WITH THE EMPLOYMENT,

AND TO HAVE FLOWED FROM THAT SOURCE AS A NATURAL CONSEQUENCE, ALTHOUGH IT NEED NOT HAVE BEEN FORESEEN OR EXPECTED.

23-901.02. **Liability of last employer; exception**

WHERE COMPENSATION IS PAYABLE FOR AN OCCUPATIONAL DISEASE THE ONLY EMPLOYER LIABLE SHALL BE THE EMPLOYER IN WHOSE EMPLOYMENT THE EMPLOYEE WAS LAST INJURIOUSLY EXPOSED TO THE HAZARDS OF SUCH DISEASE BUT IN THE CASE OF SILICOSIS OR ASBESTOSIS THE ONLY EMPLOYER LIABLE SHALL BE THE EMPLOYER IN WHOSE EMPLOYMENT THE EMPLOYEE WAS LAST EXPOSED TO HARMFUL QUANTITIES OF SILICON DIOXIDE ($Si0_2$) DUST DURING A PERIOD OF TWO YEARS OR MORE.

23-901.03. **Appointment of committee of medical consultants for claims; qualifications, powers, duties and compensation**

A. FOR EACH CASE SUBMITTED BY A CLAIMANT FOR COMPENSATION THE COMMISSION MAY, OR IF REQUESTED BY AN INTERESTED PARTY SHALL, APPOINT A COMMITTEE OF EXPERT CONSULTANTS ON OCCUPATIONAL DISEASES, THREE LICENSED PHYSICIANS IN GOOD PROFESSIONAL STANDING, EACH OF WHOM SHALL HAVE HAD AT THE TIME OF APPOINTMENT, AND IMMEDIATELY PRIOR THERETO, AT LEAST FIVE YEARS' PRACTICE IN THE DIAGNOSIS, CARE AND TREATMENT OF THE PARTICULAR DISEASE OR DISEASES FOR WHICH THE CLAIM IS SUBMITTED AND THE INTERPRETATION OF X-RAY FILMS THEREOF.

B. THE ARIZONA STATE MEDICAL ASSOCIATION MAY, AT LEAST ANNUALLY, CERTIFY TO THE COMMISSION THE NAMES OF ALL LICENSED PHYSICIANS WITHIN THE STATE WHO HAVE THE QUALIFICATIONS SPECIFIED IN THIS SECTION, AND IF SUCH CERTIFICATION IS MADE, THEN THE APPOINTMENT SHALL BE MADE FROM THE LIST SO CERTIFIED BY THE MEDICAL ASSOCIATION.

C. THERE ALSO SHALL BE APPOINTED BY THE COMMISSION AN INDUSTRIAL HYGIENIST TO SERVE AS AN ADVISOR TO THE

COMMITTEE. SUCH INDUSTRIAL HYGIENIST SHALL RENDER REPORTS TO THE COMMITTEE WHEN ASKED TO DO SO BY THE COMMITTEE OR THE COMMISSION.

D. AFTER FILING A CLAIM FOR COMPENSATION UNDER THIS CHAPTER FOR AN OCCUPATIONAL DISEASE, THE COMMISSION MAY, OR IF REQUESTED BY AN INTERESTED PARTY SHALL, DIRECT AN EXAMINATION OF AND REPORT UPON THE CLAIMANT BY THE COMMITTEE OF EXPERT CONSULTANTS, OR ONE OF THEM, INCLUDING SUCH X-RAY AND OTHER PATHOLOGICAL EXAMINATIONS AND TESTS AS IN THEIR OPINION MAY BE NECESSARY FOR THE PURPOSE OF DETERMINING DIAGNOSIS, DISABLEMENT, CAUSAL RELATION TO THE EMPLOYMENT AND THE NATURE AND TYPE OF MEDICAL TREATMENT, HOSPITALIZATION AND OTHER CARE REQUIRED. IF THE CLAIM IS NOT CONTROVERTED AS TO ANY MEDICAL FACT, THE EXAMINATION AND REPORT OF ONE MEMBER OF THE COMMITTEE SHALL BE DEEMED THE EXAMINATION AND REPORT OF THE COMMITTEE. IF THE CLAIM IS CONTROVERTED AS TO ANY MEDICAL FACT, THE REPORT SHALL BE MADE BY THE FULL COMMITTEE AFTER A PHYSICAL EXAMINATION BY AT LEAST ONE MEMBER THEREOF. THE FINDINGS AND OPINIONS OF A MAJORITY OF THE COMMITTEE SHALL CONSTITUTE THE FINDINGS AND OPINION OF THE COMMITTEE. THE CONTENTS OF THE REPORT OF THE COMMITTEE WHEN PLACED IN THE RECORD SHALL CONSTITUTE PRIMA FACIE EVIDENCE OF FACT AS TO THE MATTER CONTAINED THEREIN. THE COMMITTEE OR ANY MEMBER THEREOF MAKING THE REPORT SHALL BE SUBJECT TO EXAMINATION UPON DEMAND OF ANY INTERESTED PARTY. COPIES OF THE REPORT SHALL BE SENT TO ALL PARTIES INTERESTED.

E. THE COMMITTEE, OR ANY MEMBER THEREOF, IN ORDER TO ASSIST IN REACHING A CONCLUSION MAY REQUIRE THE ATTENDING PHYSICIAN OR DIRECTOR OF A HOSPITAL OR SANITARIUM OR OTHER PLACE IN WHICH TREATMENT OR CARE IS BEING GIVEN, OR HAS BEEN GIVEN, TO ATTEND AT A CONVENIENT TIME AND PLACE TO CONSULT WITH THE COMMITTEE OR ANY MEMBER THEREOF, AND DESCRIBE THE NATURE AND TYPE OF CARE AND TREATMENT AND FURNISH ANY OTHER EVIDENCE WHICH THE COMMITTEE, OR ANY MEMBER THEREOF, DESIRES.

F. WHEN A CLAIM FOR DEATH BENEFITS IS FILED, THE COMMITTEE MAY EXAMINE ALL AVAILABLE EVIDENCE PERTAINING TO THE CLAIM AND MAY MAKE FINDINGS AND REPORT THEREON. THE REPORT SHALL CONSTITUTE PRIMA FACIE EVIDENCE OF FACT AS TO THE MATTERS CONTAINED THEREIN.

G. THE COMMISSION UPON THE APPLICATION OF AN INTERESTED PARTY SHALL DIRECT THE COMMITTEE OR A MEMBER THEREOF, TO MAKE EXAMINATIONS OF CLAIMANTS, REVIEW THE FINDINGS OF SPECIAL MEDICAL EXAMINERS, READ AND REVIEW THE FILES OF COMPENSATION CASES WHEN NECESSARY AND RENDER TO THE COMMISSION AN OPINION AS TO THE FINDINGS IN SUCH CASES.

H. THE COMMISSION SHALL FIX THE COMPENSATION OF THE MEMBERS OF THE COMMITTEES AND ADVISORS FOR SERVICES RENDERED WHICH SHALL BE PAID FROM THE ADMINISTRATIVE FUND.

23-901.04. **Compensation precluded by misconduct, self-exposure or disobedience of orders of commission; self-exposure defined**

A. NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER, NO EMPLOYEE OR DEPENDENT OF AN EMPLOYEE SHALL BE ENTITLED TO RECEIVE COMPENSATION FOR DISABILITY FROM AN OCCUPATIONAL DISEASE, AS DEFINED BY SECTION 23-901, PARAGRAPH 9, SUBDIVISION (c), WHEN SUCH DISABILITY WAS CAUSED EITHER WHOLLY OR PARTLY BY THE WILFUL MISCONDUCT, WILFUL SELF-EXPOSURE OR DISOBEDIENCE TO SUCH REASONABLE RULES AND REGULATIONS ADOPTED BY THE EMPLOYER AND WHICH HAVE BEEN AND ARE KEPT POSTED IN CONSPICUOUS PLACES IN AND ABOUT THE PREMISES OF THE EMPLOYER, OR OTHERWISE BROUGHT TO THE ATTENTION OF THE EMPLOYEE.

B. AS USED IN THIS SECTION THE TERM "WILFUL SELF-EXPOSURE" INCLUDES:

1. FAILURE OR OMISSION ON THE PART OF AN EMPLOYEE OR APPLICANT FOR EMPLOYMENT TRUTHFULLY TO STATE IN WRITING TO THE BEST OF HIS KNOWLEDGE IN ANSWER TO AN INQUIRY MADE BY THE EMPLOYER, THE PLACE, DURATION AND NATURE OF PREVIOUS EMPLOYMENT.

2. FAILURE OR OMISSION ON THE PART OF AN APPLICANT FOR EMPLOYMENT TRUTHFULLY TO STATE IN WRITING TO THE BEST OF HIS KNOWLEDGE IN ANSWER TO AN INQUIRY MADE BY THE EMPLOYER, WHETHER OR NOT HE HAD PREVIOUSLY BEEN DISABLED, LAID OFF OR COMPENSATED IN DAMAGES OR OTHERWISE BECAUSE OF ANY PHYSICAL DISABILITY.

3. FAILURE OR OMISSION ON THE PART OF AN EMPLOYEE OR APPLICANT FOR EMPLOYMENT TRUTHFULLY TO GIVE IN WRITING TO THE BEST OF HIS KNOWLEDGE IN ANSWER TO AN INQUIRY MADE BY THE EMPLOYER, FULL INFORMATION ABOUT THE PREVIOUS STATUS OF HIS HEALTH, PREVIOUS MEDICAL AND HOSPITAL ATTENTION AND DIRECT AND CONTINUOUS EXPOSURE TO ACTIVE PULMONARY TUBERCULOSIS.

23-901.05. **Occupational disease aggravated by other disease or other disease aggravated by occupational disease; effect on compensation**

WHERE AN OCCUPATIONAL DISEASE, AS DEFINED BY SECTION 23-901, PARAGRAPH 9, SUBDIVISION (c), IS AGGRAVATED BY ANY OTHER DISEASE OR INFIRMITY NOT ITSELF COMPENSABLE, OR WHERE DISABILITY OR DEATH FROM ANY OTHER CAUSE NOT ITSELF COMPENSABLE IS AGGRAVATED, PROLONGED, ACCELERATED OR IN ANYWISE CONTRIBUTED TO BY AN OCCUPATIONAL DISEASE, THE COMPENSATION PAYABLE UNDER THIS CHAPTER SHALL BE REDUCED AND LIMITED TO SUCH PROPORTION ONLY OF THE COMPENSATION THAT WOULD BE PAYABLE IF THE OCCUPATIONAL DISEASE WERE THE SOLE CAUSE OF THE DISABILITY OR DEATH, AS SUCH OCCUPATIONAL DISEASE AS A CAUSATIVE FACTOR BEARS TO ALL THE CAUSES OF SUCH DISABILITY OR DEATH.

Sec. 3. Title 23, chapter 6, article 9, Arizona Revised Statutes, is amended by adding section 23-1073, to read:

23-1073. **Processing of prior claims**

THE COMMISSION APPOINTED PURSUANT TO THE PROVISIONS OF CHAPTER 1 OF THIS TITLE SHALL PROCESS ALL CLAIMS FOR INJURIES OR DISABLING CONDITIONS WHICH OCCURRED PRIOR TO JANUARY 1, 1969 TO THE ENTRY OF A FINAL AWARD IN ACCORDANCE WITH THE PROCEDURE AND BENEFIT LEVELS IN

EFFECT PRIOR TO JANUARY 1, 1969. PETITIONS TO REOPEN FILED SUBSEQUENT TO JANUARY 1, 1969 SHALL BE PROCESSED IN ACCORDANCE WITH THE PROCEDURAL PROVISIONS OF THIS CHAPTER.

Sec. 4. **Repeal**

Title 23, chapter 7, Arizona Revised Statutes, is repealed.

Approved by the Governor–April 13, 1973

Filed in the Office of the Secretary of State–April 16, 1973

CHAPTER 54

House Bill 2107

AN ACT

RELATING TO EDUCATION; AUTHORIZING THE PAYMENT OF COMPENSATION TO SCHOOL PERSONNEL ON A TWELVE MONTH BASIS, AND AMENDING SECTIONS 15-1204 AND 23-351, ARIZONA REVISED STATUTES.

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

Section 1. Section 15-1204, Arizona Revised Statutes, is amended to read:

15-1204. **Procedure for payment of obligations after close of fiscal year; lapsing of funds**

A. Annually on or before June 30, each school district having outstanding obligations attributable to the budgetary allotments of the fiscal year just ending shall file with the county school superintendent, in the manner and upon a form prescribed by the state superintendent of public instruction and under oath, an "advice of encumbrance" for each item of outstanding obligations. The county school superintendent shall encumber such funds as are necessary and available to pay such properly entered encumbrances. Any cash balance remaining after encumbrances shall lapse, and the balance shall be used for reduction of school district taxes for the ensuing fiscal year.

B. The county school superintendent may draw warrants against the available balances of the budgetary items made for a fiscal year for a period of one month after the close of such fiscal year OR FOR TWO MONTHS THEREAFTER FOR PAYMENT OF COMPENSATION TO SCHOOL PERSONNEL. WARRANTS MAY BE DRAWN AFTER THE CLOSE OF A FISCAL YEAR ONLY for payment of obligations incurred during the fiscal year for which such budget was approved or fulfillment of contracts properly made during OR APPLICABLE TO such year ~~and for no other purpose, if such~~ FOR goods ~~were~~ received or services rendered prior to the close of such fiscal year.

C. After expiration of the period of ~~one month~~ TWO MONTHS from the beginning of each fiscal year, the balance shall lapse and be applied as provided in subsection A of this section and no further payments shall be made on any claim for expenditures of such prior fiscal year.

Sec. 2. Section 23-351, Arizona Revised Statutes, is amended to read:

23-351. **Designation of paydays for employees; notice of dates; payment; exceptions; violation; penalty**

A. The state, county, municipality, school district or other political subdivision of the state, each department, institution or agency of the state or any political subdivision thereof, each person, firm, partnership, association or corporation employed under contract by the state or any political subdivision thereof or by any such department, institution or agency, and each company or corporation doing business and employing labor in the state, shall designate two or more days in each month, not more than sixteen days apart, as fixed paydays for payment of wages to its employees, and shall post and maintain notices, printed or written in plain type or script, in at least two conspicuous places where they may be seen by employees as they go to and from work, setting forth the dates of the regular paydays.

B. The state, and each political subdivision, department, institution, agency, contractor, company or corporation mentioned in subsection A of this section, shall, on each of the regular paydays, pay to its employees, in lawful money of the United States, or in negotiable bank checks payable on demand and bearing even date with the payday or, with the written consent of the employee, by deposit on the payday to the employee's credit at a bank of his choice doing business in Arizona and which is a member of the federal deposit insurance corporation, all wages due the employees up to such date, except:

1. In case of employees remaining in the service of any such employer, wages for not to exceed five days labor may be withheld.

2. In case of certificated employees of school districts under contract pursuant to section 15-443 and clerical employees, the annual salary may be prorated in any number of payments, and all such payments still due at the close of the ~~school~~ FISCAL year may AT THE OPTION OF THE EMPLOYEE be paid in EITHER a lump sum OR PAID WITHIN A PERIOD OF TWO MONTHS AFTER THE CLOSE OF SUCH YEAR.

C. When an employee's wages are paid by bank deposit he shall be furnished with a statement of his earnings and withholdings and a deposit receipt. Any bank wage deposit plan adopted by an employer shall entitle the employee to one withdrawal for each deposit, free of any service charge to the employee. The consent of an employee for payment of wage by bank deposit shall not constitute a prior assignment of wages to the bank and is revocable at any time prior to the actual deposit. No person shall be denied employment nor discharged for refusal to consent to payment of wage by bank deposit.

D. An officer or other person charged with payment of the wages of an employee of the state or a political subdivision thereof, or of any department or institution of the state or a political subdivision thereof, or any other employer mentioned in subsection A, who violates a provision of this section is guilty of a misdemeanor punishable by a fine of not less than fifty nor more than three hundred dollars for each offense.

Approved by the Governor—April 13, 1973

Filed in the Office of the Secretary of State—April 16, 1973

CHAPTER 55

House Bill 2133

AN ACT

RELATING TO MOTOR VEHICLES; PROVIDING FOR TRANSACTION OF HIGHWAY DEPARTMENT BUSINESS DURING HOURS AND DAYS SET BY THE SUPERINTENDENT, AND AMENDING SECTION 28-201, ARIZONA REVISED STATUTES.

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

Section 1. Section 28-201, Arizona Revised Statutes, is amended to read:

28-201. **Motor vehicle division; superintendent; compensation; offices; employees; hours**

A. The highway department shall maintain a division of motor vehicles.

B. The state highway director, subject to the approval of the commission, shall appoint a vehicle superintendent to be the head of the division, who shall receive compensation as determined pursuant to section 38-611.

C. The vehicle division shall maintain an office in the capital, and other offices as the duties of the division require. The superintendent may, with the consent of the director, appoint a chief clerk and other employees as the business of the division demands, whose compensation shall be as determined pursuant to section 38-611.

D. FOR THE CONVENIENCE OF THE PUBLIC, ALL FULL-TIME OFFICES SHALL BE OPEN FOR THE TRANSACTION OF BUSINESS PURSUANT TO SECTION 38-401 AND AT SUCH OTHER HOURS AND DAYS AS PRESCRIBED BY THE SUPERINTENDENT. ALL PART-TIME OFFICES MAINTAINED BY THE DEPARTMENT SHALL BE OPEN FOR THE TRANSACTION OF BUSINESS DURING THE HOURS AND DAYS PRESCRIBED BY THE SUPERINTENDENT.

Approved by the Governor–April 13, 1973

Filed in the Office of the Secretary of State–April 16, 1973

CHAPTER 56

House Bill 2134

AN ACT

RELATING TO PUBLIC HEALTH; PROVIDING FOR TRANSFER OF REAL PROPERTY AND EQUIPMENT OF THE BOARD OF CRIPPLED CHILDREN'S SERVICES TO THE DEPARTMENT OF MENTAL RETARDATION, AND MAKING AN APPROPRIATION.

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

Section 1. **Purpose**

The purpose of this act, which is conditioned upon passage of house bill 2089 transferring the tuberculosis sanatorium property to the state board of crippled children's services, is to transfer the present facility of the crippled children's services to the state department of mental retardation for the establishment and maintenance of a mental retardation center for the use of nonambulatory retardates.

Sec. 2. **Transfer of equipment and facilities; purpose**

All equipment not transferred by the Arizona state board of crippled children's services on or before July 1, 1973, the facility used by the Arizona state board of crippled children's services and the real property more particularly described as:

That part of Lots lettered "F" and "G" of the Amended map of MONTEZUMA PLACE, according to the official map or plat thereof on file and of record in the office of the County Recorder of Maricopa County, Arizona, in Book 1 of Maps, page 40 thereof, described as follows:

BEGINNING at a point on the West line of said Lot "F", from which the Northwest corner of the Northeast quarter of the Southwest quarter of Section 3, in Township 1 North of Range 3 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, bears North 331.10 feet, said Northwest corner being marked by City of Phoenix Survey Monument 25-61 and said point of beginning being marked by City of Phoenix Survey Monument 24-61; thence South 330.55 feet along the West line of said Lot "F" to City of Phoenix Survey Monument 23-61; thence South 89 deg. 45' East parallel with the North line of the Northeast quarter of the Southwest quarter of said Section 3 as monumented by the City of Phoenix, a distance of 655.75 feet; thence North 330.55 feet; thence North 89 deg. 45' West 655.75 feet to the point of beginning; except the North 30 feet; the East 30 feet; the South 30 feet; and the West 30 feet thereof for road purposes,

shall be transferred on July 1, 1973, to the state department of mental retardation for the establishment and maintenance of a mental retardation center.

Sec. 3. **Appropriation; purpose; exemption**

A. The sum of seven hundred fifty-five thousand eight hundred seventy dollars is appropriated to the state department of mental retardation for the purposes provided for in this act.

B. The appropriation made in subsection A shall not lapse until the purpose for which the appropriation is made is accomplished or abandoned unless the appropriation stands until July 1, 1976, without an expenditure therefrom or an encumbrance thereon.

Sec. 4. **Effective date; conditional enactment**

This act shall become effective only if house bill number 2089, thirty-first legislature, first regular session, is enacted into law.

Sec. 5. **Emergency**

To preserve the public peace, health and safety it is necessary that this act become immediately operative, subject to the provisions of section 4. It is therefore declared to be an emergency measure, to take effect as provided by law.

Approved by the Governor—April 13, 1973

Filed in the Office of the Secretary of State—April 16, 1973

CHAPTER 57

House Bill 2143

AN ACT

RELATING TO PUBLIC UTILITIES; REQUIRING PERSONS EXCAVATING IN A PUBLIC UTILITY EASEMENT TO OBTAIN INFORMATION OF UNDERGROUND FACILITIES; PRESCRIBING PROCEDURE AND LIABILITY, AND AMENDING TITLE 40, CHAPTER 2, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 6.3.

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

Section 1. Title 40, chapter 2, Arizona Revised Statutes, is amended by adding article 6.3, sections 40-360.21 through 40-360.29, to read:

ARTICLE 6.3. UNDERGROUND FACILITIES

40-360.21. **Definitions**

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "EXCAVATION" MEANS ANY OPERATION IN WHICH EARTH, ROCK OR OTHER MATERIAL IN OR ON THE GROUND IS MOVED, REMOVED OR OTHERWISE DISPLACED BY MEANS OF ANY TOOLS, EQUIPMENT OR EXPLOSIVES AND INCLUDES, WITHOUT LIMITATION, GRADING, TRENCHING, DIGGING, DITCHING, DRILLING, AUGERING, TUNNELLING, SCRAPING, CABLE OR PIPE PLOWING AND DRIVING.

2. "PERSON" MEANS ANY INDIVIDUAL, FIRM, JOINT VENTURE, PARTNERSHIP, CORPORATION, ASSOCIATION, MUNICIPALITY, GOVERNMENTAL UNIT, DEPARTMENT OR AGENCY AND SHALL INCLUDE ANY TRUSTEE, RECEIVER, ASSIGNEE OR PERSONAL REPRESENTATIVE THEREOF.

3. "UNDERGROUND FACILITY" MEANS ANY ITEM OF PERSONAL PROPERTY WHICH SHALL BE BURIED OR PLACED BELOW GROUND FOR USE IN CONNECTION WITH THE STORAGE OR CONVEYANCE OF WATER, SEWAGE, ELECTRONIC, TELEPHONIC, OR TELEGRAPHIC COMMUNICATIONS, ELECTRIC ENERGY, OIL, GAS OR OTHER SUBSTANCES, AND SHALL INCLUDE BUT NOT BE LIMITED TO PIPES, SEWERS, CONDUITS, CABLES, VALVES, LINES, WIRES, MANHOLES, ATTACHMENTS AND THOSE PORTIONS OF POLES BELOW GROUND.

40-360.22. **Excavation in public street, alley, right-of-way or utility easement; determining location of underground facilities; providing information**

A. A PERSON SHALL NOT MAKE OR BEGIN ANY EXCAVATION IN ANY PUBLIC STREET, ALLEY, RIGHT-OF-WAY DEDICATED TO THE PUBLIC USE OR UTILITY EASEMENT WITHOUT FIRST OBTAINING INFORMATION CONCERNING THE POSSIBLE LOCATION OF ANY UNDERGROUND FACILITY FROM EACH AND EVERY PUBLIC UTILITY, MUNICIPAL CORPORATION OR OTHER PERSON HAVING THE RIGHT TO BURY SUCH UNDERGROUND FACILITIES WITHIN THE PUBLIC STREET, ALLEY, RIGHT-OF-WAY OR UTILITY EASEMENT.

B. EVERY PUBLIC UTILITY, MUNICIPAL CORPORATION OR OTHER PERSON HAVING THE RIGHT TO BURY UNDERGROUND

FACILITIES SHALL FILE WITH THE COUNTY CLERK AND RECORDER IN EACH COUNTY WHERE IT IS DOING BUSINESS, THE JOB TITLE, ADDRESS AND TELEPHONE NUMBER OF THE PERSON OR PERSONS FROM WHOM THE NECESSARY INFORMATION MAY BE OBTAINED.

40-360.23. **Making excavation in careful, prudent manner; liability for negligence**

OBTAINING INFORMATION AS REQUIRED BY THIS ARTICLE DOES NOT EXCUSE ANY PERSON MAKING ANY EXCAVATION FROM DOING SO IN A CAREFUL AND PRUDENT MANNER, NOR SHALL IT EXCUSE SUCH PERSONS FROM LIABILITY FOR ANY DAMAGE OR INJURY RESULTING FROM HIS NEGLIGENCE.

40-360.24. **Notice of damage to underground facility**

IN THE EVENT OF ANY DAMAGE TO OR DISLOCATION OF ANY UNDERGROUND FACILITY IN CONNECTION WITH ANY EXCAVATION THE PERSON RESPONSIBLE FOR THE EXCAVATION OPERATIONS SHALL IMMEDIATELY NOTIFY THE OWNER OF SUCH FACILITY.

40-360.25. **Injunction; mandamus**

IF ANY PERSON IS ENGAGING IN EXCAVATION IN A NEGLIGENT OR UNSAFE MANNER WHICH HAS RESULTED IN OR IS LIKELY TO RESULT IN DAMAGE TO AN UNDERGROUND FACILITY OR IF ANY PERSON IS PROPOSING TO USE PROCEDURES FOR EXCAVATION WHICH ARE LIKELY TO RESULT IN DAMAGE TO AN UNDERGROUND FACILITY, THE OWNER OF SUCH FACILITY MAY COMMENCE AN ACTION IN THE SUPERIOR COURT IN THE COUNTY IN WHICH THE EXCAVATION IS OCCURRING OR IS TO OCCUR, OR IN WHICH THE PERSON COMPLAINED OF HAS ITS PRINCIPAL PLACE OF BUSINESS OR RESIDES, FOR THE PURPOSE OF HAVING SUCH NEGLIGENT OR UNSAFE EXCAVATION STOPPED AND PREVENTED, EITHER BY MANDAMUS OR INJUNCTION. SUCH PERSONS AS THE COURT MAY DEEM NECESSARY OR PROPER MAY BE JOINED AS PARTIES. THE FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL EITHER DISMISS THE ACTION OR DIRECT THAT THE WRIT OF MANDAMUS OR INJUNCTION ISSUE OR BE MADE PERMANENT AS PRAYED FOR IN THE COMPLAINT. IF THE COURT FINDS THAT THE PERSON COMPLAINED OF HAS REPEATEDLY ENGAGED IN NEGLIGENT OR

UNSAFE EXCAVATION RESULTING IN DAMAGE TO UNDERGROUND FACILITIES AFTER THE EFFECTIVE DATE OF THIS ARTICLE, THE COURT SHALL ISSUE SUCH ORDER AND TAKE SUCH EQUITABLE ACTION AS SHALL BE REASONABLE AND APPROPRIATE TO PREVENT CONTINUANCE BY SUCH PERSON OF SUCH NEGLIGENT OR UNSAFE OPERATIONS.

40-360.26. **Damage of underground facility; liability to owner; homeowner exemption**

A. IF ANY UNDERGROUND FACILITY IS DAMAGED BY ANY PERSON WHO HAS FAILED TO OBTAIN INFORMATION AS TO ITS LOCATION AS REQUIRED BY THIS ARTICLE, SUCH PERSON IS LIABLE TO THE OWNER OF THE UNDERGROUND FACILITY FOR THE TOTAL COST OF THE REPAIR OF SUCH FACILITY.

B. A PERSON ENGAGING IN EXCAVATING IN A UTILITY EASEMENT ACROSS PROPERTY OWNED BY HIM SHALL NOT BE LIABLE TO THE OWNER OF THE UNDERGROUND FACILITY DAMAGED BY THE PROPERTY OWNER IF THE DAMAGED UNDERGROUND FACILITY IS NOT BURIED OR PLACED BELOW GROUND IN ACCORDANCE WITH THE APPLICABLE STANDARDS OR IF THE UNDERGROUND FACILITY IS NOT LOCATED WITHIN THE EASEMENT.

40-360.27. **Liability for attorney's fee**

THE PREVAILING PARTY IN AN ACTION BROUGHT TO IMPOSE LIABILITY UNDER ANY SECTION OF THIS ARTICLE SHALL BE ENTITLED TO RECOVER A REASONABLE ATTORNEY'S FEE.

40-360.28. **Wilful failure to comply with article**

IN ADDITION TO ANY OTHER LIABILITY IMPOSED BY LAW OR BY THIS ARTICLE, ANY PERSON WHO, WHILE ENGAGING IN EXCAVATION, WILFULLY FAILS TO COMPLY WITH ANY SECTION OF THIS ARTICLE AND DAMAGES ANY UNDERGROUND FACILITY MAY BE SUBJECT TO A CIVIL PENALTY IN AN AMOUNT NOT TO EXCEED ONE THOUSAND DOLLARS. ACTIONS TO RECOVER THE PENALTY PROVIDED FOR IN THIS SECTION SHALL BE BROUGHT EITHER BY THE OWNER OF THE UNDERGROUND FACILITY DAMAGED OR BY THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF THE STATE OF ARIZONA, IN THE SUPERIOR COURT IN AND FOR THE COUNTY IN WHICH THE CAUSE OF ACTION OR SOME PART

THEREOF AROSE OR IN WHICH THE PERSON COMPLAINED OF HAS ITS PRINCIPAL PLACE OF BUSINESS OR RESIDES. ALL PENALTIES RECOVERED IN SUCH ACTION SHALL BE PAID INTO THE STATE GENERAL FUND, EXCEPT THAT A PORTION OF SUCH PENALTY RECOVERED IN ANY ACTION COMMENCED BY THE OWNER OF THE UNDERGROUND FACILITY DAMAGED, EQUAL TO A REASONABLE ATTORNEY'S FEE, IF SUCH WAS INCURRED, SHALL BE PAID TO SUCH OWNER.

40-360.29. **Charters and ordinances of governments not affected**

THE PROVISIONS OF THIS ARTICLE SHALL BE CUMULATIVE AND SUPPLEMENTAL TO OTHER PROVISIONS OF LAW OR CHARTER AND SHALL NOT BE CONSTRUED TO PROHIBIT CITIES AND TOWNS FROM ENACTING ORDINANCES REGULATING EXCAVATIONS.

Approved by the Governor—April 13, 1973

Filed in the Office of the Secretary of State—April 16, 1973

CHAPTER 58

House Bill 2148

AN ACT

RELATING TO STATE GOVERNMENT; REMOVING NONLAPSING PROVISIONS APPLICABLE TO APPROPRIATIONS FOR OFFICE OF ECONOMIC PLANNING AND DEVELOPMENT, AND REPEALING SECTION 41-507, ARIZONA REVISED STATUTES, AS ADDED BY LAWS 1968, CHAPTER 207, SECTION 3 AND AMENDED BY LAWS 1972, CHAPTER 192, SECTION 19.

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

Section 1. Section 41-507, Arizona Revised Statutes, as added by Laws 1968, chapter 207, section 3 and amended by Laws 1972, chapter 192, section 19, is repealed.

Approved by the Governor—April 13, 1973

Filed in the Office of the Secretary of State—April 16, 1973

LAWS OF ARIZONA

CHAPTER 59

House Bill 2187

AN ACT

RELATING TO MOTOR VEHICLES; PROVIDING FOR ISSUANCE AND EXCHANGE OF LICENSE PLATES FOR UNDERCOVER LAW ENFORCEMENT VEHICLES, AND AMENDING SECTION 28-317, ARIZONA REVISED STATUTES.

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

Section 1. Section 28-317, Arizona Revised Statutes, is amended to read:

28-317. **Official vehicles; exemption from fees; registration; number plates; law enforcement vehicles**

A. Registration fees need not be paid for a vehicle owned by a foreign government, a consul or other official representative thereof, by the United States or by a state or political subdivision thereof. All such vehicles shall be registered as required by this article by the person having custody thereof and the custodian shall display official registration plates which shall bear distinguishing marks thereon and which shall be furnished by the vehicle division free of charge. THOSE VEHICLES WHICH ARE EXEMPTED PURSUANT TO SECTION 28-1443, SUBSECTION B, MAY BE ISSUED REGULAR NUMBER PLATES WITHOUT ANY DISTINGUISHING MARKS.

B. THE SUPERINTENDENT MAY ISSUE LICENSE PLATES FOR MOTOR VEHICLES OWNED BY AND USED IN THE LINE OF DUTY BY LAW ENFORCEMENT AGENCIES IN OTHER STATES AND THE FEDERAL GOVERNMENT. SUBJECT TO SUBSECTION D OF THIS SECTION, SUCH VEHICLES NEED NOT BE REGISTERED AS REQUIRED BY THIS ARTICLE.

C. THE SUPERINTENDENT MAY ENTER INTO AGREEMENTS OR ARRANGEMENTS SUBJECT TO THE APPROVAL OF THE ATTORNEY GENERAL OF THIS STATE WITH THE FEDERAL GOVERNMENT AND WITH MOTOR VEHICLE DEPARTMENTS IN OTHER STATES TO PROVIDE FOR A RECIPROCAL EXCHANGE OF LICENSE PLATES FOR USE ON MOTOR VEHICLES OWNED AND OPERATED BY LAW ENFORCEMENT AGENCIES FOR INVESTIGATING ACTUAL OR SUSPECTED VIOLATIONS OF THE LAW. ANY

LICENSE PLATES OF OTHER STATES OBTAINED PURSUANT TO THIS SUBSECTION MAY BE USED ON EXEMPT MOTOR VEHICLES OF LAW ENFORCEMENT AGENCIES OF THIS STATE OR A POLITICAL SUBDIVISION THEREOF SUBJECT TO THE PROVISIONS OF SUBSECTION D OF THIS SECTION.

D. THE SUPERINTENDENT SHALL MAINTAIN A RECORD OF THE LICENSE PLATES ISSUED PURSUANT TO SUBSECTIONS B AND C OF THIS SECTION. THE SUPERINTENDENT SHALL ALSO KEEP A RECORD OF THE LICENSE PLATES RECEIVED PURSUANT TO SUBSECTION C OF THIS SECTION AND OF THE REGULAR LICENSE PLATES ISSUED PURSUANT TO SUBSECTION A OF THIS SECTION AND OF THE VEHICLES TO WHICH SUCH PLATES ARE ATTACHED. SUCH RECORDS SHALL NOT BE OPEN TO PUBLIC INSPECTION EXCEPT UPON DEMAND OF THE ATTORNEY GENERAL.

Approved by the Governor–April 13, 1973

Filed in the Office of the Secretary of State–April 16, 1973

CHAPTER 60

House Bill 2193

AN ACT

RELATING TO PUBLIC LANDS; PRESCRIBING FEES TO BE CHARGED BY THE STATE LAND DEPARTMENT, AND AMENDING SECTIONS 27-251, 27-555, 37-108 AND 37-604, ARIZONA REVISED STATUTES.

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

Section 1. Section 27-251, Arizona Revised Statutes, is amended to read:

27-251. **Application for prospecting permit**

A. Any citizen of the United States, partnership or association of citizens, or a corporation organized under the laws of the United States or any state or territory thereof, may apply to the commissioner for a mineral exploration permit on the state land in one or more of the

rectangular subdivisions of twenty acres, more or less, or lots, in any one section of the public land survey. Such application shall be in writing, signed by the applicant, or an authorized agent or attorney for the applicant, and shall contain the name and address of the applicant, a description according to the public land survey of the state land for which the applicant seeks a mineral exploration permit, and such other information as the commissioner may by regulation prescribe. The application shall be filed with the department and shall be accompanied by payment to the department of a filing fee of ~~fifteen~~ TWENTY-FIVE dollars. Each application meeting the requirements of this section shall be stamped by the department with the time and date it is filed with the department. The application shall have priority over any other application for a mineral exploration permit involving the same state land which may be filed with the department subsequent to such time and date, and such land shall be deemed withdrawn from location of mineral claims so long as the application is pending.

B. Not less than thirty days nor more than forty-five days from the filing of the application with the department, provided there is no prior application for a mineral exploration permit involving the same state land then pending before the department, or if such prior application is then pending but is subsequently cancelled, not more than fifteen days after it is cancelled, the department shall mail to the applicant, by registered or certified mail, at the address shown on the application, a written notice designating the state land described in the application which, at the time the application was filed with the department, was open to entry and location as a mineral claim or claims upon discovery of a valuable mineral deposit thereon, the amount of rental required to be paid for the mineral exploration permit as herein provided, and whether a bond will be required under the provisions of section 27-255 as a condition to issuance of such permit. If, within fifteen days after the mailing of such notice, the applicant shall pay to the department as rental for the permit the amount of two dollars per acre for each acre of state land designated in the notice and shall file with the department the bond, if any, required under section 27-255, the commissioner shall issue to the applicant a mineral exploration permit for the state land designated in the notice.

C. During the period such mineral exploration permit is in force and effect no person except the permittee and the authorized agents and employees of the permittee shall be entitled to explore for minerals on the state land covered by the permit, and no mineral claim or mineral lease shall be located or issued on such land except as provided in this article. If the applicant shall fail to make the payment or furnish the bond within the period of fifteen days, the application shall be deemed cancelled and of no further effect.

Sec. 2. Section 27-555, Arizona Revised Statutes, is amended to read:

27-555. **Lease of state lands not located within known geological structure of producing oil and gas field; application; provisions of lease; withdrawal of lands from leasing**

A. When state lands are not located within any known geological structure of a producing oil and gas field, as determined pursuant to section 27-554, the person making the first application for the lease shall be issued a lease covering the lands without competitive bidding.

B. The noncompetitive leases shall provide for the payment by the lessee of a royalty of twelve and one-half percent of the market value of all oil, gas and other hydrocarbons produced, saved, sold and removed from the lands at the well as of the time of sale or removal from the lands, as the department may elect.

C. The leases shall provide for an annual rental of one dollar and twenty-five cents per acre per year until oil or gas in paying quantities is discovered on the lands covered by the lease. The rental shall be payable as follows:

1. Twenty-five cents cash per acre per year in advance until oil or gas in paying quantities is discovered upon the lands covered by the lease.

2. The balance in the amount of one dollar per acre per year to be determined as though it were payable in advance for each year of rental, as a cash bonus to be paid by the lessee within ninety days after discovery of oil or gas in paying quantities upon the land covered by the lease.

(a) The subsequent rental payments from date of the discovery of oil or gas in paying quantities upon the land covered by the lease shall be at the rate of one dollar per acre per year and shall be credited on the royalty payments for that year.

(b) All leases shall provide for a minimum rental of eighteen dollars per year.

D. The leases shall be for a term of five years and as long thereafter as oil, gas or other hydrocarbon substances are procured and produced therefrom in paying quantities. The lease upon which drilling operations are being diligently prosecuted on the expiration date thereof shall continue in effect for a period of two years and so long thereafter as oil, gas or other hydrocarbon substances are procured and produced in paying quantities from the lands.

E. Each lease shall provide that the state's royalties shall be computed after deducting any oil or gas reasonably used in operations on the lease and after deducting the cost of dehydrating the oil production therefrom including the cost of extraction of liquid products from the gas produced.

F. The leases shall contain other terms and provisions, not inconsistent with the provisions of this article or other laws of the state, as in the opinion of the department are for the best interest of the state.

G. Not more than two thousand five hundred sixty acres of land confined to an area of six miles square shall be included in any one lease. The lands shall be in as compact a body as possible but may include noncontiguous land within the six mile area if the maximum acreage of contiguous land is not available.

H. Each lease shall provide that any combination, understanding or agreement entered into by the lessee, written, verbal or otherwise, for the purpose of delaying discovery or development of oil or gas is an illegal practice, and that upon legal determination thereof shall constitute grounds for cancellation of the lease. Appropriate proceedings may be instituted by the attorney general against the lessee in the county in which the land or any part thereof is located.

I. The provisions of this section shall not apply to a unit plan or operations entered into under the provisions of this article, or to any plan or operation authorized by any conservation law of this state.

J. Applications for noncompetitive leases shall be in writing addressed to the department and shall contain a description of the lands sufficient to identify them, the name and address of the applicant, and shall be accompanied by a filing fee of ~~ten~~ TWENTY-FIVE dollars and the rental payment for the first year. Each application shall be stamped when received by the department with a stamp showing the day and hour when received. If valid applications covering the same lands are filed simultaneously, the department shall provide by general regulation for a drawing between the applicants to determine which shall be entitled to a lease of the lands. In event the lease is not issued, the rental payment shall be refunded to the applicant.

K. The department may withdraw from leasing any specific area of land not located within any known geological structure of a producing oil and gas field when it appears that the withdrawal is in the interest of the state, but no lands shall be withdrawn by the department without the consent of a committee composed of the governor, who shall be chairman, the

attorney general, and the dean of the college of mines of the university of Arizona. The committee shall consider the proposed withdrawal presented by the department and determine whether the withdrawal shall be permitted. The land, after being withdrawn from leasing, may again be offered for leasing at any time the department deems in the best interests of the state, subject to the advice and consent of the committee provided for in this section, and pursuant to notice as the committee deems necessary.

Sec. 3. Section 37-108, Arizona Revised Statutes, is amended to read:

37-108. **Fees**

~~A.~~ The state land department shall charge the following fees:

~~1. Filing application for selection of public lands, three dollars.~~

~~2.~~ 1. Filing bonds, one dollar.

~~3. Filing application for lease or purchase, one dollar.~~

~~4. Issuing lease, one dollar and fifty cents.~~

~~5. Issuing certificate of purchase, three dollars.~~

~~6. Issuing patent, five dollars.~~

~~7.~~ 2. Filing application for reimbursement, two dollars.

~~8. Filing application for transfer or assignment of lease or certificate of purchase, or transferring lease, one dollar and fifty cents.~~

~~9. Transferring certificate of purchase, three dollars.~~

~~10. Filing application for right of way, five dollars.~~

~~11.~~ 3. Filing application to cut timber or wood or use any product of state lands, two dollars.

~~12.~~ 4. Issuing permit to contract to cut timber or wood or use any product of state lands, two dollars.

~~13.~~ 5. Filing and approving bond, two dollars.

~~14. Making certified copy of proceedings or other records of the commissioner, twenty cents per folio.~~

~~15. Classification and appraisal fee:~~

6. SELLING AND ADMINISTRATIVE EXPENSES:

(a) Two per cent of the purchase price for all land sold.

(b) Two per cent of the first two hundred fifty thousand dollars of the appraised value for all improvements sold or the actual cost of the appraisal fee of the improvements sold, whichever is greater.

7. FILING APPLICATION FOR AGRICULTURAL LEASE, TWENTY-FIVE DOLLARS.

8. FILING APPLICATION FOR COMMERCIAL LEASE FOR BUSINESS PURPOSES, SEVENTY-FIVE DOLLARS.

9. FILING APPLICATION FOR COMMERCIAL LEASE FOR ALL OTHER NONBUSINESS PURPOSES, TWENTY DOLLARS.

10. FILING ORIGINAL APPLICATION FOR GRAZING LAND, TWENTY DOLLARS PER SECTION OF LAND.

11. FILING RENEWAL APPLICATION FOR GRAZING LAND, TWENTY DOLLARS PER LEASE, WHICH INCLUDES ALL SECTIONS OF LAND UNDER SUCH LEASE.

12. FILING APPLICATION FOR HOMESITE LEASE, TWENTY DOLLARS.

13. FILING APPLICATION FOR MINERAL MATERIALS LEASE, TWENTY-FIVE DOLLARS.

14. FILING APPLICATION FOR PROSPECTING PERMIT, TWENTY-FIVE DOLLARS.

15. FILING APPLICATION FOR A MINERAL LEASE, TWENTY-FIVE DOLLARS.

16. FILING APPLICATION FOR AN OIL AND GAS LEASE, TWENTY-FIVE DOLLARS.

17. FILING APPLICATION FOR A GEOTHERMAL LEASE, TWENTY-FIVE DOLLARS.

18. FILING APPLICATION FOR A RIGHTS-OF-WAY PERMIT OVER LANDS HELD BY EXISTING AGRICULTURAL, GRAZING AND HOMESITE LESSEES WHO ARE PRIMARILY ENGAGED IN RANCHING OR AGRICULTURE, TWENTY DOLLARS.

19. FILING APPLICATION FOR A RIGHTS-OF-WAY PERMIT WHEN APPLICANT IS NOT A HOLDER OF AN EXISTING AGRICULTURAL, GRAZING OR HOMESITE LEASE AND NOT ENGAGED PRIMARILY IN AGRICULTURE OR RANCHING, FIFTY DOLLARS, PLUS A ONE HUNDRED DOLLAR APPRAISAL FEE, IF REQUIRED, AND PLUS ANY ADMINISTRATIVE AND INSPECTION FEES NECESSARY TO PROTECT THE ENVIRONMENT AND THE TRUST.

20. FILING APPLICATION FOR A PERPETUAL RIGHTS-OF-WAY PERMIT, FIFTY DOLLARS, PLUS A ONE HUNDRED FIFTY DOLLAR APPRAISAL FEE, IF REQUIRED, AND PLUS ANY ADMINISTRATIVE AND INSPECTION FEES NECESSARY TO PROTECT THE ENVIRONMENT AND THE TRUST.

21. FILING APPLICATION FOR A USE PERMIT, SEVENTY-FIVE DOLLARS.

22. FILING APPLICATION FOR AN ASSIGNMENT OF LEASE, TWENTY DOLLARS.

23. FILING APPLICATION FOR AN ASSIGNMENT OF AN OIL AND GAS LEASE, TWENTY DOLLARS.

24. FILING APPLICATION FOR PLACE IMPROVEMENT, TEN DOLLARS.

25. FILING APPLICATION FOR RECLASSIFICATION, THIRTY-FIVE DOLLARS.

26. FILING APPLICATION FOR AFFIDAVIT FOR LOSS OF LEASE, TEN DOLLARS.

27. FILING APPLICATION FOR PURCHASE OF STATE LAND, FIFTY DOLLARS.

28. FILING APPLICATION FOR EXCHANGE OF LAND, FIFTY DOLLARS, PLUS A ONE HUNDRED FIFTY DOLLAR APPRAISAL FEE, IF REQUIRED.

29. SELECTION OF PUBLIC LANDS, TEN DOLLARS.

30. ISSUANCE OF PATENT, TWENTY-FIVE DOLLARS.

31. ISSUANCE OF PARTIAL PATENT, THIRTY-FIVE DOLLARS.

32. ISSUANCE OF CERTIFICATE OF PURCHASE, TEN DOLLARS.

33. TRANSFER OF CERTIFICATE OF PURCHASE, TEN DOLLARS.

34. FOR MAPS, ONE DOLLAR FOR THE FIRST SHEET AND FIFTY CENTS FOR EACH ADDITIONAL SHEET.

35. FOR DATA PROCESSING OUTPUTS, TEN DOLLARS FOR THE FIRST SHEET AND TWENTY-FIVE CENTS FOR EACH ADDITIONAL SHEET.

36. FOR ALL OTHER COPIES OF RECORDS NOT SPECIFIED, FIVE CENTS PER SHEET.

~~B. If any application is rejected, the filing fee shall be refunded, except that the department may retain selection and purchase fees if field examination has theretofore been made.~~

Sec. 4. Section 37-604, Arizona Revised Statutes, is amended to read:

37-604. **Exchange of state land; procedure; limitation and exceptions**

A. The state land department and selection board, for reasons of proper management, control, protection, or public use of state lands, may exchange state lands managed by the state land department for any other land within the state. The exchange may be made for land owned or held by the United States or agency thereof, other state agencies, counties, municipalities and privately owned lands.

B. The state land department shall promulgate rules and regulations governing application and procedure for exchange of state land. Such rules and regulations shall include the following requirements:

1. The application shall include:

(a) The name, age, residence of the applicant.

(b) A description of all lands sought to be exchanged.

(c) A list of permanent improvements on the lands to be exchanged.

(d) Any lease-hold interest in the land to be exchanged.

(e) Accompanying agreements, if any, with the lease-holder or owner of improvements on the lands to be exchanged.

2. An application fee shall be paid in the amount of ~~ten~~ FIFTY dollars, PLUS A ONE HUNDRED FIFTY DOLLAR APPRAISAL FEE, IF REQUIRED.

3. An application initiated by a private owner shall be accompanied by a deposit equal to the estimated cost of appraising the value of the privately owned property to be exchanged.

4. Such additional requirements may be imposed as the state land department from time to time determines to be necessary.

C. The exchange of state lands shall be subject to the following requirements:

1. All lands exchanged shall be of substantially equal value.

2. No county or municipality may be permitted to select lands in another county or municipality.

3. State lands known to contain oil, gases and other hydrocarbon substances, coal or stone, metals, minerals, fossils and fertilizer of every name and description, in paying quantities, or uranium, thorium, or any other material which is or may be determined by the laws of the state, the United States, or competent judicial decision of federal or Arizona state court to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, and state lands adjoining lands upon which there are producing mines, oil or gas wells, or adjoining lands known to contain any of such substances, minerals or metals in paying quantities, or uranium, thorium, or any other material peculiarly essential to the production of fissionable materials, whether or not of commercial value, shall not be exchanged.

4. All state lands offered for trade pursuant to this section must be located in the same county as the lands offered to the state.

5. Prior to any public notice of a proposed exchange of state lands for privately owned lands, the state land department and selection board shall give thirty days notice in writing, to other interested state agencies, counties, municipalities, and lease-holders on such lands that are or may be affected by the trade.

6. Before any state land may be considered for exchange under the provisions of this article, the land shall be classified as suitable for such purposes in accordance with the provisions of section 37-212.

7. Any person adversely affected by such decision may appeal from the decision as provided in section 37-214.

8. If in any single transaction, the total area of state lands to be exchanged is less than five acres and its value, as computed pursuant to section 37-607, is less than twenty thousand dollars, the state land department shall publish notice of said proposed exchange in the same manner and places as is required for the sale of state lands pursuant to section 37-237, which notice shall contain descriptions of the properties involved, together with other pertinent terms and conditions of the exchange. Any person residing in the county in which state owned land to be exchanged is located may, within ten days of the date of final publication of notice as provided herein, file a written protest of the exchange at the state land department offices at the state capitol upon forms provided by the state land department. Upon receipt of such a protest to a contemplated exchange pursuant to this section, the state land commissioner shall, not later than thirty days after receipt of the protest, hold a public hearing at the county seat of the county in which the state lands proposed to be exchanged are located to hear any and all matters properly subject to the proposed exchange. Notice of the public hearing shall be mailed to all protestants and published one time prior to the date of the hearing in the same newspapers used to publish notice of the proposed exchange.

9. If, in any single transaction, the total area of state lands to be exchanged is equal to or greater than five acres or its value, as computed pursuant to section 37-607, is equal to twenty thousand dollars or more, the state land department shall publish notice of said proposed exchange in the same manner and places as is required for the sale of state lands pursuant to section 37-237, which notice shall contain a description of the properties involved, together with other pertinent terms and conditions of the exchange. The state land department shall also schedule a public hearing on the exchange contemplated in the notice, which hearing shall be held at the county seat of the county in which the state lands proposed to be exchanged are located. The hearing shall be held not less than fifteen days prior to the date of the proposed exchange, at which time any person may appear and protest such proposed exchange.

10. Lands conveyed to the state under this article shall, upon acceptance of title and recording, be dedicated to the same purpose and administered

under the same laws to which the lands conveyed were subject, but may be reclassified as provided in section 37-212.

Approved by the Governor–April 13, 1973

Filed in the Office of the Secretary of State–April 16, 1973

CHAPTER 61

House Bill 2204

AN ACT

MAKING A SUPPLEMENTAL APPROPRIATION TO THE ARIZONA DEPARTMENT OF AERONAUTICS.

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

Section 1. **Appropriation; purpose**

In addition to the appropriation made by Laws 1972, chapter 216, section 1, subdivision 35, the sum of five thousand one hundred seventy dollars is appropriated to the Arizona department of aeronautics to be available to provide for a law enforcement officer at preboard screening of airline passengers at Grand Canyon airport in compliance with FAA regulation, part 107.1e, effective February 6, 1973.

Sec. 2. **Emergency**

To preserve the public peace, health and safety it is necessary that this act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.

Approved by the Governor–April 13, 1973

Filed in the Office of the Secretary of State–April 16, 1973

LAWS OF ARIZONA

CHAPTER 62

House Bill 2213

AN ACT

RELATING TO EDUCATION; PROVIDING FOR PAYMENT OF CERTAIN EXPENSES OF SCHOOL BOARD MEMBERS-ELECT; PRESCRIBING POWERS AND DUTIES OF BOARD OF TRUSTEES, AND AMENDING SECTION 15-442, ARIZONA REVISED STATUTES.

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

Section 1. Section 15-442, Arizona Revised Statutes, is amended to read:

15-442. **General powers and duties**

A. The board of trustees shall:

1. Maintain the schools established by them. Schools shall be maintained for the attendance of each pupil for a period of not less than one hundred seventy-five school days, or its equivalent as approved by the superintendent of public instruction for a school approved for extended year operation, in each school year, and if the funds of the district are sufficient, for a longer period, and as far as practicable with equal rights and privileges.

2. Enforce the courses of study and select all textbooks used in the schools from the multiple lists determined and authorized by the state board of education pursuant to paragraph 18 of section 15-102 and purchase the same from the publishers under contracts negotiated by the state board as provided in this title. One fourth of the amount budgeted for textbooks may be expended for teaching aids relating to the textbooks selected. District school funds may be budgeted and expended by the board for supplementary books, as contained in the lists prepared by the state board of education pursuant to subsection B of section 15-1101, and for such additional textbooks as may be necessary because of an extraordinary increase in enrollment or an act of God, provided that supplementary books shall not be purchased in such quantities as to take the place of the textbooks prescribed by paragraph 18 of section 15-102.

3. Visit every school in the district and examine carefully into its management, condition and needs.

4. Provide transportation for any child or children when deemed for the best interest of the district, whether within or without the district, county or state.

5. Exclude from schools all books, publications or papers of a sectarian, partisan or denominational character.

6. Manage and control the school property within its district.

7. Purchase school furniture, apparatus, equipment, library books and supplies for the use of the schools.

8. Rent, furnish, repair and insure the school property of the district.

9. Construct school buildings when directed to do so by a vote of the district.

10. Make in the name of the district conveyances of property belonging to the district and sold by the board.

11. Purchase or sell school sites when authorized by a vote of the district, but such authorization shall not necessarily specify the site to be purchased.

12. Construct, improve and furnish buildings used for school purposes when such buildings or premises are leased from the national park service, when directed to do so by a vote of the district.

13. Purchase school sites or construct, improve and furnish school buildings from the proceeds of the sale of or from insurance recoveries on school property only when directed to do so by a vote of the district.

B. The board may:

1. Expel pupils for misconduct.

2. Exclude from the primary grades children under six years of age.

3. Make such segregation of groups of pupils as it deems advisable.

4. Maintain such special schools during vacation as deemed necessary for the benefit of the pupils of the district.

5. Permit a superintendent, principal or their representatives to travel for a school purpose, as determined by a majority vote of the board. By

unanimous vote the board may permit members AND MEMBERS-ELECT of the board to travel for a school purpose. Any expenditure for travel and subsistence shall be as provided under the terms of title 38, chapter 4, article 2, and shall be a charge against the budgeted school district funds.

6. Rent such buildings as may be necessary provided the rental contract does not exceed one year.

7. Construct or provide in rural districts housing facilities for teachers which the board determines is necessary for the operation of the school.

8. Sell to the state, county or city any school property required for a public purpose, provided the sale of the property will not affect the normal operations of a school within the school district.

9. Apply the proceeds from the sale of school property or from insurance recoveries to the payment of any outstanding bonded indebtedness of the school district which is payable from the levy of taxes upon property within the district.

C. Except as provided in section 15-445, the board of trustees shall not enter into any lease-purchase agreement. A lease-purchase agreement may be continued until the termination date thereof if such agreement was entered into before and is still in effect on July 1, 1968.

Approved by the Governor—April 13, 1973

Filed in the Office of the Secretary of State—April 16, 1973

CHAPTER 63

House Bill 2288

AN ACT

MAKING A SUPPLEMENTAL APPROPRIATION TO THE DEPARTMENT OF PUBLIC BUILDINGS MAINTENANCE.

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

Section 1. **Appropriation; purpose**

In addition to the appropriations made by Laws 1972, chapter 210 and chapter 216, section 1, subdivision 8, the sum of thirty-five thousand dollars is appropriated to the department of public buildings maintenance for moving involved agencies into new buildings in the capitol complex.

Sec. 2. **Lapsing of appropriation**

The appropriation made by this act shall not lapse until the purpose for which the appropriation is made is accomplished or abandoned unless the appropriation stands until July 1, 1974, without an expenditure therefrom or an encumbrance thereon.

Sec. 3. **Emergency**

To preserve the public peace, health and safety it is necessary that this act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.

Approved by the Governor–April 13, 1973

Filed in the Office of the Secretary of State–April 16, 1973

CHAPTER 64

House Bill 2307

AN ACT

MAKING A SUPPLEMENTAL APPROPRIATION TO THE DEPARTMENT OF PUBLIC BUILDINGS MAINTENANCE.

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

Section 1. **Appropriation; purpose**

In addition to the appropriations made by Laws 1972, chapter 210, chapter 216, section 1, subdivision 8, and chapter 217, section 1, subdivision 3, the sum of thirty-five thousand dollars is appropriated to the department of public buildings maintenance to be available for motor pool establishment.

Sec. 2. **Lapsing of appropriation**

The appropriation made in section 1 shall not lapse until the purpose for which the appropriation is made is accomplished or abandoned unless the appropriation stands until July 1, 1975, without an expenditure therefrom or an encumbrance thereon.

Sec. 3. **Emergency**

To preserve the public peace, health and safety it is necessary that this act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.

Approved by the Governor–April 13, 1973

Filed in the Office of the Secretary of State–April 16, 1973

CHAPTER 65

House Bill 2309

AN ACT

MAKING A SUPPLEMENTAL APPROPRIATION TO THE NATIONAL GUARD.

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

Section 1. **Appropriation; purpose**

In addition to the appropriation made under Laws 1972, chapter 216, section 1, subdivision 89, the sum of forty-six thousand two hundred fifty dollars is appropriated to the national guard to be immediately available for the following purposes in the following amounts:

Field supplies and for utility services, including among others, gas, electric and telephone services.	$37,000.00
State contribution for paving of military vehicle parking area at the armory located on 52nd street, Phoenix.	9,250.00
TOTAL	$46,250.00

Sec. 2. **Reversion**

Of the sum appropriated by this act, any funds thereof remaining unexpended or unencumbered at the close of June 30, 1973 shall revert to the state general fund.

Sec. 3. **Emergency**

To preserve the public peace, health and safety it is necessary that this act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.

Approved by the Governor–April 13, 1973

Filed in the Office of the Secretary of State–April 16, 1973

CHAPTER 66

House Bill 2242

AN ACT

RELATING TO LABOR; PROVIDING FOR EQUAL WAGE RATES FOR MEN AND WOMEN, AND AMENDING SECTION 23-340 AND 23-341, ARIZONA REVISED STATUTES.

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

Section 1. Section 23-340, Arizona Revised Statutes, is amended to read:

23-340. **Definitions**

In this article, unless the context otherwise requires:

1. "Commission" means the industrial commission of Arizona.

2. "Employee" means every woman or man in receipt of or entitled to compensation for labor performed for any employer.

3. "Employer" means every person, firm, corporation, agent, manager, representative, contractor, subcontractor, principal or other person having control or direction of any woman or man employed at any labor, or responsible directly or indirectly for the wages of another.

~~4. "Female" means a woman of eighteen years or over.~~

~~5.~~ 4. "Wage" or "wages" means any compensation for labor measured by time, piece, or otherwise.

Sec. 2. Section 23-341, Arizona Revised Statutes, is amended to read:

23-341. **Equal wage rates; variations; penalties; enforcement**

A. Notwithstanding the other provisions of this chapter, no employer shall pay any ~~female~~ PERSON in his employ at wage rates less than the rates paid to ~~male~~ employees OF THE OPPOSITE SEX in the same establishment for the same quantity and quality of the same classification of work, provided, that nothing herein shall prohibit a variation of rates of pay for male and female employees engaged in the same classification of work based upon a difference in seniority, length of service, ability, skill, difference in duties or services performed, whether regularly or occasionally, difference in the shift or time of day worked, hours of work, or restrictions or prohibitions on lifting or moving objects in excess of specified weight, or other reasonable differentiation, factor or factors other than sex, when exercised in good faith.

B. Any employer who violates subsection A of this section is liable to the ~~female~~ employee affected in the amount of the wages of which such employee is deprived by reason of such violation.

C. Any affected ~~female~~ employee may register with the commission a complaint that the wages paid to ~~her~~ SUCH EMPLOYEE are less than the wages to which ~~she~~ SUCH EMPLOYEE is entitled under this section.

D. The commission shall take all proceedings necessary to enforce the payment of any sums found to be due and unpaid to such ~~female~~ employees.

E. Any ~~female~~ employee receiving less than the wage to which ~~she~~ SUCH EMPLOYEE is entitled under this section may recover in a civil action the balance of such wages, together with the costs of suit, notwithstanding any agreement to work for a lesser wage.

F. Any action based upon or arising under this section shall be instituted within six months after the date of the alleged violation, but in no event shall any employer be liable for any pay due under this section for more than thirty days prior to receipt by the employer of written notice of claim thereof from the ~~female~~ employee.

G. The burden of proof shall be upon the person bringing the claim to establish that the differentiation in rate of pay is based upon the factor of sex and not upon other differences, factor or factors.

Sec. 3. **Name change**

The designation of title 23, chapter 2, article 6.1, Arizona Revised Statutes, is changed from "EQUAL WAGES FOR WOMEN" to "EQUAL WAGES".

Approved by the Governor–April 18, 1973

Filed in the Office of the Secretary of State–April 18, 1973

CHAPTER 67

House Bill 2285

AN ACT

RELATING TO EDUCATION; REMOVING AUTHORITY TO ESTABLISH A COMMUNITY COLLEGE NOT WITHIN THE STATE COMMUNITY COLLEGE SYSTEM, AND REPEALING SECTIONS 15-601 AND 15-611 THROUGH 15-614, ARIZONA REVISED STATUTES.

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

Section 1. **Repeals**

Sections 15-601 and 15-611 through 15-614, Arizona Revised Statutes, are repealed.

Sec. 2. **Savings clause**

While no community college district may be established pursuant to title 15, chapter 6, Arizona Revised Statutes, after this act becomes effective, any community college district which is operating under the provisions of title 15, chapter 6 on such date shall retain all powers, duties, assistance eligibility and status as if the title 15, chapter 6 provisions relating to the establishment of such a district had not been repealed.

Approved by the Governor–April 18, 1973

Filed in the Office of the Secretary of State–April 18, 1973

LAWS OF ARIZONA

CHAPTER 68

House Bill 2016

AN ACT

RELATING TO TAXATION OF INCOME; PROVIDING FOR OPTION BY EMPLOYEE TO HAVE HIGHER PERCENTAGE OF COMPENSATION WITHHELD, AND AMENDING SECTION 43-188, ARIZONA REVISED STATUTES.

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

Section 1. **Purpose**

The purpose of this act is to provide a system of withholding which permits taxpayers an option to increase withholding percentage to a level sufficient to meet total state income tax liability.

Sec. 2. Section 43-188, Arizona Revised Statutes, is amended to read:

43-188. **Collection of tax–information at source; withholding tax**

(a) **Information at source and withholding.** This section does not apply to the payment of interest obligations not taxable under this title.

(b) **Information at source, general.** Every individual, estate, trust, partnership, corporation, joint stock company or association, insurance company, business trust, or so–called Massachusetts trust, being a resident or having a place of business in this state, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of this state or any political subdivision of this state, or any city organized under a charter, or any political body not a subdivision or agency of the state, having the control, receipt, custody, disposal, or payment of interest (other than interest coupons payable to bearer), dividends, rent (except rent paid by the individual taxpayer with respect to his personal dwelling), salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income amounting to three hundred dollars or over, paid or payable during any year to any taxpayer, shall make a complete return to the tax commission, which shall contain or be verified by a written declaration that it is made under the penalties of perjury, under such regulations and in such form and manner and to such extent as may be prescribed by it setting forth the amount of such gain, profits and income, and the name and address of the recipient of such payment.

(c) **Information at source returns–patronage dividends.** Any corporation allocating amounts as patronage dividends, rebates, or refunds (whether in cash, merchandise, capital stock, revolving fund certificates, retain certificates, certificates of indebtedness, letters of advice, or in some other manner that discloses to each patron the amount of such dividend, refund, or rebate) shall render a correct return, which shall contain or be verified by a written declaration that it is made under the penalties of perjury stating the name and address of each patron to whom it has made such allocations amounting to one hundred dollars or more during the calendar year, and the amount of such allocations to each patron. If required by the tax commission, any such corporation shall render a correct return, which shall contain or be verified by a written declaration that it is under penalties of perjury, of all patronage dividends, rebates, or refunds made during the calendar year to its patrons. This subsection shall not apply in the case of any corporation exempt from tax under section 43-147.

(d) **Information at source returns, on income from securities.** The return described in subsection (b) may be required, regardless of amounts, in the case of

(1) Payments of interest upon bonds, mortgages, deeds of trust, or other similar obligations of corporations.

(2) Dividends paid by corporations.

(3) Collections of items (not payable in the United States) of interest upon the bonds of foreign countries and interest upon the bonds of and dividends from corporations created or organized in a foreign country by persons undertaking as a matter of business or for profit the collection of foreign payments of such interest or dividends by means of coupons, checks, or bills of exchange.

(e) **Withholding, agent entitled to address of recipient.** When necessary to make effective the provisions of this section, the name and address of the recipient of income shall be furnished upon demand of the person paying the income.

The commission shall furnish the person paying the income with forms to be signed by the person from whom the tax is being withheld. Such forms shall provide for the information the commission deems necessary.

(f) **Withholding tax.**

(1) On and after January 1, ~~1970~~ 1974, every employer at the time of the payment of wages, salary, bonus or other emolument to any employee

whose compensation is for services performed within this state shall deduct and retain therefrom an amount equal to ten per cent OR TWENTY PER CENT of the total amount of the federal income tax deducted and withheld by an employer from the total value of such wages, bonus or other emolument of an employee under the provisions of the internal revenue code of the United States computed without deductions for any amount withheld, and shall, quarterly, on or before the last day of April, July, October and January of each year, pay over to the commission the amount so collected during the preceding calendar quarter. EACH EMPLOYEE SHALL ELECT WHICH PERCENTAGE OF THE FEDERAL INCOME TAX DEDUCTED AND WITHHELD, TEN PER CENT OR TWENTY PER CENT, SHALL BE WITHHELD FOR APPLICATION TOWARD HIS STATE INCOME TAX LIABILITY. For the purposes of this section the term "employer" means the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person including any officer or department of the state or any political subdivision or agency of the state, or any city organized under a charter, or any political body not a subdivision or agency of the state, except that if the person for whom the individual performs or performed the services does not have control of the payment of the wages for such services, the term "employer" means the person having control of the payment of such wages.

(2) THE ELECTION PROVIDED UNDER SECTION 43-188 (f) (1) SHALL BE EXERCISED BY EACH EMPLOYEE, IN WRITING ON A FORM PRESCRIBED BY THE COMMISSION. THE ELECTION MUST BE MADE WITHIN FIVE DAYS OF EMPLOYMENT. EACH EMPLOYER SHALL NOTIFY HIS EMPLOYEES OF THE ELECTION MADE AVAILABLE UNDER SECTION 43-188 (f) (1) AND SHALL HAVE ELECTION FORMS AVAILABLE AT ALL TIMES. EACH FORM SHALL BE COMPLETED IN TRIPLICATE, WITH ONE COPY EACH FOR THE COMMISSION, THE EMPLOYER AND THE EMPLOYEE. IT SHALL BE THE DUTY OF THE EMPLOYER TO FILE A COPY OF EACH COMPLETED FORM WITH THE COMMISSION. ANY EMPLOYEE FAILING TO COMPLETE AN ELECTION FORM AS PRESCRIBED SHALL BE DEEMED TO HAVE ELECTED THE SMALLEST WITHHOLDING PERCENTAGE PROVIDED FOR IN SECTION 43-188 (f) (1).

~~(2)~~ (3) The amounts deducted from the wages of an employee during any calendar year in accordance with the provisions of this subsection shall be considered to be paid in part payment of the tax on such employee's taxable income for his tax year which begins within such calendar year, and the return made by the employer pursuant to paragraph ~~(5)~~ (6) may be accepted by the commission as prima facie evidence of the amounts so deducted from his wages.

~~(3)~~ (4) No amount shall be deducted or retained from:

(A) Wages paid for active service in the military or naval forces of the United States.

(B) Wages or salary paid to an employee of a common carrier when such employee is a nonresident of Arizona as defined in section 43-101 and regularly performs services both within and without the state of Arizona.

(C) Wages paid for domestic service in a private home.

(D) Wages paid for casual labor not in the course of the employer's trade or business.

(E) Wages paid to part-time or seasonal employees whose services to the employer consist solely of labor in connection with the planting, cultivating, harvesting or field packing of seasonal agricultural crops, except such employees whose principal duties are operating any mechanically driven device in such operations.

~~(4)~~ (5) In the case of nonresident employees who are residents of another state of the United States or the District of Columbia and are allowed a tax credit for income taxes paid to their state of residency or domicile under the provisions of section 43-128(b) (1) sufficient in amount to offset the tax required by this section to be withheld from the wages of an employee, the tax commission may by rules and regulations relieve the employers of such employees from withholding requirements of this section with respect to such employees.

~~(5)~~ (6) When the total amount deducted under this subsection exceeds the amount of the tax on the employee's entire taxable income as computed under this title, the commission shall, after auditing the annual return filed by the employee in accordance with section 43-142, and without requiring a filing of a refund claim as provided in section 43-184(b) (1), refund the amount of the excess deducted, without interest thereon. Failure of the commission to make such refund shall not limit the right of the taxpayer to file a claim for a refund as provided in section 43-184. No refund shall be made to an employee who fails to file such return within one year from the due date of the return in respect of which the tax withheld might have been credited. If the excess tax deducted is less than one dollar, no refund shall be made unless specifically requested by the taxpayer at the time such return is filed. In no event shall any excess be allowed as a credit against any tax accruing on a return filed for a year subsequent to the year during which such excess was withheld, the provisions of section 43-184 notwithstanding.

The commission may make separate refunds of withheld taxes upon request by a husband or wife who has filed a joint return, the refund payable to each spouse being proportioned to the gross earnings of each shown by the information returns filed by the employer or otherwise shown to the satisfaction of the commission. If a taxpayer entitled to a refund under this subsection dies, the commission may certify to the commissioner of finance that the refund be made to the taxpayer's executor, administrator, or duly appointed representative.

~~(6)~~ (7) Every employer shall, with each payment made by him to the commission, deliver to the commission a return in the form prescribed by the commission, showing the total amount of wages, salaries, bonuses or other emoluments paid to his employees, the amount deducted therefrom in accordance with the provisions of this subsection, and such other information as the commission may require. The employer is charged with the duty of advising the employee of the amount of moneys withheld, in accordance with such regulations as the commission may prescribe, using printed forms furnished by the commission for such purposes, or when requested by the employer upon forms approved by the commission.

The employer shall make an annual return for the calendar year to the commission on forms provided by it, summarizing the total compensation paid and the tax withheld for each employee during the calendar year and shall file the same with the commission before February 16 of the year following the year for which the report is made. The return required in the preceding sentence shall contain or be verified by a written declaration that it is made under the penalties of perjury, and the information contained in said return shall satisfy the requirements of section 43-188(b) relating to the salaries and wages included in the report required under this paragraph.

The employer shall, within thirty days after the end of each calendar year, furnish such employee with either a statement of the amount withheld during the previous tax year, showing the gross earnings and the amount of tax withheld, or, if the termination of employment is prior to the end of the year, then, within fifteen days after the termination of employment, a summary statement showing the total earnings for the tax year and the amount of taxes withheld from compensation.

(g) **Liability for failure to withhold; penalty for failure to remit.**

(1) The employer shall be liable to the tax commission for the payment of the tax required to be deducted and withheld under this section, and the employee shall not thereafter be liable for the amount of any such

payment, nor shall the employer be liable to any person or any employee for the amount of any such payment. For the purpose of making penalty sections of this title applicable, any amount deducted or required to be deducted and remitted to the commission under this section shall be considered the tax of the employer and with respect to such amounts he shall be considered as a taxpayer.

(2) Whenever any employer is required to collect or withhold the tax imposed by this title from any employee and to pay such tax over to the tax commission, the amount of tax so collected or withheld shall be held to be a special fund in trust for the state of Arizona. The amount of such fund shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations (including penalties) as are applicable with respect to the taxes from which such fund arose.

(3) Any employer intrusted with, or having in his control any tax required to be collected or withheld and constituting a "special fund in trust for the state of Arizona" pursuant to this subsection, who fraudulently appropriates, or secretes with a fraudulent intent to appropriate, to any use or purpose not in the due and lawful execution of the trust, pursuant to this section, any portion thereof, shall be guilty of embezzlement under section 13-682, and shall be punishable as provided in sections 13-688 and 13-689.

(h) **Withholding agent, must pay without resorting to action.** Any person required to withhold and transmit any amount pursuant to this section shall comply with the requirement without resort to any legal or equitable action in a court of law or equity.

(i) **Withholding tax, refund therefor.** Any taxpayer from whom a tax is collected by withholding under this title is entitled to the remedies set forth in sections 43-163(b), 43-175(1), 43-184 to 43-186 and 43-195(c) except where such sections are in conflict with this section.

Sec. 3. **Effective date**

The provisions of this act shall become effective with the taxable year beginning from and after December 31, 1973.

Approved by the Governor–April 18, 1973

Filed in the Office of the Secretary of State–April 18, 1973

LAWS OF ARIZONA

CHAPTER 69

House Bill 2115

AN ACT

RELATING TO MOTOR VEHICLES; PRESCRIBING HEIGHT LIMITATION FOR VEHICLE; PROVIDING FOR EXCESS HEIGHT PERMITS; PRESCRIBING LIABILITY FOR DAMAGE TO HIGHWAYS OR STRUCTURES, AND AMENDING SECTIONS 28-1004 AND 28-1013, ARIZONA REVISED STATUTES.

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

Section 1. Section 28-1004, Arizona Revised Statutes, is amended to read:

28-1004. **Height and length of vehicles and loads; exceptions**

A. ~~No~~ IT IS UNLAWFUL FOR ANY vehicle~~, including any~~ UNLADEN OR WITH load ~~thereon, shall~~ TO exceed a height of thirteen feet six inches ABOVE THE LEVEL SURFACE UPON WHICH SUCH VEHICLE STANDS, WITHOUT A PERMIT ISSUED UNDER THE PROVISIONS OF SECTION 28-1011 OR THIS SECTION.

B. NOTWITHSTANDING THE PROVISIONS OF SECTION 28-1011, THE COMMISSION WITH RESPECT TO HIGHWAYS UNDER ITS JURISDICTION AND LOCAL AUTHORITIES WITH RESPECT TO HIGHWAYS UNDER THEIR JURISDICTION MAY IN THEIR DISCRETION, UPON APPLICATION IN WRITING AND GOOD CAUSE BEING SHOWN THEREFOR, ISSUE A SPECIAL PERMIT IN WRITING, VALID FOR ONE YEAR, AUTHORIZING THE APPLICANT TO OPERATE OR MOVE A MOTOR VEHICLE OR COMBINATION OF VEHICLES OF A HEIGHT EXCEEDING THE MAXIMUM SPECIFIED IN THIS SECTION ALONG DESIGNATED ROUTES IN THIS STATE. A FEE OF TEN DOLLARS SHALL BE ASSESSED FOR EACH MOTOR VEHICLE COVERED BY A PERMIT ISSUED IN ACCORDANCE WITH THE PROVISIONS OF THIS SUBSECTION. EXCEPT AS EXPRESSLY PROVIDED IN THIS SUBSECTION, ONE YEAR EXCESS-HEIGHT SPECIAL PERMITS SHALL BE GOVERNED BY THE PROVISIONS OF SECTION 28-1011.

~~B.~~ C. No vehicle, including any load thereon, shall exceed a length of forty feet extreme over-all dimension, inclusive of front and rear bumpers.

This provision shall not apply to a semitrailer as defined in section 28-142 when used in combination with a truck tractor but such combination shall not exceed the length of combinations of vehicles as set forth in subsection C of this section.

~~C.~~ D. No combination of vehicles coupled together shall consist of more than two units except that a truck tractor and semitrailer will be permitted to haul one full trailer and no such combination of vehicles shall exceed a total length of sixty-five feet. This provision shall not apply to damaged, disabled or abandoned vehicles or combinations of vehicles while being towed by a tow truck in compliance with the provisions of section 28-1007.

Sec. 2. Section 28-1013, Arizona Revised Statutes, is amended to read:

28-1013. **Liability for damage to highway or structure**

A. Any person driving any vehicle, object or contrivance upon any highway or highway structure shall be liable for all damage which the highway or structure may sustain as a result of any illegal operation, driving or moving of the vehicle, object or contrivance, or as a result of operating, driving or moving any vehicle, object or contrivance weighing in excess of the maximum weight OR HEIGHT in this article but authorized by a special permit issued as provided in ~~section~~ SECTIONS 28-1004 OR 28-1011.

B. When the driver is not the owner of the vehicle, object or contrivance, but is so operating, driving or moving the same with the express or implied permission of the owner, then the owner and driver shall be jointly and severally liable for any damage.

C. Such damage may be recovered in a civil action brought by the authorities in control of the highway or highway structure.

Approved by the Governor–April 19, 1973

Filed in the Office of the Secretary of State–April 20, 1973

LAWS OF ARIZONA

CHAPTER 70

House Bill 2209

AN ACT

RELATING TO EDUCATION; TRANSFERRING RESPONSIBILITY FOR PERSONAL PROPERTY OF COMMUNITY COLLEGE DISTRICT FROM STATE BOARD OF DIRECTORS TO DISTRICT GOVERNING BOARDS, AND AMENDING SECTIONS 15-659 AND 15-679, ARIZONA REVISED STATUTES.

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

Section 1. Section 15-659, Arizona Revised Statutes, is amended to read:

15-659. **General powers of state board of directors for community colleges as body corporate**

A. The state board shall be a body corporate with the perpetual succession and shall have the name "state board of directors for community colleges of Arizona".

B. The state board may:

1. Adopt a corporate seal.

2. Contract and be contracted with.

3. Sue and be sued.

C. The state board shall determine the location within the district of the community college and purchase, receive, hold, make and take leases of and sell real ~~and personal~~ property for the benefit of the state and for the use of the community colleges under its jurisdiction.

D. The state board may accept grants or donations of monies from the United States, or from any of its agencies, departments or officers, or from any persons, corporations, foundations, or associations. Such monies shall be deposited into a specific fund and account into the office of the state treasurer, and shall be administered by the state board in accordance with the purpose of the grant or donation with specific regulations or restrictions as described or stipulated in the grant or donation. IN THE

CASE OF PERSONAL PROPERTY GRANTED OR DONATED TO OR FOR THE BENEFIT OF A COMMUNITY COLLEGE DISTRICT, THE STATE BOARD SHALL IMMEDIATELY TRANSFER POSSESSION AND OWNERSHIP OF SUCH PROPERTY TO THE DESIGNATED DISTRICT.

Sec. 2. Section 15-679, Arizona Revised Statutes, is amended to read:

15-679. **Powers and duties**

A. Except as otherwise provided, the district board shall:

1. Maintain the ~~junior~~ COMMUNITY college for a period of not less than eight months in each year, and if the funds of the district are sufficient, maintain the college for a longer period.

2. Enforce the courses of study and the use of textbooks prescribed and adopted by the state board.

3. Visit the ~~junior~~ COMMUNITY college and examine carefully into its management, conditions and needs.

4. Exclude from the college all books, publications or papers of a sectarian, partisan, or denominational character intended for use as textbooks.

5. Appoint and employ a president or presidents, vice presidents, deans, professors, instructors, lecturers, fellows, and such other officers and employees it deems necessary.

6. Determine the salaries of persons appointed and employed.

7. Remove any officer or employee when in its judgment the interests of education in the state so require.

8. Award degrees, certificates and diplomas upon the completion of such courses and curriculum as it deems appropriate.

9. Appoint, if deemed necessary by the district board, security officers who shall have the authority and power of peace officers for the protection of persons and property under the administration of the district board.

10. RECEIVE, HOLD, MAKE AND TAKE LEASES OF AND SELL

PERSONAL PROPERTY FOR THE BENEFIT OF THE COMMUNITY COLLEGE DISTRICT UNDER ITS JURISDICTION.

B. The district board may administer trusts declared or created for the district, and receive by gift, devise or bequest, and hold in trust or otherwise, property wheresoever located, and when not otherwise provided, dispose of such property for the benefit of the district, provided, WITH RESPECT TO REAL PROPERTY, THAT the state board has consented to the disposition thereof.

Sec. 3. **Transfer of certain personal property**

On the effective date of this act the state board of directors for community colleges shall transfer the possession and ownership of all personal property held for the use of any community college district to the involved district. In addition, the liability for any contract for the purchase or lease of personal property, for the use of a community college district, as contracted by the state board shall be assumed by the involved district and such district shall indemnify and hold harmless the state board of and from any liability arising from any such contract.

Approved by the Governor–April 19, 1973

Filed in the Office of the Secretary of State–April 20, 1973

CHAPTER 71

House Bill 2290

AN ACT

RELATING TO PUBLIC FINANCES; PRESCRIBING AUTHORITY TO COMMISSIONER OF FINANCE TO TRANSFER CERTAIN AMOUNTS OF BUDGET UNIT FUNDS; AMENDING SECTION 35-173, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1972, CHAPTER 176, SECTION 1, AND REPEALING SECTION 35-173, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1972, CHAPTER 141, SECTION 40.

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

Section 1. Section 35-173, Arizona Revised Statutes, as amended by Laws 1972, chapter 176, section 1, is amended to read:

35-173. **Allotment of appropriations; limitations; exceptions**

A. An "allotment schedule" means a detail of expenditures for a full fiscal year within a budget program, class, or subclass.

B. Before funds from an authorized appropriation, or any other source, can be obligated, an allotment schedule must be submitted to and approved by the commissioner of finance. The allotment schedule shall be based on the estimated annual requirement and shall schedule available funds to cover the entire fiscal year's operations.

C. With the exception of the ~~department~~ DIVISION of finance, the budget unit may, upon approval of the commissioner of finance:

1. Transfer funds from one class or subclass to another.

2. Transfer funds between and within programs if funds are appropriated to the budget unit by programs.

D. No transfer to or from personal services from any other program, budget class or subclass of expenditures shall be permitted unless recommended by the joint legislative budget committee and approved by the commissioner of finance, EXCEPT THAT THE COMMISSIONER OF FINANCE MAY TRANSFER AMOUNTS EQUAL TO THE GROSS PAYROLL AND RELATED EMPLOYEE EXPENSES OF A BUDGET UNIT FROM FUNDS OF A BUDGET UNIT AVAILABLE FOR THAT PURPOSE TO PAYROLL IMPREST ACCOUNTS FOR THE PURPOSE OF PAYING EMPLOYEES OF THE BUDGET UNIT AND DISBURSING RELATED EMPLOYEE EXPENSES.

E. Transfer of funds within the ~~department~~ DIVISION of finance shall be made only with the approval of the joint legislative budget committee, EXCEPT AS PROVIDED IN SUBSECTION D OF THIS SECTION.

F. The provisions of this section shall not apply to the universities.

Sec. 2. **Repeal**

Section 35-173, Arizona Revised Statutes, as amended by Laws 1972, chapter 141, section 40, is repealed.

Approved by the Governor–April 19, 1973

Filed in the Office of the Secretary of State–April 20, 1973

LAWS OF ARIZONA

CHAPTER 72

House Bill 2291

AN ACT

MAKING SUPPLEMENTAL APPROPRIATION TO THE DEPARTMENT OF FINANCE, OR ITS SUCCESSOR, FOR PAYMENT OF INCREASE IN STATE'S CONTRIBUTIONS TO RETIREMENT PLAN.

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

Section 1. **Appropriation; purpose**

In addition to the appropriation made in Laws 1972, chapter 216, subdivision 15, the sum of one hundred seventy-one thousand nine hundred ninety dollars is appropriated from the state general fund to the department of finance, or its successor, to be available for payment of additional funding to increase state retirement contributions pursuant to the elected state officers' retirement plan for the fiscal year ending June 30, 1973.

Sec. 2. **Exemption**

The appropriation made by this act is exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing appropriations, except that any monies thereof remaining unexpended and unencumbered on June 30, 1974 shall revert to the state general fund.

Sec. 3. **Emergency**

To preserve the public peace, health and safety it is necessary that this act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.

Approved by the Governor—April 19, 1973

Filed in the Office of the Secretary of State—April 20, 1973

LAWS OF ARIZONA

CHAPTER 73

Senate Bill 1141

AN ACT

RELATING TO MOTOR VEHICLES; PRESCRIBING MINIMUM AGE REQUIREMENT FOR OPERATING TOW TRUCK; PROVIDING THAT TOW TRUCKS BE KEPT IN SAFE MECHANICAL CONDITION; PROVIDING FOR REGISTRATION OF TOW TRUCK OPERATORS, AND AMENDING SECTIONS 28-414, 28-981, AND 28-1007, ARIZONA REVISED STATUTES.

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

Section 1. Section 28-414, Arizona Revised Statutes, is amended to read:

28-414. **Classification of chauffeurs; special restrictions**

A. The department upon issuing a chauffeur's license shall indicate thereon the class of license issued and shall appropriately examine each applicant according to the class of license applied for and may impose such rules and regulations for the exercise thereof as it may deem necessary for the safety and welfare of the traveling public.

B. No person shall drive a school bus transporting school children, or a motor vehicle when in use for the transportation of persons or property for compensation OR A TOW TRUCK WHEN IN USE FOR MOVING OR TRANSPORTING WRECKED, DAMAGED, DISABLED OR ABANDONED VEHICLES~~, nor in either event~~ until he has been licensed as a chauffeur for ~~either~~ SUCH purpose and the license so indicates. The department shall not issue a chauffeur's license for ~~either~~ ANY SUCH purpose unless the applicant has had at least one year of driving experience prior thereto and has filed with the department one or more certificates signed by a total of at least three responsible people to whom he is well known certifying as to his good character and habits and the department is fully satisfied as to the applicant's competency and fitness to be so employed.

Sec. 2. Section 28-981, Arizona Revised Statutes, is amended to read:

28-981. **Vehicles without required equipment or in unsafe condition**

No person shall drive or move on any highway any motor vehicle, TOW TRUCK, trailer, semi-trailer or pole trailer, or any combination thereof

unless the equipment upon any and every such vehicle is in good working order and adjustment as required in this chapter and the vehicle is in such safe mechanical condition as not to endanger the driver or other occupant or any person upon the highway.

Sec. 3. Section 28-1007, Arizona Revised Statutes, is amended to read:

28-1007. **Trailers, towed vehicles and tow trucks**

A. When one vehicle is towing another the drawbar or other connection shall be of sufficient strength to pull all weight towed thereby and the drawbar or other connection shall not exceed fifteen feet from one vehicle to the other except the connection between any two vehicles transporting poles, pipe, machinery or other objects of structural nature which cannot readily be dismembered.

B. When one vehicle is towing another and the connection consists of a chain, rope or cable, there shall be displayed upon the connection a white flag or cloth not less than twelve inches square.

C. The director of the department of public safety shall adopt and enforce rules and regulations not inconsistent with this chapter to govern the design and operation of all tow trucks used for the purpose of towing WRECKED, damaged, disabled or abandoned motor vehicles on any highway.

D. NO PERSON MAY OPERATE A TOW TRUCK FOR COMPENSATION FOR THE PURPOSE OF MOVING OR TRANSPORTING WRECKED, DAMAGED, DISABLED OR ABANDONED VEHICLES WITHOUT FIRST REGISTERING WITH THE DIRECTOR OF THE DEPARTMENT OF PUBLIC SAFETY AND OBTAINING A PERMIT PURSUANT TO THE RULES AND REGULATIONS GOVERNING TOW TRUCKS PROMULGATED BY THE DEPARTMENT OF PUBLIC SAFETY.

Approved by the Governor–April 24, 1973

Filed in the Office of the Secretary of State–April 24, 1973

LAWS OF ARIZONA

CHAPTER 74

House Bill 2025

AN ACT

RELATING TO TRADE AND COMMERCE; AMENDING PROVISIONS RELATING TO THE REGULATION OF THE MANUFACTURE, SALE AND INSTALLATION OF MOBILE HOMES, RECREATIONAL VEHICLES AND FACTORY BUILT HOMES; REPEALING SECTIONS 44-1705 AND 44-1706.01, ARIZONA REVISED STATUTES; AMENDING TITLE 44, CHAPTER 11, ARTICLE 7, ARIZONA REVISED STATUTES BY ADDING SECTION 44-1702.01, AND AMENDING SECTIONS 44-1701, 44-1704, 44-1706, 44-1709, 44-1710, 44-1711, 44-1712, 44-1713 AND 44-1714, ARIZONA REVISED STATUTES.

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

Section 1. Section 44-1701, Arizona Revised Statutes, is amended to read:

44-1701. **Definitions**

In this article, unless the context otherwise requires:

1. "Component" means prefabriacted wall, floor, ceiling or roof panels, OR PRECUT BUILDING KITS or similar units of construction or any combination of such units.

2. "Custom made unit" means a recreational vehicle, factory built or mobile housing unit constructed with individual specifications for ONE OR a limited number of models.

3. "Director" means the director of the building codes division within the office of the registrar of contractors.

4. "Factory built building" means a single story commercial building of less than four thousand five hundred square feet floor space, a residential building not exceeding two stories in height, a dwelling unit or habitable room thereof which is either wholly or in substantial part manufactured at an off-site location to be assembled on site, except that it does not include a mobile home as defined in this section.

5. "Insignia of approval" means a numbered label or seal which is issued

by the director and attached to a unit manufactured and approved in accordance with the provisions of this article.

6. "Local enforcement agencies" means zoning or building departments of cities, towns or counties.

7. "Mobile home" or "mobile housing" means a movable or portable dwelling over thirty-two feet in length or over eight feet wide, constructed to be towed on its own chassis and designed so as to be installed with or without a permanent foundation for human occupancy as a residence OR AS A TEMPORARY OR PERMANENT OFFICE which may include one or more components that can be retracted for towing purposes and subsequently expanded for additional capacity, or two or more units separately towable but designed to be joined into one integral unit, as well as a portable dwelling OR OFFICE composed of a single unit, except that it does not include recreational vehicle as defined in this subsection.

8. "Recreational vehicle" means a vehicular type unit thirty-two feet or less in length and eight feet or less in width primarily designed as temporary living quarters for recreational, camping or travel use, which either has its own motive power or is mounted on or drawn by another vehicle.

Sec. 2. Title 44, chapter 11, article 7, Arizona Revised Statutes, is amended by adding section 44-1702.01, to read:

44-1702.01. **Division of building codes fund**

A. THE STATE TREASURER SHALL MAINTAIN A FUND KNOWN AS THE DIVISION OF BUILDING CODES FUND.

B. ALL MONIES RECEIVED BY THE DIVISION FOR INSPECTIONS BY OR FOR THE DIVISION PURSUANT TO THE FEE SCHEDULE ESTABLISHED BY THE DIRECTOR UNDER SECTION 44-1706 SHALL BE TRANSMITTED AT LEAST ONCE EACH WEEK BY THE DIRECTOR TO THE STATE TREASURER WHO SHALL DEPOSIT ALL OF SUCH MONIES IN THE DIVISION OF BUILDING CODES FUND.

C. ALL MONIES TO THE CREDIT OF THE DIVISION OF BUILDING CODES FUND ARE APPROPRIATED TO THE DIVISION OF BUILDING CODES FOR PAYMENT OF TRAVEL AND SUBSISTENCE EXPENSES INCURRED IN ADMINISTERING THE PROVISIONS OF THIS ARTICLE. ALL OTHER MONIES RECEIVED BY THE DIVISION PURSUANT TO THIS ARTICLE SHALL BE TRANSMITTED

PURSUANT TO SECTION 44-1704 FOR DEPOSIT IN THE GENERAL FUND. THE DIRECTOR SHALL REPORT TO THE GOVERNOR SEMIANNUALLY UNDER OATH THE TOTAL AMOUNTS OF RECEIPTS AND EXPENDITURES OF THE DIVISION FOR THE PRECEDING SIX MONTHS. AT THE END OF EACH FISCAL YEAR ALL UNEXPENDED AND UNENCUMBERED BALANCES REMAINING IN THE DIVISION OF BUILDING CODES FUND IN EXCESS OF TWENTY THOUSAND DOLLARS SHALL REVERT TO THE GENERAL FUND.

Sec. 3. Section 44-1704, Arizona Revised Statutes, is amended to read:

44-1704. **Powers and duties of director**

A. The director shall:

1. Administer the provisions of this article.

2. Adopt and promulgate rules and regulations imposing construction requirements and standards for factory built buildings and components thereof which are consistent with recognized and accepted standards contained in the 1970 editions of the uniform building code and uniform mechanical code, volume 2, as adopted by the international conference of building officials, the uniform plumbing code as adopted by the international association of plumbing and mechanical officials, the Arizona electric code and the 1968 edition of the national electric code as adopted by the national fire protection association or updated versions thereof.

3. Adopt and promulgate rules and regulations imposing requirements for body and frame design and construction and installation of plumbing, heating and electrical systems for mobile homes which are consistent with recognized and accepted standards contained in American National Standards Institute A119.1.

4. Adopt and promulgate rules and regulations imposing requirements for the installation of plumbing, heating and electrical systems for recreational vehicles which are consistent with recognized and accepted standards contained in the American National Standards Institute A119.2.

5. Adopt and promulgate such other rules and regulations pursuant to procedures prescribed in title 41, chapter 6, article 1, as he deems necessary to carry out the provisions of this article. In adopting and promulgating rules and regulations the director shall consider for adoption and promulgation any amendments to the codes and standards referred to in this section. If the director adopts the amendments to such codes and

standards, he shall notify the manufacturers licensed pursuant to this article within ninety days prior to the effective date of such amendments.

6. Establish a schedule of fees for inspections, licenses and insignia so that total annual income derived from such fees will equal or exceed the anticipated budget of the division for the ensuing year.

7. EXCEPT AS PROVIDED IN SECTION 44-1702.01, transmit at ~~the end of~~ LEAST ONCE each ~~month~~ WEEK all fees received pursuant to this article to the state treasurer who shall deposit such monies in the state general fund.

8. Annually prepare and submit a budget estimate and appropriation request pursuant to the provisions of title 35, chapter 1.

9. Establish a state inspection agency within the building codes division and maintain sufficient qualified inspection personnel as necessary to insure compliance with this article.

~~10. Establish and maintain licensing standards for third party certification and inspection agencies.~~

~~11.~~ 10. Keep a list of all manufacturers certified by the division in this and other states which manufacture any units regulated pursuant to this article and offer such units for sale within this state.

~~12.~~ 11. Establish and maintain licensing standards, fees and bonding requirements for all manufacturers of mobile homes, recreational vehicles, factory built buildings and components thereof who manufacture such products within this state or who manufacture such products in another state for sale within this state.

~~13.~~ 12. Issue certification insignia to indicate compliance with the construction codes promulgated pursuant to this article.

~~14.~~ 13. Determine whether construction plans or custom made units submitted by manufacturers comply with appropriate code requirements.

~~15.~~ 14. Establish and maintain licensing standards, fees and bonding requirements for all dealers of mobile homes, CUSTOM MADE UNITS, recreational vehicles, factory built buildings and components thereof who sell, RENT OR LEASE such products within this state.

~~16.~~ 15. Employ such professional and clerical personnel as necessary to assist in administering the provisions of this article.

~~17.~~ 16. Enter into reciprocity agreements with other states which adopt and maintain standards of construction reasonably consistent with those adopted pursuant to this article upon determining that such standards are being enforced by such other state. The director may void such agreements upon determining such standards are not being maintained.

~~18.~~ 17. Promulgate rules and regulations requiring that provisions for tie-down shall be an integral part of each mobile home and requiring standards for ground anchors AND THE CONNECTION OF THE SAME.

18. PROMULGATE RULES AND REGULATIONS RELATING TO INSTALLATION OF FACTORY BUILT BUILDINGS, MOBILE HOMES AND RECREATIONAL VEHICLES, WHICH RULES SHALL BE STANDARD THROUGHOUT THE STATE AND SHALL BE ENFORCED BY THE LOCAL ENFORCEMENT AGENCIES UPON INSTALLATION TO INSURE A MINIMUM STANDARD OF SAFETY. SUCH RULES AND REGULATIONS SHALL RELATE TO THE GAS, ELECTRIC AND SANITARY PLUMBING OF SAID FACTORY BUILT BUILDINGS, MOBILE HOMES AND RECREATIONAL VEHICLES. ORDINANCES OF ANY POLITICAL SUBDIVISION OF THIS STATE RELATING TO GAS, ELECTRIC AND SANITARY PLUMBING OF FACTORY BUILT BUILDINGS, MOBILE HOMES AND RECREATIONAL VEHICLES SHALL NOT BE IN CONFLICT WITH THE RULES AND REGULATIONS PROMULGATED HEREUNDER.

B. The director may:

1. Adopt and promulgate rules pertaining to hearings conducted pursuant to the provisions of this article.

2. After a hearing provided pursuant to the provisions of title 41, chapter 6, article 1, suspend or revoke the license of any ~~certification agency, or~~ manufacturer, DEALER OR INSTALLER which fails to maintain the standards promulgated pursuant to this article.

Sec. 4. **Repeal**

Section 44-1705, Arizona Revised Statutes, is repealed.

Sec. 5. Section 44-1706, Arizona Revised Statutes, is amended to read:

44-1706. **Duties of state inspectors; fees**

A. State inspectors ~~or third parties licensed as a quality control certification and inspection agency pursuant to this section~~ OR ANY INDEPENDENT QUALITY CONTROL AGENCY OPERATING UNDER CONTRACT WITH THE DIRECTOR shall:

1. Inspect the construction of recreational vehicles, factory built buildings and mobile homes or components thereof as such are constructed in factories.

2. Determine whether the standards of construction adopted by the division are met by such manufacturers.

3. Provide numbered insignia of approval for each unit which meets the standards applicable to such unit.

~~B. State inspectors shall determine whether the standards of inspection adopted by the division are met by the third party certification and inspection agencies.~~

B. INSPECTIONS PROVIDED BY STATE INSPECTORS OR ANY INDEPENDENT QUALITY CONTROL AGENCY OPERATING UNDER CONTRACT WITH THE DIRECTOR OF THE DIVISION SHALL BE PAID FOR IN ACCORDANCE WITH THE FEE SCHEDULE ESTABLISHED PURSUANT TO RULES AND REGULATIONS PROMULGATED BY THE DIRECTOR. SUCH FEE SCHEDULE SHALL INCLUDE ALL ACTUAL AND NECESSARY TRAVEL EXPENSES INCURRED BY THE DIVISION IN PROVIDING AN INSPECTION PURSUANT TO THIS SECTION.

Sec. 6. **Repeal**

Section 44-1706.01, Arizona Revised Statutes, is repealed.

Sec. 7. Section 44-1709, Arizona Revised Statutes, is amended to read:

44-1709. **Submission of construction plans by manufacturers; approval; termination; revocation; exception for custom units**

A. Prior to the ~~sale~~ CONSTRUCTION of any new model of recreational vehicle, factory built building or mobile housing or component thereof, each manufacturer who manufacturers, delivers to or sells such unit in this state shall submit to the director for approval detailed plans of such model, except that custom made units shall be approved pursuant to the provisions of subsection D.

B. A plan approval issued by the director shall remain in effect ~~until~~ FOR FIFTEEN MONTHS FROM THE DATE OF ISSUE UNLESS withdrawn or revised by the manufacturer or ~~until~~ revoked by the director.

C. A plan approval may be revoked by the director upon a finding that a manufacturer is not complying with the plan as approved or that such manufacturer has used inferior materials or workmanship in construction.

D. Prior to the ~~sale~~ CONSTRUCTION of any custom made recreational vehicle, factory built building or mobile housing or component thereof, each manufacturer who manufacturers, delivers to or sells such unit in this state shall submit the structural specifications and such custom unit to a visual inspection by state inspectors who shall attach an insignia of approval to such unit upon a determination that the standards provided pursuant to this article have been met.

Sec. 8. Section 44-1710, Arizona Revised Statutes, is amended to read:

44-1710. **Preemption of local building codes; requirements for modification**

A. All factory built buildings or mobile ~~housing units~~ HOMES, recreational vehicles and components thereof bearing an insignia of approval affixed pursuant to the provisions of this article ~~or manufactured prior to the effective date of this article~~ shall be exempt from compliance with the requirements of all ordinances or regulations enacted by any city, county or other political subdivision of this state which may be applicable to the manufacture of such units or components.

B. LOCAL ENFORCEMENT AGENCIES SHALL INSPECT ALL FACTORY BUILT BUILDINGS, MOBILE HOMES AND COMPONENTS THEREOF UPON, OR PROMPTLY AFTER, INSTALLATION AT THE BUILDING SITE TO DETERMINE WHETHER THEY HAVE BEEN DAMAGED IN TRANSIT OR INSTALLATION. THIS MAY INCLUDE TESTS FOR TIGHTNESS OF PLUMBING AND MECHANICAL SYSTEMS, AND FOR MALFUNCTIONS IN THE ELECTRICAL SYSTEM, AND A VISUAL INSPECTION FOR OBVIOUS VIOLATIONS OF THE RULES AND REGULATIONS PROMULGATED PURSUANT HERETO. DESTRUCTIVE DISASSEMBLY OF CERTIFIED BUILDINGS OR BUILDING COMPONENTS SHALL NOT BE PERFORMED IN ORDER TO CONDUCT SUCH TESTS OR INSPECTIONS NOR SHALL STANDARDS MORE STRINGENT THAN THOSE PROMULGATED PURSUANT HERETO BE IMPOSED. NONDESTRUCTIVE DISASSEMBLY MAY BE PERFORMED ONLY IN ACCORDANCE WITH

RULES AND REGULATIONS PROMULGATED PURSUANT HERETO. LOCAL ENFORCEMENT AGENCIES SHALL SUPERVISE THE REASONABLE MODIFICATIONS NECESSARY TO ACHIEVE COMPLIANCE OF NONCOMPLYING FACTORY BUILT BUILDINGS, MOBILE HOMES, AND COMPONENTS THEREOF OR THE REMOVAL OF NONCOMPLYING UNITS IN ACCORDANCE WITH APPLICABLE LAW AND WITH THE RULES AND REGULATIONS PROMULGATED PURSUANT HERETO.

~~B.~~ C. No factory built buildings or mobile housing unit, recreational vehicle or component thereof bearing an insignia of approval may be modified prior to or during installation unless approval is first obtained in writing from the division.

~~C.~~ D. Nothing in subsections A, B and C of this section shall prevent the application of local CODES AND ORDINANCES GOVERNING zoning requirements, ~~local~~ fire zones, building setback, maximum area and fire separation requirements, site development and property line requirements and on-site utility requirements for factory built buildings, MOBILE HOMES AND RECREATIONAL VEHICLES, as well as review and regulation of architectural and aesthetic requirements.

~~D. Nothing in subsection A and B shall prevent the application of local zoning requirements, including review and regulation of architectural and aesthetic requirements, governing the use or placement of mobile housing or recreational vehicles.~~

~~E. Nothing in subsection A and B shall prevent the application of local codes governing on-site utilities work or inspection of the connection of utilities to such mobile housing unit or recreational vehicle.~~

~~F.~~ E. If a factory built unit bears the insignia of approval issued pursuant to the provisions of this article, no city, county or other political subdivision of this state may require as a condition of installation of such unit any modification of the unit including modification of the plumbing and electrical wiring contained in the unit, except as provided for by ~~subsection C of~~ this section.

~~G. Local enforcement agencies shall enforce and inspect the installation of factory built buildings in accordance with applicable codes.~~

Sec. 9. Section 44-1711, Arizona Revised Statutes, is amended to read:

44-1711. **Licensing for installation of mobile homes, issuance, fees; bond**

A. No person may engage in the business of installing mobile homes on private property, INCLUDING MOBILE PARK FACILITIES, unless such person is licensed and certified by the director pursuant to rules and regulations adopted by the director. For the purposes of this article, installing mobile homes includes the connection to on-site utility terminals AND THE GROUND ANCHORING OF MOBILE HOMES.

B. To obtain a license under this section, an applicant shall file an application on a form provided by the director accompanied by a fee AND BOND determined by the director.

C. THE DIRECTOR MAY REQUIRE AN APPLICANT TO PASS AN EXAMINATION IN THE HOOKUP AND TESTING OF GROUND ANCHORING, PLUMBING, GAS LINES, ELECTRICAL POWER LINES AND SEWERS.

~~C.~~ D. The director shall notify an applicant, within sixty days from the date of filing the application, of the action taken on his application. If the director determines that the applicant is qualified to hold a license in accordance with the provisions of this section he shall issue a license to the applicant permitting him to engage in business under the terms of this section for the balance of the fiscal year for which the application is submitted.

~~D.~~ E. Licenses issued pursuant to this section shall expire on June 30 of each year. Applications for renewal of current licenses, accompanied by a fee determined by the director and received before June 30, shall authorize the licensee to operate until actual issuance or refusal of the renewal license for the ensuing fiscal year.

F. LOCAL ENFORCEMENT AGENCIES MAY CHARGE FEES FOR INSPECTIONS CONDUCTED UNDER THIS ACT OR RULES AND REGULATIONS PROMULGATED PURSUANT HERETO AND SUCH FEES SHALL BE CONSISTENT WITH FEES CHARGED BY SAID LOCAL ENFORCEMENT AGENCIES FOR OTHER TYPES OF BUILDINGS REGULATED BY SAID LOCAL ENFORCEMENT AGENCIES.

Sec. 10. Section 44-1712, Arizona Revised Statutes, is amended to read:

44-1712. **Licensing of dealers; issuance; fees; bond**

A. No person may operate in this state as a dealer of recreational vehicles, mobile housing or factory built buildings or components thereof unless licensed by the director.

B. For the purposes of this section, dealer means any person who engages in the business of selling, RENTING OR LEASING recreational vehicles, mobile housing, CUSTOM MADE UNITS or factory built building units or components thereof.

C. To obtain a license to operate as a dealer pursuant to this section, the applicant shall file with the director an application provided by the director which shall be accompanied by a license fee and bond established by the director.

D. Licenses issued under this section shall expire on June 30 each year. Application for renewal accompanied by a fee established by the director shall be submitted to the director not later than June 30 and shall be authorization for the licensee to operate as a dealer of recreational vehicles, mobile housing or factory built buildings or components thereof until issuance or rejection of the renewal license.

Sec. 11. Section 44-1713, Arizona Revised Statutes, is amended to read:

44-1713. **Violation; penalty**

A. No person may sell or offer to sell, in this state, any recreational vehicle, factory built building, mobile home or any component thereof, manufactured one hundred twenty days or more after the effective date of this article, unless such unit, its components, systems and applicances have been constructed and assembled in accordance with the standards adopted by the director pursuant to this article and rules, regulations and standards issued pursuant to this article.

B. Units or components manufactured prior to the effective date of this article shall be exempt from the standards adopted by the director pursuant to this article, and rules, regulations and standards issued pursuant to this article.

C. No person may remove or cause to be removed an insignia of approval without prior authorization of the division.

D. A person who violates any provision of this article, or any such rule, regulation or standard, is guilty of a misdemeanor punishable by imprisonment for not more than six months, by a fine of not less than one hundred dollars, or both.

E. The director may, after notice and hearing pursuant to the provisions of title 41, chapter 6, article 1, revoke or suspend the license of any

manufacturer, dealer, OR INSTALLER ~~or certification and inspection agency~~ which has violated any provision of this article or any standards, rules or regulations issued pursuant to this article.

Sec. 12. Section 44-1714, Arizona Revised Statutes, is amended to read:

44-1714. **Injunction against unlawful act**

When in the judgment of the director any person has engaged, or is about to engage in any acts or practices which constitute, or will constitute, a violation of ~~section 44-1714.~~ ANY PROVISION OF THIS ARTICLE OR THE RULES, REGULATIONS OR STANDARDS PROMULGATED PURSUANT TO THIS ARTICLE, the director may make application to the appropriate court for an order enjoining such acts or practices. ~~, and~~ Upon a showing by the director that such person has engaged, or is about to engage in any such acts or practices, an injunction, restraining order or such other order as may be appropriate shall be granted by such court without bond.

Approved by the Governor–April 24, 1973

Filed in the Office of the Secretary of State–April 24, 1973

CHAPTER 75

House Bill 2002

AN ACT

RELATING TO DECEDENTS' ESTATES, GUARDIANSHIPS, PROTECTIVE PROCEEDINGS AND TRUSTS; AMENDING SECTION 12-612, ARIZONA REVISED STATUTES; REPEALING TITLE 14, CHAPTER 1, CHAPTER 2 EXCEPT ARTICLE 2, CHAPTER 3, CHAPTER 4 EXCEPT SECTION 14-477, CHAPTER 5 EXCEPT SECTIONS 14-597 AND 14-598, CHAPTER 6 EXCEPT SECTION 14-898, CHAPTER 7 EXCEPT ARTICLES 7, 8 AND 9 AND CHAPTER 8, ARIZONA REVISED STATUTES; AMENDING ARIZONA REVISED STATUTES, BY ADDING A NEW TITLE 14; AMENDING SECTIONS 6-433, 6-508, 12-313, 12-1224, 12-1251, 12-2101, 25-201, 36-514, 36-523 AND 42-1526, ARIZONA REVISED STATUTES; TRANSFERRING TITLE 14, CHAPTER 2,

ARTICLE 2, ARIZONA REVISED STATUTES, FOR PLACEMENT IN THE NEW TITLE 14, CHAPTER 2, ARTICLE 8, ARIZONA REVISED STATUTES, AND RENUMBERING; AMENDING NEW SECTION 14-2808, ARIZONA REVISED STATUTES; TRANSFERRING SECTION 14-477, ARIZONA REVISED STATUTES, FOR PLACEMENT IN THE NEW TITLE 14, CHAPTER 3, ARTICLE 1, ARIZONA REVISED STATUTES, AND RENUMBERING; TRANSFERRING SECTIONS 14-597 AND 14-598, ARIZONA REVISED STATUTES, FOR PLACEMENT IN THE NEW TITLE 14, CHAPTER 3, ARTICLE 5, ARIZONA REVISED STATUTES, AND RENUMBERING; AMENDING NEW SECTIONS 14-3506 AND 14-3507, ARIZONA REVISED STATUTES; TRANSFERRING SECTION 14-898, ARIZONA REVISED STATUTES, FOR PLACEMENT IN TITLE 36, CHAPTER 5, ARTICLE 1, ARIZONA REVISED STATUTES, AND RENUMBERING; TRANSFERRING TITLE 14, CHAPTER 7, ARTICLES 7, 8 AND 9, ARIZONA REVISED STATUTES, FOR PLACEMENT IN THE NEW TITLE 14, CHAPTER 7, ARIZONA REVISED STATUTES, AS ARTICLES 4, 5 AND 6, AND RENUMBERING; AMENDING NEW SECTIONS 14-7408, 14-7412 AND 14-7413, ARIZONA REVISED STATUTES, AND REPEALING SECTIONS 6-268, 6-431 AND 12-504, ARIZONA REVISED STATUTES.

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

Section 1. **Purpose**

The legislature intends by this act to provide for a substantial revision of the laws relating to decedents' estates, guardianships, protective proceedings and trusts to become effective January 1, 1974.

Sec. 2. Section 12-612, Arizona Revised Statutes is amended to read:

12-612. **Parties plaintiff; recovery; distribution**

A. An action for wrongful death shall be brought by and in the name of the surviving husband or wife or personal representative of the deceased person for and on behalf of the surviving husband or wife, children or parents, or if none of these survive, on behalf of the decedent's estate.

B. The father, or in the case of his death or desertion of his family, the mother, may maintain the action for death of a child, and the guardian for death of his ward.

C. The amount recovered in an action for wrongful death shall be distributed to the parties provided for in subsection A ~~and in the proportions provided by law for distribution of personal estate left by persons dying intestate~~ IN PROPORTION TO THEIR DAMAGES, AND IF RECOVERY IS ON BEHALF OF THE DECEDENT'S ESTATE THE AMOUNT SHALL BE AN ASSET OF THE ESTATE.

D. The term "personal representative" as used in this section shall include any person to whom letters testamentary or of administration are granted by competent authority under the laws of this or any other state. The action for wrongful death may be maintained by any such personal representative without issuance of further letters, or other requirement or authorization of law.

Sec. 3. **Repeals**

Title 14, chapter 1, chapter 2 except article 2, chapter 3, chapter 4 except section 14-477, chapter 5 except sections 14-597 and 14-598, chapter 6 except section 14-898, chapter 7 except articles 7, 8 and 9 and chapter 8, Arizona Revised Statutes, are repealed.

Sec. 4. Arizona Revised Statutes are amended by adding a new title 14, to read:

TITLE 14.
DECEDENTS' ESTATES, GUARDIANSHIPS, PROTECTIVE PROCEEDINGS AND TRUSTS
CHAPTER 1.
GENERAL PROVISIONS, DEFINITIONS AND PROBATE JURISDICTION OF COURTS
ARTICLE 1. GENERAL PROVISIONS

14-1101. (Blank)

14-1102. **Purposes; rule of construction**

A. THIS TITLE SHALL BE LIBERALLY CONSTRUED AND APPLIED TO PROMOTE ITS UNDERLYING PURPOSES AND POLICIES.

B. THE UNDERLYING PURPOSES AND POLICIES OF THIS TITLE ARE:

1. TO SIMPLIFY AND CLARIFY THE LAW CONCERNING THE AFFAIRS OF DECEDENTS, MISSING PERSONS, PROTECTED PERSONS, MINORS AND INCAPACITATED PERSONS.

2. TO DISCOVER AND MAKE EFFECTIVE THE INTENT OF A DECEDENT IN DISTRIBUTION OF HIS PROPERTY.

3. TO PROMOTE A SPEEDY AND EFFICIENT SYSTEM FOR LIQUIDATING THE ESTATE OF THE DECEDENT AND MAKING DISTRIBUTION TO HIS SUCCESSORS.

4. TO FACILITATE USE AND ENFORCEMENT OF CERTAIN TRUSTS.

5. TO MAKE UNIFORM THE LAW AMONG THE VARIOUS JURISDICTIONS.

14-1103. **Supplementary general principles of law applicable**

UNLESS DISPLACED BY THE PARTICULAR PROVISIONS OF THIS TITLE, THE PRINCIPLES OF LAW AND EQUITY SUPPLEMENT ITS PROVISIONS.

14-1104. (Blank)

14-1105. (Blank)

14-1106. **Effect of fraud and evasion**

IF FRAUD HAS BEEN PERPETRATED IN CONNECTION WITH ANY PROCEEDING OR IN ANY STATEMENT FILED UNDER THIS TITLE OR IF FRAUD IS USED TO AVOID OR CIRCUMVENT THE PROVISIONS OR PURPOSES OF THIS TITLE, ANY PERSON INJURED THEREBY MAY OBTAIN APPROPRIATE RELIEF AGAINST THE PERPETRATOR OF THE FRAUD OR RESTITUTION FROM ANY PERSON, OTHER THAN A BONA FIDE PURCHASER, BENEFITING FROM THE FRAUD, WHETHER INNOCENT OR NOT. ANY PROCEEDING MUST BE COMMENCED WITHIN TWO YEARS AFTER THE DISCOVERY OF THE FRAUD, BUT NO PROCEEDING MAY BE BROUGHT AGAINST ONE NOT A PERPETRATOR OF THE FRAUD LATER THAN FIVE YEARS AFTER THE TIME OF COMMISSION OF THE FRAUD. THIS SECTION HAS NO BEARING ON REMEDIES RELATING TO FRAUD PRACTICED ON A DECEDENT DURING HIS LIFETIME WHICH AFFECTS THE SUCCESSION OF HIS ESTATE.

14-1107. **Evidence as to death or status**

IN PROCEEDINGS UNDER THIS TITLE THE RULES OF EVIDENCE IN COURTS OF GENERAL JURISDICTION INCLUDING ANY

RELATING TO SIMULTANEOUS DEATHS, ARE APPLICABLE UNLESS SPECIFICALLY DISPLACED BY THIS TITLE. IN ADDITION, THE FOLLOWING RULES RELATING TO DETERMINATION OF DEATH AND STATUS ARE APPLICABLE:

1. A CERTIFIED OR AUTHENTICATED COPY OF A DEATH CERTIFICATE PURPORTING TO BE ISSUED BY AN OFFICIAL OR AGENCY OF THE PLACE WHERE THE DEATH PURPORTEDLY OCCURRED IS PRIMA FACIE PROOF OF THE FACT, PLACE, DATE AND TIME OF DEATH AND THE IDENTITY OF THE DECEDENT.

2. A CERTIFIED OR AUTHENTICATED COPY OF ANY RECORD OR REPORT OF A GOVERNMENTAL AGENCY, DOMESTIC OR FOREIGN, THAT A PERSON IS MISSING, DETAINED, DEAD OR ALIVE IS PRIMA FACIE EVIDENCE OF THE STATUS AND OF THE DATES, CIRCUMSTANCES AND PLACES DISCLOSED BY THE RECORD OR REPORT.

3. A PERSON WHO IS ABSENT FOR A CONTINUOUS PERIOD OF FIVE YEARS, DURING WHICH HE HAS NOT BEEN HEARD FROM, AND WHOSE ABSENCE IS NOT SATISFACTORILY EXPLAINED AFTER DILIGENT SEARCH OR INQUIRY IS PRESUMED TO BE DEAD. HIS DEATH IS PRESUMED TO HAVE OCCURRED AT THE END OF THE PERIOD UNLESS THERE IS SUFFICIENT EVIDENCE FOR DETERMINING THAT DEATH OCCURRED EARLIER.

14-1108. **Acts by holder of general power**

FOR THE PURPOSE OF GRANTING CONSENT OR APPROVAL WITH REGARD TO THE ACTS OR ACCOUNTS OF A PERSONAL REPRESENTATIVE OR TRUSTEE, INCLUDING RELIEF FROM LIABILITY OR PENALTY FOR FAILURE TO POST BOND OR TO PERFORM OTHER DUTIES, AND FOR PURPOSES OF CONSENTING TO MODIFICATION OR TERMINATION OF A TRUST OR TO DEVIATION FROM ITS TERMS, THE SOLE HOLDER OR ALL CO-HOLDERS OF A PRESENTLY EXERCISABLE GENERAL POWER OF APPOINTMENT, INCLUDING ONE IN THE FORM OF A POWER OF AMENDMENT OR REVOCATION, ARE DEEMED TO ACT FOR BENEFICIARIES TO THE EXTENT THEIR INTERESTS, AS OBJECTS, TAKERS IN DEFAULT OR OTHERWISE, ARE SUBJECT TO THE POWER.

ARTICLE 2. DEFINITIONS

14-1201. **General definitions**

SUBJECT TO ADDITIONAL DEFINITIONS CONTAINED IN THE SUBSEQUENT CHAPTERS WHICH ARE APPLICABLE TO SPECIFIC CHAPTERS OR ARTICLES AND UNLESS THE CONTEXT OTHERWISE REQUIRES, IN THIS TITLE:

1. "APPLICATION" MEANS A WRITTEN REQUEST TO THE REGISTRAR FOR AN ORDER OF INFORMAL PROBATE OR APPOINTMENT UNDER ARTICLE 3 OF CHAPTER 3.

2. "BENEFICIARY", AS IT RELATES TO TRUST BENEFICIARIES, INCLUDES A PERSON, WHETHER OR NOT IN BEING, WHO HAS ANY PRESENT OR FUTURE INTEREST, VESTED OR CONTINGENT, AND ALSO INCLUDES THE OWNER OF AN INTEREST BY ASSIGNMENT OR OTHER TRANSFER AND AS IT RELATES TO A CHARITABLE TRUST, INCLUDES ANY PERSON ENTITLED TO ENFORCE THE TRUST.

3. "CHILD" INCLUDES ANY INDIVIDUAL ENTITLED TO TAKE AS A CHILD UNDER THIS TITLE BY INTESTATE SUCCESSION FROM THE PARENT WHOSE RELATIONSHIP IS INVOLVED AND EXCLUDES ANY PERSON WHO IS ONLY A STEPCHILD, A FOSTER CHILD, A GRANDCHILD OR ANY MORE REMOTE DESCENDANT.

4. "CLAIMS", IN RESPECT TO ESTATES OF DECEDENTS AND PROTECTED PERSONS, INCLUDE LIABILITIES OF THE DECEDENT OR PROTECTED PERSON WHETHER ARISING IN CONTRACT, IN TORT OR OTHERWISE, AND LIABILITIES OF THE ESTATE WHICH ARISE AT OR AFTER THE DEATH OF THE DECEDENT OR AFTER THE APPOINTMENT OF A CONSERVATOR, INCLUDING FUNERAL EXPENSES AND EXPENSES OF ADMINISTRATION. THE TERM DOES NOT INCLUDE ESTATE OR INHERITANCE TAXES, DEMANDS OR DISPUTES REGARDING TITLE OF A DECEDENT OR PROTECTED PERSON TO SPECIFIC ASSETS ALLEGED TO BE INCLUDED IN THE ESTATE.

5. "COMMUNITY PROPERTY" IS THAT PROPERTY OF A HUSBAND AND WIFE WHICH IS ACQUIRED DURING MARRIAGE AS COMMUNITY PROPERTY AS DEFINED IN SECTION 25-211.

6. "CONSERVATOR" MEANS A PERSON WHO IS APPOINTED BY A COURT TO MANAGE THE ESTATE OF A PROTECTED PERSON.

7. "COURT" MEANS THE SUPERIOR COURT.

8. "DEPENDENT CHILD" MEANS A MINOR CHILD WHOM THE DECEDENT WAS OBLIGATED TO SUPPORT OR AN ADULT CHILD WHO WAS IN FACT BEING SUPPORTED BY HIM AT THE TIME OF HIS DEATH.

9. "DEVISE", WHEN USED AS A NOUN, MEANS A TESTAMENTARY DISPOSITION OF REAL OR PERSONAL PROPERTY AND WHEN USED AS A VERB, MEANS TO DISPOSE OF REAL OR PERSONAL PROPERTY BY WILL.

10. "DEVISEE" MEANS ANY PERSON DESIGNATED IN A WILL TO RECEIVE A DEVISE. IN THE CASE OF A DEVISE TO AN EXISTING TRUST OR TRUSTEE, OR TO A TRUSTEE ON TRUST DESCRIBED BY WILL, THE TRUST OR TRUSTEE IS THE DEVISEE AND THE BENEFICIARIES ARE NOT DEVISEES.

11. "DISABILITY" MEANS CAUSE FOR A PROTECTIVE ORDER AS DESCRIBED BY SECTION 14-5401.

12. "DISTRIBUTEE" MEANS ANY PERSON WHO HAS RECEIVED PROPERTY OF A DECEDENT FROM HIS PERSONAL REPRESENTATIVE OTHER THAN AS A CREDITOR OR PURCHASER. A TESTAMENTARY TRUSTEE IS A DISTRIBUTEE ONLY TO THE EXTENT OF DISTRIBUTED ASSETS OR INCREMENT THERETO REMAINING IN HIS HANDS. A BENEFICIARY OF A TESTAMENTARY TRUST TO WHOM THE TRUSTEE HAS DISTRIBUTED PROPERTY RECEIVED FROM A PERSONAL REPRESENTATIVE IS A DISTRIBUTEE OF THE PERSONAL REPRESENTATIVE. FOR PURPOSES OF THIS PROVISION, "TESTAMENTARY TRUSTEE" INCLUDES A TRUSTEE TO WHOM ASSETS ARE TRANSFERRED BY WILL, TO THE EXTENT OF THE DEVISED ASSETS.

13. "ESTATE" MEANS ALL OF THE PROPERTY OF THE DECEDENT, TRUST OR OTHER PERSON WHOSE AFFAIRS ARE SUBJECT TO THIS TITLE AS ORIGINALLY CONSTITUTED AND AS IT EXISTS FROM TIME TO TIME DURING ADMINISTRATION. IN THE CASE OF A HUSBAND OR WIFE, THE ESTATE INCLUDES ONLY THE SEPARATE PROPERTY AND THE SHARE OF THE COMMUNITY PROPERTY BELONGING TO THE DECEDENT OR PERSON WHOSE AFFAIRS ARE SUBJECT TO THIS TITLE.

14. "EXEMPT PROPERTY" MEANS THAT PROPERTY OF A DECEDENT'S ESTATE WHICH IS DESCRIBED IN SECTION 14-2402.

15. "FIDUCIARY" INCLUDES PERSONAL REPRESENTATIVE, GUARDIAN, CONSERVATOR AND TRUSTEE.

16. "FOREIGN PERSONAL REPRESENTATIVE" MEANS A PERSONAL REPRESENTATIVE OF ANOTHER JURISDICTION.

17. "FORMAL PROCEEDINGS" MEAN THOSE CONDUCTED BEFORE A JUDGE WITH NOTICE TO INTERESTED PERSONS.

18. "GUARDIAN" MEANS A PERSON WHO HAS QUALIFIED AS A GUARDIAN OF A MINOR OR INCAPACITATED PERSON PURSUANT TO TESTAMENTARY OR COURT APPOINTMENT, BUT EXCLUDES ONE WHO IS MERELY A GUARDIAN AD LITEM.

19. "HEIRS" MEAN THOSE PERSONS, INCLUDING THE SURVIVING SPOUSE, WHO ARE ENTITLED UNDER THE STATUTES OF INTESTATE SUCCESSION TO THE PROPERTY OF A DECEDENT.

20. "INCAPACITATED PERSON" IS AS DEFINED IN SECTION 14-5101.

21. "INFORMAL PROCEEDINGS" MEAN THOSE CONDUCTED, WITHOUT NOTICE TO INTERESTED PERSONS, BY AN OFFICER OF THE COURT ACTING AS A REGISTRAR FOR PROBATE OF A WILL OR APPOINTMENT OF A PERSONAL REPRESENTATIVE.

22. "INTERESTED PERSON" INCLUDES HEIRS, DEVISEES, CHILDREN, SPOUSES, CREDITORS, BENEFICIARIES AND ANY OTHERS HAVING A PROPERTY RIGHT IN OR CLAIM AGAINST A TRUST ESTATE OR THE ESTATE OF A DECEDENT, WARD OR PROTECTED PERSON WHICH MAY BE AFFECTED BY THE PROCEEDING. IT ALSO INCLUDES PERSONS HAVING PRIORITY FOR APPOINTMENT AS PERSONAL REPRESENTATIVE, AND OTHER FIDUCIARIES REPRESENTING INTERESTED PERSONS. THE MEANING AS IT RELATES TO PARTICULAR PERSONS MAY VARY FROM TIME TO TIME AND MUST BE DETERMINED ACCORDING TO THE PARTICULAR PURPOSES OF, AND MATTER INVOLVED IN, ANY PROCEEDING.

23. "ISSUE" OF A PERSON MEANS ALL HIS LINEAL DESCENDANTS OF ALL GENERATIONS, WITH THE RELATIONSHIP OF PARENT AND CHILD AT EACH GENERATION BEING DETERMINED BY THE DEFINITIONS OF PARENT AND CHILD CONTAINED IN THIS TITLE.

24. "LEASE" INCLUDES AN OIL, GAS OR OTHER MINERAL LEASE.

25. "LETTERS" INCLUDE LETTERS TESTAMENTARY, LETTERS OF GUARDIANSHIP, LETTERS OF ADMINISTRATION AND LETTERS OF CONSERVATORSHIP.

26. "MINOR" MEANS A PERSON DEFINED AS SUCH IN SECTION 1-215.

27. "MORTGAGE" MEANS ANY CONVEYANCE, AGREEMENT OR ARRANGEMENT IN WHICH PROPERTY IS USED AS SECURITY.

28. "NONRESIDENT DECEDENT" MEANS A DECEDENT WHO WAS DOMICILED IN ANOTHER JURISDICTION AT THE TIME OF HIS DEATH.

29. "ORGANIZATION" INCLUDES A CORPORATION, GOVERNMENT OR GOVERNMENTAL SUBDIVISION OR AGENCY, BUSINESS TRUST, ESTATE, TRUST, PARTNERSHIP OR ASSOCIATION, TWO OR MORE PERSONS HAVING A JOINT OR COMMON INTEREST OR ANY OTHER LEGAL ENTITY.

30. "PARENT" INCLUDES ANY PERSON ENTITLED TO TAKE, OR WHO WOULD BE ENTITLED TO TAKE IF THE CHILD DIED WITHOUT A WILL, AS A PARENT UNDER THIS TITLE BY INTESTATE SUCCESSION FROM THE CHILD WHOSE RELATIONSHIP IS IN QUESTION AND EXCLUDES ANY PERSON WHO IS ONLY A STEPPARENT, FOSTER PARENT OR GRANDPARENT.

31. "PERSON" MEANS AN INDIVIDUAL, A CORPORATION, AN ORGANIZATION OR OTHER LEGAL ENTITY.

32. "PERSONAL REPRESENTATIVE" INCLUDES EXECUTOR, ADMINISTRATOR, SUCCESSOR PERSONAL REPRESENTATIVE, SPECIAL ADMINISTRATOR AND PERSONS WHO PERFORM SUBSTANTIALLY THE SAME FUNCTION UNDER THE LAW GOVERNING THEIR STATUS. "GENERAL PERSONAL REPRESENTATIVE" EXCLUDES SPECIAL ADMINISTRATOR.

33. "PETITION" MEANS A WRITTEN REQUEST TO THE COURT FOR AN ORDER AFTER NOTICE.

34. "PROCEEDING" INCLUDES ACTION AT LAW AND SUIT IN EQUITY.

35. "PROPERTY" INCLUDES BOTH REAL AND PERSONAL PROPERTY OR ANY INTEREST THEREIN AND MEANS ANYTHING THAT MAY BE THE SUBJECT OF OWNERSHIP.

36. "PROTECTED PERSON" IS AS DEFINED IN SECTION 14-5101.

37. "PROTECTIVE PROCEEDING" IS AS DEFINED IN SECTION 14-5101.

38. "REGISTRAR" REFERS TO THE OFFICIAL OF THE COURT DESIGNATED TO PERFORM THE FUNCTIONS OF REGISTRAR AS PROVIDED IN SECTION 14-1307.

39. "SECURITY" INCLUDES ANY NOTE, STOCK, TREASURY STOCK, BOND, DEBENTURE, EVIDENCE OF INDEBTEDNESS, CERTIFICATE OF INTEREST OR PARTICIPATION IN AN OIL, GAS OR MINING TITLE OR LEASE OR IN PAYMENTS OUT OF PRODUCTION UNDER SUCH A TITLE OR LEASE, COLLATERAL TRUST CERTIFICATE, TRANSFERABLE SHARE, VOTING TRUST CERTIFICATE OR, IN GENERAL, ANY INTEREST OR INSTRUMENT COMMONLY KNOWN AS A SECURITY, OR ANY CERTIFICATE OF INTEREST OR PARTICIPATION, ANY TEMPORARY OR INTERIM CERTIFICATE, RECEIPT OR CERTIFICATE OF DEPOSIT FOR, OR ANY WARRANT OR RIGHT TO SUBSCRIBE TO OR PURCHASE ANY OF THE FOREGOING.

40. "SEPARATE PROPERTY" IS THAT PROPERTY OF A HUSBAND OR WIFE WHICH IS HIS OR HER SEPARATE PROPERTY AS DEFINED IN SECTION 25-213.

41. "SETTLEMENT", IN REFERENCE TO A DECEDENT'S ESTATE, INCLUDES THE FULL PROCESS OF ADMINISTRATION, DISTRIBUTION AND CLOSING.

42. "SPECIAL ADMINISTRATOR" MEANS A PERSONAL REPRESENTATIVE AS DESCRIBED BY SECTIONS 14-3614 THROUGH 14-3618.

43. "STATE" INCLUDES ANY STATE OF THE UNITED STATES, THE DISTRICT OF COLUMBIA, THE COMMONWEALTH OF PUERTO RICO AND ANY TERRITORY OR POSSESSION SUBJECT TO THE LEGISLATIVE AUTHORITY OF THE UNITED STATES.

44. "SUCCESSOR PERSONAL REPRESENTATIVE" MEANS A PERSONAL REPRESENTATIVE, OTHER THAN A SPECIAL

ADMINISTRATOR, WHO IS APPOINTED TO SUCCEED A PREVIOUSLY APPOINTED PERSONAL REPRESENTATIVE.

45. "SUCCESSORS" MEAN THOSE PERSONS, OTHER THAN CREDITORS, WHO ARE ENTITLED TO PROPERTY OF A DECEDENT UNDER HIS WILL OR THIS TITLE.

46. "SUPERVISED ADMINISTRATION" REFERS TO THE PROCEEDINGS DESCRIBED IN CHAPTER 3, ARTICLE 5.

47. "TESTACY PROCEEDING" MEANS A PROCEEDING TO ESTABLISH A WILL OR DETERMINE INTESTACY.

48. "TRUST" INCLUDES ANY EXPRESS TRUST, PRIVATE OR CHARITABLE, WITH ADDITIONS THERETO, WHEREVER AND HOWEVER CREATED. IT ALSO INCLUDES A TRUST CREATED OR DETERMINED BY JUDGMENT OR DECREE UNDER WHICH THE TRUST IS TO BE ADMINISTERED IN THE MANNER OF AN EXPRESS TRUST. "TRUST" EXCLUDES OTHER CONSTRUCTIVE TRUSTS, AND IT EXCLUDES RESULTING TRUSTS, CONSERVATORSHIPS, PERSONAL REPRESENTATIVES, TRUST ACCOUNTS AS DEFINED IN CHAPTER 6, CUSTODIAL ARRANGEMENTS PURSUANT TO TITLE 44, CHAPTER 12.1, BUSINESS TRUSTS PROVIDING FOR CERTIFICATES TO BE ISSUED TO BENEFICIARIES, COMMON TRUST FUNDS, VOTING TRUSTS, SECURITY ARRANGEMENTS, LIQUIDATION TRUSTS AND TRUSTS FOR THE PRIMARY PURPOSE OF PAYING DEBTS, DIVIDENDS, INTEREST, SALARIES, WAGES, PROFITS, PENSIONS OR EMPLOYEE BENEFITS OF ANY KIND, AND ANY ARRANGEMENT UNDER WHICH A PERSON IS NOMINEE OR ESCROWEE FOR ANOTHER.

49. "TRUSTEE" INCLUDES AN ORIGINAL, ADDITIONAL OR SUCCESSOR TRUSTEE, WHETHER OR NOT APPOINTED OR CONFIRMED BY COURT.

50. "WARD" IS AS DEFINED IN SECTION 14-5101.

51. "WILL" INCLUDES CODICIL AND ANY TESTAMENTARY INSTRUMENT WHICH MERELY APPOINTS AN EXECUTOR OR REVOKES OR REVISES ANOTHER WILL.

ARTICLE 3. SCOPE, JURISDICTION AND COURTS

14-1301. **Territorial application**

EXCEPT AS OTHERWISE PROVIDED IN THIS TITLE, THE TITLE APPLIES TO:

1. THE AFFAIRS AND ESTATES OF DECEDENTS, MISSING PERSONS AND PERSONS TO BE PROTECTED, DOMICILED IN THIS STATE.

2. THE PROPERTY OF NONRESIDENTS LOCATED IN THIS STATE OR PROPERTY COMING INTO THE CONTROL OF A FIDUCIARY WHO IS SUBJECT TO THE LAWS OF THIS STATE.

3. INCAPACITATED PERSONS AND MINORS IN THIS STATE.

4. MULTIPLE-PARTY ACCOUNTS IN THIS STATE.

5. TRUSTS SUBJECT TO ADMINISTRATION IN THIS STATE.

THIS TITLE DOES NOT APPLY TO PROPERTY OF INDIANS WITHIN THE JURISDICTION OF THEIR TRIBAL COURTS OR TO LANDS HELD IN TRUST BY THE UNITED STATES FOR INDIANS.

14-1302. **Subject matter jurisdiction**

A. TO THE FULL EXTENT PERMITTED BY THE CONSTITUTION, THE COURT HAS JURISDICTION OVER ALL SUBJECT MATTER RELATING TO:

1. ESTATES OF DECEDENTS, INCLUDING CONSTRUCTION OF WILLS AND DETERMINATION OF HEIRS AND SUCCESSORS OF DECEDENTS, AND ESTATES OF PROTECTED PERSONS.

2. PROTECTION OF MINORS AND INCAPACITATED PERSONS.

3. TRUSTS.

B. THE COURT HAS FULL POWER TO MAKE ORDERS, JUDGMENTS AND DECREES AND TAKE ALL OTHER ACTION NECESSARY AND PROPER TO ADMINISTER JUSTICE IN THE MATTERS WHICH COME BEFORE IT INCLUDING POWER TO ENFORCE ORDERS AGAINST A FIDUCIARY BY CONTEMPT PROCEEDINGS AND TO COMPEL ACTION BY A FIDUCIARY BY BODY ATTACHMENT.

14-1303. **Venue; multiple proceedings; transfer**

A. WHERE A PROCEEDING UNDER THIS TITLE COULD BE MAINTAINED IN MORE THAN ONE PLACE IN THIS STATE, THE COURT IN WHICH THE PROCEEDING IS FIRST COMMENCED HAS THE EXCLUSIVE RIGHT TO PROCEED.

B. IF PROCEEDINGS CONCERNING THE SAME ESTATE, PROTECTED PERSON, WARD OR TRUST ARE COMMENCED IN MORE THAN ONE COUNTY OF THIS STATE, THE COURT IN THE COUNTY IN WHICH THE PROCEEDING WAS FIRST COMMENCED SHALL CONTINUE TO HEAR THE MATTER, AND THE OTHER COURTS SHALL HOLD THE MATTER IN ABEYANCE UNTIL THE QUESTION OF VENUE IS DECIDED; AND IF THE RULING COURT DETERMINES THAT VENUE IS PROPERLY IN ANOTHER COUNTY, IT SHALL TRANSFER THE PROCEEDING TO THE OTHER COUNTY.

C. IF A COURT FINDS THAT IN THE INTEREST OF JUSTICE A PROCEEDING OR A FILE SHOULD BE LOCATED IN ANOTHER COUNTY OF THIS STATE, THE COURT MAKING THE FINDING MAY TRANSFER THE PROCEEDING OR FILE TO THE OTHER COUNTY.

14-1304. **Practice in court**

UNLESS SPECIFICALLY PROVIDED TO THE CONTRARY IN THIS TITLE OR UNLESS INCONSISTENT WITH ITS PROVISIONS, THE RULES OF CIVIL PROCEDURE INCLUDING THE RULES CONCERNING VACATION OF ORDERS AND APPELLATE REVIEW GOVERN FORMAL PROCEEDINGS UNDER THIS TITLE.

14-1305. **Records and certified copies**

THE CLERK OF THE COURT SHALL KEEP A RECORD FOR EACH DECEDENT, WARD, PROTECTED PERSON OR TRUST INVOLVED IN ANY DOCUMENT WHICH MAY BE FILED WITH THE COURT UNDER THIS TITLE INCLUDING PETITIONS AND APPLICATIONS, DEMANDS AND ANY ORDERS OR RESPONSES RELATING THERETO BY THE REGISTRAR OR COURT, AND ESTABLISH AND MAINTAIN A SYSTEM FOR INDEXING, FILING OR RECORDING WHICH IS SUFFICIENT TO ENABLE USERS OF THE RECORDS TO OBTAIN ADEQUATE INFORMATION. UPON PAYMENT OF THE FEES REQUIRED BY LAW THE CLERK MUST ISSUE CERTIFIED COPIES OF ANY PROBATED WILLS, LETTERS ISSUED TO PERSONAL REPRESENTATIVES, OR ANY OTHER RECORD OR PAPER FILED OR RECORDED. CERTIFICATES RELATING TO PROBATED WILLS MUST INDICATE WHETHER THE DECEDENT WAS DOMICILED IN THIS STATE AND WHETHER THE PROBATE WAS

FORMAL OR INFORMAL. CERTIFICATES RELATING TO LETTERS MUST SHOW THE DATE OF APPOINTMENT.

14-1306. **Jury trial**

A. IF DULY DEMANDED, A PARTY IS ENTITLED TO TRIAL BY JURY IN ANY PROCEEDING IN WHICH ANY CONTROVERTED QUESTION OF FACT ARISES AS TO WHICH ANY PARTY HAS A CONSTITUTIONAL RIGHT TO TRIAL BY JURY.

B. IF THERE IS NO RIGHT TO TRIAL BY JURY UNDER SECTION A OR THE RIGHT IS WAIVED, THE COURT IN ITS DISCRETION MAY CALL A JURY TO DECIDE ANY ISSUE OF FACT, IN WHICH CASE THE VERDICT IS ADVISORY ONLY.

14-1307. **Registrar; powers**

THE ACTS AND ORDERS WHICH THIS TITLE SPECIFIES AS PERFORMABLE BY THE REGISTRAR SHALL BE PERFORMED BY A JUDGE, THE CLERK OF THE COURT, A COURT COMMISSIONER OR ANY OF SUCH AT THE SELECTION OF THE PRESIDING JUDGE OF THE COUNTY DESIGNATED BY THE COURT BY A WRITTEN ORDER FILED AND RECORDED IN THE OFFICE OF THE CLERK OF THE COURT.

14-1308. (Blank)

14-1309. (Blank)

14-1310. **Oath or affirmation on filed documents**

EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THIS TITLE OR BY RULE, EACH DOCUMENT FILED WITH THE COURT UNDER THIS TITLE INCLUDING APPLICATIONS, PETITIONS AND DEMANDS FOR NOTICE, SHALL BE DEEMED TO INCLUDE AN OATH, AFFIRMATION OR STATEMENT TO THE EFFECT THAT ITS REPRESENTATIONS ARE TRUE AS FAR AS THE PERSON EXECUTING OR FILING IT KNOWS OR IS INFORMED. EACH DOCUMENT FILED WITH THE COURT UNDER THIS TITLE IS MATERIAL AND MAY SUBJECT THE PERSON EXECUTING OR FILING SUCH DOCUMENT TO PENALTIES UNDER THE PROVISIONS OF TITLE 13, CHAPTER 2, ARTICLE 30, RELATING TO PERJURY AND SUBORNATION OF PERJURY.

ARTICLE 4. NOTICE, PARTIES AND REPRESENTATION IN ESTATE LITIGATION AND OTHER MATTERS

14-1401. **Notice; method and time of giving**

A. IF NOTICE OF A HEARING ON ANY PETITION IS REQUIRED AND EXCEPT FOR SPECIFIC NOTICE REQUIREMENTS AS OTHERWISE PROVIDED, THE PETITIONER SHALL CAUSE NOTICE OF THE TIME AND PLACE OF HEARING OF ANY PETITION TO BE GIVEN TO ANY INTERESTED PERSON OR HIS ATTORNEY IF HE HAS APPEARED BY ATTORNEY OR REQUESTED THAT NOTICE BE SENT TO HIS ATTORNEY. NOTICE SHALL BE GIVEN EITHER:

1. BY MAILING A COPY THEREOF AT LEAST FOURTEEN DAYS BEFORE THE TIME SET FOR THE HEARING BY CERTIFIED, REGISTERED OR ORDINARY FIRST CLASS MAIL ADDRESSED TO THE PERSON BEING NOTIFIED AT THE POST OFFICE ADDRESS GIVEN IN HIS DEMAND FOR NOTICE, IF ANY, OR AT HIS OFFICE OR PLACE OF RESIDENCE, IF KNOWN.

2. BY DELIVERING A COPY THEREOF TO THE PERSON BEING NOTIFIED PERSONALLY AT LEAST FOURTEEN DAYS BEFORE THE TIME SET FOR THE HEARING.

3. IF THE ADDRESS, OR IDENTITY OF ANY PERSON IS NOT KNOWN AND CANNOT BE ASCERTAINED WITH REASONABLE DILIGENCE, OR WHEN OTHERWISE REQUIRED UNDER THIS TITLE, BY PUBLISHING AT LEAST THREE TIMES, A COPY THEREOF IN A NEWSPAPER HAVING GENERAL CIRCULATION IN THE COUNTY WHERE THE HEARING IS TO BE HELD, THE FIRST PUBLICATION OF WHICH IS TO BE AT LEAST TEN DAYS BEFORE THE TIME SET FOR THE HEARING.

B. THE COURT FOR GOOD CAUSE SHOWN MAY PROVIDE FOR A DIFFERENT METHOD OR TIME OF GIVING NOTICE FOR ANY HEARING.

C. PROOF OF THE GIVING OF NOTICE SHALL BE MADE AT OR BEFORE THE HEARING AND FILED IN THE PROCEEDING.

14-1402. **Notice; waiver**

A PERSON, INCLUDING A GUARDIAN AD LITEM, CONSERVATOR OR OTHER FIDUCIARY, MAY WAIVE NOTICE BY A WRITING SIGNED BY HIM OR HIS ATTORNEY AND FILED IN THE PROCEEDING.

14-1403. **Pleadings; when parties bound by others; notice**

IN FORMAL PROCEEDINGS INVOLVING TRUSTS OR ESTATES OF DECEDENTS, MINORS, PROTECTED PERSONS OR INCAPACITATED PERSONS, AND IN JUDICIALLY SUPERVISED SETTLEMENTS, THE FOLLOWING APPLY:

1. INTERESTS TO BE AFFECTED SHALL BE DESCRIBED IN PLEADINGS WHICH GIVE REASONABLE INFORMATION TO OWNERS BY NAME OR CLASS, BY REFERENCE TO THE INSTRUMENT CREATING THE INTERESTS OR IN OTHER APPROPRIATE MANNER.

2. PERSONS ARE BOUND BY ORDERS BINDING OTHERS IN THE FOLLOWING CASES:

(a) ORDERS BINDING THE SOLE HOLDER OR ALL CO-HOLDERS OF A POWER OF REVOCATION OR A PRESENTLY EXERCISABLE GENERAL POWER OF APPOINTMENT, INCLUDING ONE IN THE FORM OF A POWER OF AMENDMENT, BIND OTHER PERSONS TO THE EXTENT THEIR INTERESTS, AS OBJECTS, TAKERS IN DEFAULT OR OTHERWISE, ARE SUBJECT TO THE POWER.

(b) TO THE EXTENT THERE IS NO CONFLICT OF INTEREST BETWEEN THEM OR AMONG PERSONS REPRESENTED:

(i) ORDERS BINDING A CONSERVATOR BIND THE PERSON WHOSE ESTATE HE CONTROLS.

(ii) ORDERS BINDING A GUARDIAN BIND THE WARD IF NO CONSERVATOR OF HIS ESTATE HAS BEEN APPOINTED.

(iii) ORDERS BINDING A TRUSTEE BIND BENEFICIARIES OF THE TRUST IN PROCEEDINGS TO PROBATE A WILL ESTABLISHING OR ADDING TO A TRUST, TO REVIEW THE ACTS OR ACCOUNTS OF A PRIOR FIDUCIARY AND IN PROCEEDINGS INVOLVING CREDITORS OR OTHER THIRD PARTIES.

(iv) ORDERS BINDING A PERSONAL REPRESENTATIVE BIND PERSONS INTERESTED IN THE UNDISTRIBUTED ASSETS OF A DECEDENT'S ESTATE IN ACTIONS OR PROCEEDINGS BY OR AGAINST THE ESTATE. IF THERE IS NO CONFLICT OF INTEREST AND NO CONSERVATOR OR GUARDIAN HAS BEEN APPOINTED, A PARENT MAY REPRESENT HIS MINOR CHILD.

(c) AN UNBORN OR UNASCERTAINED PERSON WHO IS NOT OTHERWISE REPRESENTED IS BOUND BY AN ORDER TO THE EXTENT HIS INTEREST IS ADEQUATELY REPRESENTED BY ANOTHER PARTY HAVING A SUBSTANTIALLY IDENTICAL INTEREST IN THE PROCEEDING.

3. NOTICE IS REQUIRED AS FOLLOWS:

(a) NOTICE AS PRESCRIBED BY SECTION 14-1401 SHALL BE GIVEN TO EVERY INTERESTED PERSON OR TO ONE WHO CAN BIND AN INTERESTED PERSON AS DESCRIBED IN PARAGRAPH 2, SUBDIVISION (a) OR (b) OF THIS SECTION. NOTICE MAY BE GIVEN BOTH TO A PERSON AND TO ANOTHER WHO MAY BIND HIM.

(b) NOTICE IS GIVEN TO UNBORN OR UNASCERTAINED PERSONS WHO ARE NOT REPRESENTED UNDER PARAGRAPH 2, SUBDIVISION (a) OR (b) OF THIS SECTION, BY GIVING NOTICE TO ALL KNOWN PERSONS WHOSE INTERESTS IN THE PROCEEDINGS ARE SUBSTANTIALLY IDENTICAL TO THOSE OF THE UNBORN OR UNASCERTAINED PERSONS.

4. AT ANY POINT IN A PROCEEDING, A COURT MAY APPOINT A GUARDIAN AD LITEM TO REPRESENT THE INTEREST OF A MINOR, AN INCAPACITATED, UNBORN OR UNASCERTAINED PERSON, OR A PERSON WHOSE IDENTITY OR ADDRESS IS UNKNOWN, IF THE COURT DETERMINES THAT REPRESENTATION OF THE INTEREST OTHERWISE WOULD BE INADEQUATE. IF NOT PRECLUDED BY CONFLICT OF INTERESTS, A GUARDIAN AD LITEM MAY BE APPOINTED TO REPRESENT SEVERAL PERSONS OR INTERESTS. THE COURT SHALL SET OUT ITS REASONS FOR APPOINTING A GUARDIAN AD LITEM AS A PART OF THE RECORD OF THE PROCEEDING.

CHAPTER 2
INTESTATE SUCCESSION AND WILLS
ARTICLE 1. INTESTATE SUCCESSION

14-2101. **Intestate estate**

ANY PART OF THE ESTATE OF A DECEDENT NOT EFFECTIVELY DISPOSED OF BY HIS WILL PASSES TO HIS HEIRS AS PRESCRIBED IN THE FOLLOWING SECTIONS OF THIS TITLE.

14-2102. **Intestate share of surviving spouse**

THE FOLLOWING PART OF THE INTESTATE ESTATE, AS TO BOTH SEPARATE PROPERTY AND THE ONE-HALF OF COMMUNITY PROPERTY WHICH BELONGS TO DECEDENT, PASSES TO THE SURVIVING SPOUSE:

1. IF THERE IS NO SURVIVING ISSUE, OR IF THERE ARE SURVIVING ISSUE ALL OF WHOM ARE ISSUE OF THE SURVIVING SPOUSE ALSO, THE ENTIRE INTESTATE ESTATE.

2. IF THERE ARE SURVIVING ISSUE ONE OR MORE OF WHOM ARE NOT ISSUE OF THE SURVIVING SPOUSE, ONE-HALF OF THE INTESTATE SEPARATE PROPERTY AND NO INTEREST IN THE ONE-HALF OF THE COMMUNITY PROPERTY WHICH BELONGED TO THE DECEDENT.

14-2103. **Share of heirs other than surviving spouse**

A. THE PART OF THE INTESTATE ESTATE NOT PASSING TO THE SURVIVING SPOUSE UNDER SECTION 14-2102, OR THE ENTIRE INTESTATE ESTATE IF THERE IS NO SURVIVING SPOUSE, PASSES AS FOLLOWS:

1. TO THE ISSUE OF THE DECEDENT.

2. IF THERE IS NO SURVIVING ISSUE, TO THE DECEDENT'S PARENT OR PARENTS EQUALLY.

3. IF THERE IS NO SURVIVING ISSUE OR PARENT, TO THE ISSUE OF THE DECEDENT'S PARENTS.

4. IF THERE IS NO SURVIVING ISSUE, PARENT OR ISSUE OF A PARENT, BUT THE DECEDENT IS SURVIVED BY ONE OR MORE GRANDPARENTS OR ISSUE OF GRANDPARENTS, HALF OF THE ESTATE PASSES TO THE PATERNAL GRANDPARENT OR GRANDPARENTS EQUALLY, OR TO THEIR ISSUE IF BOTH GRANDPARENTS ARE DECEASED; THE OTHER HALF PASSES TO MATERNAL GRANDPARENTS OR THEIR ISSUE IN THE SAME MANNER. IF THERE IS NO SURVIVING GRANDPARENT OR ISSUE ON EITHER THE PATERNAL OR MATERNAL SIDE, THE ENTIRE ESTATE PASSES TO THE RELATIVES ON THE OTHER SIDE IN THE SAME MANNER AS THE HALF.

B. WHENEVER THE HEIRS ARE ISSUE OF THE DECEDENT, OR OF HIS PARENTS, OR OF HIS GRANDPARENTS, THE ISSUE TAKE

EQUALLY IF THEY ARE ALL OF THE SAME DEGREE OF KINSHIP TO THE DECEDENT; BUT IF THEY ARE OF UNEQUAL DEGREE, THEN THOSE OF MORE REMOTE DEGREE TAKE BY REPRESENTATION AS PROVIDED IN SECTION 14-2106.

14-2104. **Requirement that heir survive decedent for one hundred twenty hours**

FOR PURPOSES OF INTESTATE SUCCESSION, THE ALLOWANCE IN LIEU OF HOMESTEAD AND EXEMPT PROPERTY, ANY PERSON WHO FAILS TO SURVIVE THE DECEDENT BY ONE HUNDRED TWENTY HOURS IS DEEMED TO HAVE PREDECEASED THE DECEDENT AND THE DECEDENT'S HEIRS ARE DETERMINED ACCORDINGLY. IF THE TIME OF DEATH OF THE DECEDENT OR OF THE PERSON WHO WOULD OTHERWISE BE AN HEIR, OR THE TIMES OF DEATH OF BOTH, CANNOT BE DETERMINED, AND IT CANNOT BE ESTABLISHED THAT THE PERSON WHO WOULD OTHERWISE BE AN HEIR HAS SURVIVED THE DECEDENT BY ONE HUNDRED TWENTY HOURS, IT IS DEEMED THAT THE PERSON FAILED TO SURVIVE FOR THE REQUIRED PERIOD. THIS SECTION IS NOT TO BE APPLIED WHERE ITS APPLICATION WOULD RESULT IN A TAKING OF INTESTATE ESTATE BY THE STATE UNDER SECTION 14-2105.

14-2105. **No taker**

IF THERE IS NO TAKER UNDER THE PROVISIONS OF THIS CHAPTER, THE INTESTATE ESTATE PASSES TO THE STATE.

14-2106. **Representation**

IF REPRESENTATION IS CALLED FOR BY THIS TITLE, THE ESTATE IS DIVIDED INTO AS MANY SHARES AS THERE ARE SURVIVING HEIRS IN THE NEAREST DEGREE OF KINSHIP AND DECEASED PERSONS IN THE SAME DEGREE WHO LEFT ISSUE WHO SURVIVE THE DECEDENT, EACH SURVIVING HEIR IN THE NEAREST DEGREE RECEIVING ONE SHARE AND THE SHARE OF EACH DECEASED PERSON IN THE SAME DEGREE BEING DIVIDED AMONG HIS ISSUE IN THE SAME MANNER.

14-2107. **Kindred of half blood**

SECTION 14-2103 INCLUDES ISSUE OF ONE PARENT AND ISSUE OF ONE GRANDPARENT. RELATIVES OF THE HALF BLOOD

INHERIT THE SAME SHARE THEY WOULD INHERIT IF THEY WERE OF THE WHOLE BLOOD.

14-2108. **Afterborn heirs**

RELATIVES OF THE DECEDENT CONCEIVED BEFORE HIS DEATH BUT BORN THEREAFTER INHERIT AS IF THEY HAD BEEN BORN IN THE LIFETIME OF THE DECEDENT.

14-2109. **Meaning of child and related terms**

IF, FOR PURPOSES OF INTESTATE SUCCESSION, A RELATIONSHIP OF PARENT AND CHILD MUST BE ESTABLISHED TO DETERMINE SUCCESSION BY, THROUGH OR FROM A PERSON:

1. AN ADOPTED PERSON IS THE CHILD OF AN ADOPTING PARENT AND NOT OF THE NATURAL PARENTS EXCEPT THAT ADOPTION OF A CHILD BY THE SPOUSE OF A NATURAL PARENT HAS NO EFFECT ON THE RELATIONSHIP BETWEEN THE CHILD AND THAT NATURAL PARENT.

2. IN CASES NOT COVERED BY PARAGRAPH 1, A PERSON BORN OUT OF WEDLOCK IS A CHILD OF THE MOTHER. THAT PERSON IS ALSO A CHILD OF THE FATHER, IF EITHER:

(a) THE NATURAL PARENTS PARTICIPATED IN A MARRIAGE CEREMONY BEFORE OR AFTER THE BIRTH OF THE CHILD, EVEN THOUGH THE ATTEMPTED MARRIAGE IS VOID.

(b) THE PATERNITY IS ESTABLISHED BY AN ADJUDICATION BEFORE THE DEATH OF THE FATHER OR IS ESTABLISHED THEREAFTER BY CLEAR AND CONVINCING PROOF, EXCEPT THAT THE PATERNITY ESTABLISHED UNDER THIS SUBDIVISION IS INEFFECTIVE TO QUALIFY THE FATHER OR HIS KINDRED TO INHERIT FROM OR THROUGH THE CHILD UNLESS THE FATHER HAS OPENLY TREATED THE CHILD AS HIS, AND HAS NOT REFUSED TO SUPPORT THE CHILD.

14-2110. **Advancements**

IF A PERSON DIES INTESTATE AS TO ALL HIS ESTATE, PROPERTY WHICH HE GAVE IN HIS LIFETIME TO AN HEIR IS TREATED AS AN ADVANCEMENT AGAINST THE LATTER'S SHARE OF THE ESTATE ONLY IF DECLARED IN A CONTEMPORANEOUS WRITING BY THE

DECEDENT OR ACKNOWLEDGED IN WRITING BY THE HEIR TO BE AN ADVANCEMENT. FOR THIS PURPOSE THE PROPERTY ADVANCED IS VALUED AS OF THE TIME THE HEIR CAME INTO POSSESSION OR ENJOYMENT OF THE PROPERTY OR AS OF THE TIME OF DEATH OF THE DECEDENT, WHICHEVER FIRST OCCURS. IF THE RECIPIENT OF THE PROPERTY FAILS TO SURVIVE THE DECEDENT, THE PROPERTY IS NOT TAKEN INTO ACCOUNT IN COMPUTING THE INTESTATE SHARE TO BE RECEIVED BY THE RECIPIENT'S ISSUE, UNLESS THE DECLARATION OR ACKNOWLEDGMENT PROVIDES OTHERWISE.

14-2111. **Debts to decedent**

A DEBT OWED TO THE DECEDENT IS NOT CHARGED AGAINST THE INTESTATE SHARE OF ANY PERSON EXCEPT THE DEBTOR. IF THE DEBTOR FAILS TO SURVIVE THE DECEDENT, THE DEBT IS NOT TAKEN INTO ACCOUNT IN COMPUTING THE INTESTATE SHARE OF THE DEBTOR'S ISSUE.

14-2112. **Alienage**

NO PERSON IS DISQUALIFIED TO TAKE AS AN HEIR BECAUSE HE OR A PERSON THROUGH WHOM HE CLAIMS IS OR HAS BEEN AN ALIEN.

ARTICLE 2. WAIVER OF RIGHTS OF SPOUSE

14-2204. **Waiver of rights of spouse; effect of property settlement**

THE RIGHTS OF A SURVIVING SPOUSE UNDER THIS TITLE MAY BE WAIVED, WHOLLY OR PARTIALLY, BEFORE OR AFTER MARRIAGE, BY A WRITTEN CONTRACT, AGREEMENT OR WAIVER SIGNED BY THE PARTY AFTER A FAIR DISCLOSURE. UNLESS THE CONTRACT PROVIDES TO THE CONTRARY, A WAIVER OF ALL RIGHTS IN THE PROPERTY OR ESTATE OF A PRESENT OR PROSPECTIVE SPOUSE, OR A COMPLETE PROPERTY SETTLEMENT ENTERED INTO AFTER OR IN ANTICIPATION OF SEPARATION OR DIVORCE IS A WAIVER OF ALL RIGHTS TO AN ALLOWANCE IN LIEU OF HOMESTEAD, EXEMPT PROPERTY AND FAMILY ALLOWANCE BY EACH SPOUSE IN THE PROPERTY OF THE OTHER AND A RENUNCIATION BY EACH OF ALL BENEFITS WHICH WOULD OTHERWISE PASS TO HIM FROM THE OTHER BY INTESTATE SUCCESSION OR BY VIRTUE OF THE PROVISIONS OF ANY WILL

EXECUTED BEFORE THE WAIVER OR PROPERTY SETTLEMENT. A WAIVER OF ALL RIGHTS DOES NOT AFFECT THE RIGHTS OF EACH SPOUSE TO HIS SHARE OF COMMUNITY PROPERTY, IN THE ABSENCE OF CONTRARY PROVISION; BUT A COMPLETE SETTLEMENT TERMINATES RIGHTS TO COMMUNITY PROPERTY IN ASSETS THEN OWNED OR THEREAFTER ACQUIRED, UNLESS THE SETTLEMENT AGREEMENT PROVIDES TO THE CONTRARY.

ARTICLE 3. SPOUSE AND CHILDREN UNPROVIDED FOR IN WILLS

14-2301. **Omitted spouse**

A. IF A TESTATOR FAILS TO PROVIDE BY WILL FOR HIS SURVIVING SPOUSE WHO MARRIED THE TESTATOR AFTER THE EXECUTION OF THE WILL, THE OMITTED SPOUSE SHALL RECEIVE THE SAME SHARE OF THE ESTATE HE WOULD HAVE RECEIVED IF THE DECEDENT LEFT NO WILL UNLESS IT APPEARS FROM THE WILL THAT THE OMISSION WAS INTENTIONAL OR THE TESTATOR PROVIDED FOR THE SPOUSE BY TRANSFER OUTSIDE THE WILL AND THE INTENT THAT THE TRANSFER BE IN LIEU OF A TESTAMENTARY PROVISION IS SHOWN BY STATEMENTS OF THE TESTATOR OR FROM THE AMOUNT OF THE TRANSFER OR OTHER EVIDENCE.

B. IN SATISFYING A SHARE PROVIDED BY THIS SECTION, THE DEVISES MADE BY THE WILL ABATE AS PROVIDED IN SECTION 14-3902.

14-2302. **Pretermitted children**

A. IF A TESTATOR FAILS TO PROVIDE IN HIS WILL FOR ANY OF HIS CHILDREN BORN OR ADOPTED AFTER THE EXECUTION OF HIS WILL, THE OMITTED CHILD RECEIVES A SHARE IN THE ESTATE EQUAL IN VALUE TO THAT WHICH HE WOULD HAVE RECEIVED IF THE TESTATOR HAD DIED INTESTATE UNLESS:

1. IT APPEARS FROM THE WILL THAT THE OMISSION WAS INTENTIONAL.

2. WHEN THE WILL WAS EXECUTED THE TESTATOR HAD ONE OR MORE CHILDREN AND DEVISED SUBSTANTIALLY ALL HIS ESTATE TO THE OTHER PARENT OF THE OMITTED CHILD.

3. THE TESTATOR PROVIDED FOR THE CHILD BY TRANSFER OUTSIDE THE WILL AND THE INTENT THAT THE TRANSFER BE IN LIEU OF A TESTAMENTARY PROVISION IS SHOWN BY STATEMENTS OF THE TESTATOR OR FROM THE AMOUNT OF THE TRANSFER OR OTHER EVIDENCE.

B. IF AT THE TIME OF EXECUTION OF THE WILL THE TESTATOR FAILS TO PROVIDE IN HIS WILL FOR A LIVING CHILD SOLELY BECAUSE HE BELIEVES THE CHILD TO BE DEAD, THE CHILD RECEIVES A SHARE IN THE ESTATE EQUAL IN VALUE TO THAT WHICH HE WOULD HAVE RECEIVED IF THE TESTATOR HAD DIED INTESTATE.

C. IN SATISFYING A SHARE PROVIDED BY THIS SECTION, THE DEVISES MADE BY THE WILL ABATE AS PROVIDED IN SECTION 14-3902.

ARTICLE 4. EXEMPT PROPERTY AND ALLOWANCES

14-2401. **Allowance in lieu of homestead**

A SURVIVING SPOUSE OF A DECEDENT WHO WAS DOMICILED IN THIS STATE IS ENTITLED TO AN ALLOWANCE OF SIX THOUSAND DOLLARS. IF THERE IS NO SURVIVING SPOUSE, EACH DEPENDENT CHILD OF THE DECEDENT IS ENTITLED TO AN ALLOWANCE OF SIX THOUSAND DOLLARS DIVIDED BY THE NUMBER OF DEPENDENT CHILDREN OF THE DECEDENT. THE ALLOWANCE PROVIDED IN THIS SECTION IS IN LIEU OF ANY HOMESTEAD EXEMPTION THE DECEDENT MAY HAVE HAD DURING LIFETIME UNDER SECTION 33-1101. THE ALLOWANCE PROVIDED IN THIS SECTION IS EXEMPT FROM AND HAS PRIORITY OVER ALL CLAIMS AGAINST THE ESTATE EXCEPT EXPENSES OF ADMINISTRATION. THE ALLOWANCE IS IN ADDITION TO ANY SHARE PASSING TO THE SURVIVING SPOUSE OR CHILD EITHER BY INTESTATE SUCCESSION, OR BY THE WILL OF THE DECEDENT UNLESS THE WILL PROVIDES OTHERWISE.

14-2402. **Exempt property**

IN ADDITION TO THE ALLOWANCE IN LIEU OF HOMESTEAD THE SURVIVING SPOUSE OF A DECEDENT WHO WAS DOMICILED IN THIS STATE IS ENTITLED FROM THE ESTATE TO VALUE NOT EXCEEDING THREE THOUSAND FIVE HUNDRED DOLLARS IN EXCESS OF ANY SECURITY INTERESTS THEREIN IN HOUSEHOLD

FURNITURE, AUTOMOBILES, FURNISHINGS, APPLIANCES AND PERSONAL EFFECTS. IF THERE IS NO SURVIVING SPOUSE, DEPENDENT CHILDREN OF THE DECEDENT ARE ENTITLED JOINTLY TO THE SAME VALUE. IF ENCUMBERED CHATTELS ARE SELECTED AND IF THE VALUE IN EXCESS OF SECURITY INTERESTS, PLUS THAT OF OTHER EXEMPT PROPERTY, IS LESS THAN THREE THOUSAND FIVE HUNDRED DOLLARS, OR IF THERE IS NOT THREE THOUSAND FIVE HUNDRED DOLLARS WORTH OF EXEMPT PROPERTY IN THE ESTATE, THE SPOUSE OR CHILDREN ARE ENTITLED TO OTHER ASSETS OF THE ESTATE, IF ANY, TO THE EXTENT NECESSARY TO MAKE UP THE THREE THOUSAND FIVE HUNDRED DOLLAR VALUE. RIGHTS TO EXEMPT PROPERTY AND ASSETS NEEDED TO MAKE UP A DEFICIENCY OF EXEMPT PROPERTY HAVE PRIORITY OVER ALL CLAIMS AGAINST THE ESTATE, EXCEPT THE EXPENSES OF ADMINISTRATION, BUT THE RIGHT TO ANY ASSETS TO MAKE UP A DEFICIENCY OF EXEMPT PROPERTY SHALL ABATE AS NECESSARY TO PERMIT PRIOR PAYMENT OF ALLOWANCE IN LIEU OF HOMESTEAD AND FAMILY ALLOWANCE. THESE RIGHTS ARE IN ADDITION TO ANY BENEFIT OR SHARE PASSING TO THE SURVIVING SPOUSE OR CHILDREN BY INTESTATE SUCCESSION, OR BY THE WILL OF THE DECEDENT UNLESS THE WILL PROVIDES OTHERWISE.

14-2403. **Family allowance**

A. IN ADDITION TO THE RIGHT TO THE ALLOWANCE IN LIEU OF HOMESTEAD AND EXEMPT PROPERTY, IF THE DECEDENT WAS DOMICILED IN THIS STATE, THE SURVIVING SPOUSE AND DEPENDENT CHILDREN ARE ENTITLED TO A REASONABLE ALLOWANCE IN MONEY OUT OF THE ESTATE FOR THEIR MAINTENANCE DURING THE PERIOD OF ADMINISTRATION, WHICH ALLOWANCE MAY NOT CONTINUE FOR LONGER THAN ONE YEAR IF THE ESTATE IS INADEQUATE TO DISCHARGE ALLOWED CLAIMS. THE ALLOWANCE MAY BE PAID AS A LUMP SUM OR IN PERIODIC INSTALLMENTS. IT IS PAYABLE TO THE SURVIVING SPOUSE, FOR THE USE OF THE SURVIVING SPOUSE AND DEPENDENT CHILDREN. IF THE SPOUSE IS NOT LIVING THE ALLOWANCE IS PAYABLE TO THE CHILDREN OR PERSONS HAVING THEIR CARE AND CUSTODY. IN CASE ANY DEPENDENT CHILD IS NOT LIVING WITH THE SURVIVING SPOUSE, THE ALLOWANCE MAY BE MADE PARTIALLY TO THE CHILD OR HIS GUARDIAN OR OTHER PERSON HAVING HIS CARE AND CUSTODY, AND PARTIALLY TO THE SPOUSE, AS THEIR NEEDS MAY APPEAR. THE FAMILY ALLOWANCE IS EXEMPT FROM AND

HAS PRIORITY OVER ALL CLAIMS EXCEPT EXPENSES OF ADMINISTRATION, BUT NOT OVER THE ALLOWANCE IN LIEU OF HOMESTEAD.

B. THE FAMILY ALLOWANCE IS NOT CHARGEABLE AGAINST ANY BENEFIT OR SHARE PASSING TO THE SURVIVING SPOUSE OR CHILDREN EITHER BY INTESTATE SUCCESSION, OR BY THE WILL OF THE DECEDENT UNLESS THE WILL PROVIDES OTHERWISE. THE DEATH OF ANY PERSON ENTITLED TO FAMILY ALLOWANCE TERMINATES HIS RIGHT TO ALLOWANCES NOT PAID.

14-2404. **Source, determination and documentation**

IF THE ESTATE IS OTHERWISE SUFFICIENT, PROPERTY SPECIFICALLY DEVISED SHALL NOT BE USED TO SATISFY RIGHTS TO THE ALLOWANCE IN LIEU OF HOMESTEAD AND EXEMPT PROPERTY. SUBJECT TO THIS RESTRICTION, THE SURVIVING SPOUSE, THE GUARDIANS OF THE MINOR CHILDREN OR CHILDREN WHO ARE ADULTS MAY SELECT PROPERTY OF THE ESTATE AS THE ALLOWANCE IN LIEU OF HOMESTEAD AND EXEMPT PROPERTY. THE PERSONAL REPRESENTATIVE MAY MAKE THESE SELECTIONS IF THE SURVIVING SPOUSE, THE CHILDREN OR THE GUARDIANS OF THE MINOR CHILDREN ARE UNABLE OR FAIL TO DO SO WITHIN A REASONABLE TIME OR IF THERE ARE NO GUARDIANS OF THE MINOR CHILDREN. THE ALLOWANCE IN LIEU OF HOMESTEAD, THE EXEMPT PROPERTY, AND THE FAMILY ALLOWANCE MAY BE TAKEN OUT OF SEPARATE PROPERTY OR THE DECEDENT'S SHARE OF COMMUNITY PROPERTY. THE PERSONAL REPRESENTATIVE MAY EXECUTE AN INSTRUMENT OR DEED OF DISTRIBUTION TO ESTABLISH THE OWNERSHIP OF PROPERTY TAKEN AS THE ALLOWANCE IN LIEU OF HOMESTEAD OR EXEMPT PROPERTY. HE MAY DETERMINE THE FAMILY ALLOWANCE IN A LUMP SUM NOT EXCEEDING SIX THOUSAND DOLLARS OR PERIODIC INSTALLMENTS NOT EXCEEDING FIVE HUNDRED DOLLARS PER MONTH FOR ONE YEAR, AND MAY DISBURSE FUNDS OF THE ESTATE IN PAYMENT OF THE FAMILY ALLOWANCE AND ANY PART OF THE ALLOWANCE IN LIEU OF HOMESTEAD PAYABLE IN CASH. THE PERSONAL REPRESENTATIVE OR ANY INTERESTED PERSON AGGRIEVED BY ANY SELECTION, DETERMINATION, PAYMENT, PROPOSED PAYMENT OR FAILURE TO ACT UNDER THIS SECTION MAY PETITION THE COURT FOR APPROPRIATE RELIEF, WHICH RELIEF MAY PROVIDE A FAMILY ALLOWANCE LARGER OR SMALLER THAN THAT WHICH THE PERSONAL REPRESENTATIVE DETERMINED OR COULD HAVE DETERMINED.

ARTICLE 5. WILLS

14-2501. **Who may make a will**

ANY PERSON EIGHTEEN OR MORE YEARS OF AGE WHO IS OF SOUND MIND MAY MAKE A WILL.

14-2502. **Execution**

EXCEPT AS PROVIDED FOR HOLOGRAPHIC WILLS, WRITINGS WITHIN SECTION 14-2513 AND WILLS WITHIN SECTION 14-2506, EVERY WILL SHALL BE IN WRITING SIGNED BY THE TESTATOR OR IN THE TESTATOR'S NAME BY SOME OTHER PERSON IN THE TESTATOR'S PRESENCE AND BY HIS DIRECTION, AND SHALL BE SIGNED BY AT LEAST TWO PERSONS EACH OF WHOM WITNESSED EITHER THE SIGNING OR THE TESTATOR'S ACKNOWLEDGMENT OF THE SIGNATURE OR OF THE WILL.

14-2503. **Holographic will**

A WILL WHICH DOES NOT COMPLY WITH SECTION 14-2502 IS VALID AS A HOLOGRAPHIC WILL, WHETHER OR NOT WITNESSED, IF THE SIGNATURE AND THE MATERIAL PROVISIONS ARE IN THE HANDWRITING OF THE TESTATOR.

14-2504. **Self-proved will**

AN ATTESTED WILL MAY AT THE TIME OF ITS EXECUTION OR AT ANY SUBSEQUENT DATE BE MADE SELF-PROVED, BY THE ACKNOWLEDGMENT THEREOF BY THE TESTATOR AND THE AFFIDAVITS OF THE WITNESSES, EACH MADE BEFORE AN OFFICER AUTHORIZED TO ADMINISTER OATHS UNDER THE LAWS OF THE STATE AND EVIDENCED BY THE OFFICER'S CERTIFICATE, UNDER OFFICIAL SEAL, ATTACHED OR ANNEXED TO THE WILL IN FORM AND CONTENT SUBSTANTIALLY AS FOLLOWS:

THE STATE OF _____

COUNTY OF _____

WE, ____, _____, AND _____, THE TESTATOR AND THE WITNESSES, RESPECTIVELY, WHOSE NAMES ARE SIGNED TO THE ATTACHED OR FOREGOING INSTRUMENT, BEING FIRST DULY SWORN, DO HEREBY DECLARE TO THE UNDERSIGNED AUTHORITY THAT THE TESTATOR SIGNED AND EXECUTED THE INSTRUMENT AS HIS LAST WILL AND THAT HE HAD SIGNED WILLINGLY

OR DIRECTED ANOTHER TO SIGN FOR HIM, AND THAT HE EXECUTED IT AS HIS FREE AND VOLUNTARY ACT FOR THE PURPOSES THEREIN EXPRESSED, AND THAT EACH OF THE WITNESSES, IN THE PRESENCE OF THE TESTATOR, SIGNED THE WILL AS WITNESS AND THAT TO THE BEST OF HIS KNOWLEDGE THE TESTATOR WAS AT THAT TIME EIGHTEEN OR MORE YEARS OF AGE, OF SOUND MIND AND UNDER NO CONSTRAINT OR UNDUE INFLUENCE.

_____

TESTATOR

_____

WITNESS

_____

WITNESS

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED BEFORE ME BY _____, THE TESTATOR, AND SUBSCRIBED AND SWORN TO BEFORE ME BY _____ AND _____, WITNESSES, THIS _____ DAY OF _____, _____.

(SEAL) (SIGNED) _____

_____

(OFFICIAL CAPACITY OF OFFICER)

14-2505. **Who may witness**

A. ANY PERSON GENERALLY COMPETENT TO BE A WITNESS MAY ACT AS A WITNESS TO A WILL.

B. A WILL OR ANY PROVISION THEREOF IS NOT INVALID BECAUSE THE WILL IS SIGNED BY AN INTERESTED WITNESS.

14-2506. **Choice of law as to execution**

A WRITTEN WILL IS VALID IF EXECUTED IN COMPLIANCE WITH SECTION 14-2502 OR SECTION 14-2503 OR IF ITS EXECUTION COMPLIES WITH THE LAW AT THE TIME OF EXECUTION OF THE PLACE WHERE THE WILL IS EXECUTED, OR OF THE LAW OF THE PLACE WHERE AT THE TIME OF EXECUTION OR AT THE TIME OF DEATH THE TESTATOR IS DOMICILED, HAS A PLACE OF ABODE OR IS A NATIONAL.

14-2507. **Revocation by writing or by act**

A WILL OR ANY PART THEREOF IS REVOKED BY EITHER:

1. A SUBSEQUENT WILL WHICH REVOKES THE PRIOR WILL OR PART EXPRESSLY OR BY INCONSISTENCY.

2. BEING BURNED, TORN, CANCELED, OBLITERATED OR DESTROYED, WITH THE INTENT AND FOR THE PURPOSE OF REVOKING IT BY THE TESTATOR OR BY ANOTHER PERSON IN HIS PRESENCE AND BY HIS DIRECTION.

14-2508. **Revocation by divorce or annulment; no revocation by other changes of circumstances**

IF AFTER EXECUTING A WILL THE TESTATOR IS DIVORCED OR HIS MARRIAGE ANNULLED, THE DIVORCE OR ANNULMENT REVOKES ANY DISPOSITION OR APPOINTMENT OF PROPERTY MADE BY THE WILL TO THE FORMER SPOUSE OR TO ANY ISSUE OF THE FORMER SPOUSE WHO ARE NOT ALSO ISSUE OF THE TESTATOR, ANY PROVISION CONFERRING A GENERAL OR SPECIAL POWER OF APPOINTMENT ON THE FORMER SPOUSE OR SUCH ISSUE, AND ANY NOMINATION OF THE FORMER SPOUSE OR SUCH ISSUE AS EXECUTOR, TRUSTEE, CONSERVATOR OR GUARDIAN, UNLESS THE WILL EXPRESSLY PROVIDES OTHERWISE. PROPERTY PREVENTED FROM PASSING TO A PERSON BECAUSE OF REVOCATION UNDER THIS SECTION PASSES AS IF THE PERSON FAILED TO SURVIVE THE DECEDENT; AND OTHER PROVISIONS CONFERRING SOME POWER OR OFFICE ON THE FORMER SPOUSE, OR ISSUE OF THE FORMER SPOUSE WHO ARE NOT ALSO ISSUE OF THE TESTATOR, ARE INTERPRETED AS IF THE SPOUSE OR ISSUE FAILED TO SURVIVE THE DECEDENT. IF PROVISIONS ARE REVOKED SOLELY BY THIS SECTION, THEY ARE REVIVED BY TESTATOR'S REMARRIAGE TO THE FORMER SPOUSE. FOR PURPOSES OF THIS SECTION, DIVORCE OR ANNULMENT MEANS ANY DIVORCE OR ANNULMENT WHICH WOULD EXCLUDE THE SPOUSE AS A SURVIVING SPOUSE WITHIN THE MEANING OF SECTION 14-2802, SUBSECTION B. A DECREE OF SEPARATION WHICH DOES NOT TERMINATE THE STATUS OF HUSBAND AND WIFE IS NOT A DIVORCE FOR PURPOSES OF THIS SECTION. NO CHANGE OF CIRCUMSTANCES OTHER THAN AS DESCRIBED IN THIS SECTION REVOKES A WILL OR ANY PART THEREOF.

14-2509. **Revival of revoked will**

A. IF A SECOND WILL WHICH, HAD IT REMAINED EFFECTIVE AT DEATH, WOULD HAVE REVOKED THE FIRST WILL IN WHOLE OR

IN PART, IS THEREAFTER REVOKED BY ACTS UNDER SECTION 14-2507, THE FIRST WILL IS REVOKED IN WHOLE OR IN PART UNLESS IT IS EVIDENT FROM THE CIRCUMSTANCES OF THE REVOCATION OF THE SECOND WILL OR FROM TESTATOR'S CONTEMPORARY OR SUBSEQUENT DECLARATIONS THAT HE INTENDED THE FIRST WILL TO TAKE EFFECT AS EXECUTED.

B. IF A SECOND WILL WHICH, HAD IT REMAINED EFFECTIVE AT DEATH, WOULD HAVE REVOKED THE FIRST WILL IN WHOLE OR IN PART, IS THEREAFTER REVOKED BY A THIRD WILL, THE FIRST WILL IS REVOKED IN WHOLE OR IN PART, EXCEPT TO THE EXTENT IT APPEARS FROM THE TERMS OF THE THIRD WILL THAT THE TESTATOR INTENDED THE FIRST WILL TO TAKE EFFECT.

14-2510. **Incorporation by reference**

ANY WRITING IN EXISTENCE WHEN A WILL IS EXECUTED MAY BE INCORPORATED BY REFERENCE IF THE LANGUAGE OF THE WILL MANIFESTS THIS INTENT AND DESCRIBES THE WRITING SUFFICIENTLY TO PERMIT ITS IDENTIFICATION.

14-2511. **Testamentary additions to trusts**

A DEVISE, THE VALIDITY OF WHICH IS DETERMINABLE BY THE LAW OF THIS STATE, MAY BE MADE BY A WILL TO THE TRUSTEE OF A TRUST, REGARDLESS OF THE EXISTENCE, SIZE OR CHARACTER OF THE CORPUS OF THE TRUST AND INCLUDING A FUNDED OR UNFUNDED LIFE INSURANCE TRUST, ALTHOUGH THE TRUSTOR HAS RESERVED ANY OR ALL RIGHTS OF OWNERSHIP OF THE INSURANCE CONTRACTS, ESTABLISHED OR TO BE ESTABLISHED BY THE TESTATOR, THE TESTATOR AND SOME OTHER PERSON OR BY SOME OTHER PERSON IF THE TRUST IS IDENTIFIED IN THE TESTATOR'S WILL AND ITS TERMS ARE SET FORTH IN A WRITTEN INSTRUMENT, OTHER THAN A WILL, EXECUTED BEFORE OR CONCURRENTLY WITH THE EXECUTION OF THE TESTATOR'S WILL OR IN THE VALID LAST WILL OF A PERSON WHO HAS PREDECEASED THE TESTATOR. THE DEVISE IS NOT INVALID BECAUSE THE TRUST IS AMENDABLE OR REVOCABLE, OR BECAUSE THE TRUST WAS AMENDED AFTER THE EXECUTION OF THE WILL OR AFTER THE DEATH OF THE TESTATOR. UNLESS THE TESTATOR'S WILL PROVIDES OTHERWISE, THE PROPERTY SO DEVISED:

1. IS NOT DEEMED TO BE HELD UNDER A TESTAMENTARY TRUST OF THE TESTATOR BUT BECOMES A PART OF THE TRUST TO WHICH IT IS GIVEN.

2. SHALL BE ADMINISTERED AND DISPOSED OF IN ACCORDANCE WITH THE PROVISIONS OF THE INSTRUMENT OR WILL SETTING FORTH THE TERMS OF THE TRUST, INCLUDING ANY AMENDMENTS THERETO MADE BEFORE THE DEATH OF THE TESTATOR, REGARDLESS OF WHETHER MADE BEFORE OR AFTER THE EXECUTION OF THE TESTATOR'S WILL, AND, IF THE TESTATOR'S WILL SO PROVIDES, INCLUDING ANY AMENDMENTS TO THE TRUST MADE AFTER THE DEATH OF THE TESTATOR. A REVOCATION OR TERMINATION OF THE TRUST BEFORE THE DEATH OF THE TESTATOR CAUSES THE DEVISE TO LAPSE.

14-2512. **Events of independent significance**

A WILL MAY DISPOSE OF PROPERTY BY REFERENCE TO ACTS AND EVENTS WHICH HAVE SIGNIFICANCE APART FROM THEIR EFFECT UPON THE DISPOSITIONS MADE BY THE WILL, WHETHER THEY OCCUR BEFORE OR AFTER THE EXECUTION OF THE WILL OR BEFORE OR AFTER THE TESTATOR'S DEATH. THE EXECUTION OR REVOCATION OF A WILL OF ANOTHER PERSON IS SUCH AN EVENT.

14-2513. **Separate writing identifying devise of tangible property**

WHETHER OR NOT THE PROVISIONS RELATING TO HOLOGRAPHIC WILLS APPLY, A WILL MAY REFER TO A WRITTEN STATEMENT OR LIST TO DISPOSE OF ITEMS OF TANGIBLE PERSONAL PROPERTY NOT OTHERWISE SPECIFICALLY DISPOSED OF BY THE WILL, OTHER THAN MONEY, EVIDENCES OF INDEBTEDNESS, DOCUMENTS OF TITLE, AND SECURITIES, AND PROPERTY USED IN TRADE OR BUSINESS. TO BE ADMISSIBLE UNDER THIS SECTION AS EVIDENCE OF THE INTENDED DISPOSITION, THE WRITING MUST EITHER BE IN THE HANDWRITING OF THE TESTATOR OR BE SIGNED BY HIM AND MUST DESCRIBE THE ITEMS AND THE DEVISEES WITH REASONABLE CERTAINTY. THE WRITING MAY BE REFERRED TO AS ONE TO BE IN EXISTENCE AT THE TIME OF THE TESTATOR'S DEATH; IT MAY BE PREPARED BEFORE OR AFTER THE EXECUTION OF THE WILL; IT MAY BE ALTERED BY THE TESTATOR AFTER ITS PREPARATION; AND IT MAY BE A WRITING WHICH HAS NO SIGNIFICANCE APART FROM ITS EFFECT UPON THE DISPOSITIONS MADE BY THE WILL.

ARTICLE 6. RULES OF CONSTRUCTION

14-2601. Requirement that devisee survive testator by one hundred twenty hours

A. A DEVISEE WHO DOES NOT SURVIVE THE TESTATOR BY ONE HUNDRED TWENTY HOURS IS TREATED AS IF HE PREDECEASED THE TESTATOR, UNLESS THE WILL OF DECEDENT CONTAINS SOME LANGUAGE DEALING EXPLICITLY WITH SIMULTANEOUS DEATHS OR DEATHS IN A COMMON DISASTER, OR REQUIRING THAT THE DEVISEE SURVIVE THE TESTATOR OR SURVIVE THE TESTATOR FOR A STATED PERIOD IN ORDER TO TAKE UNDER THE WILL.

B. IF THE TIME OF DEATH OF THE TESTATOR, THE DEVISEE OR BOTH CANNOT BE DETERMINED AND IT CANNOT BE ESTABLISHED THAT THE DEVISEE HAS SURVIVED THE TESTATOR BY ONE HUNDRED TWENTY HOURS, IT IS DEEMED THAT THE DEVISEE HAS FAILED TO SURVIVE FOR THE REQUIRED PERIOD.

14-2602. Choice of law as to meaning and effect of wills

THE MEANING AND LEGAL EFFECT OF A DISPOSITION IN A WILL SHALL BE DETERMINED BY THE LOCAL LAW OF A PARTICULAR STATE SELECTED BY THE TESTATOR IN HIS INSTRUMENT UNLESS THE APPLICATION OF THAT LAW IS CONTRARY TO THE PUBLIC POLICY OF THIS STATE OTHERWISE APPLICABLE TO THE DISPOSITION.

14-2603. Rules of construction and intention

THE INTENTION OF A TESTATOR AS EXPRESSED IN HIS WILL CONTROLS THE LEGAL EFFECT OF HIS DISPOSITIONS. THE RULES OF CONSTRUCTION EXPRESSED IN THE SUCCEEDING SECTIONS OF THIS ARTICLE APPLY UNLESS A CONTRARY INTENTION IS INDICATED BY THE WILL.

14-2604. Construction that will passes all property; after-acquired property

A WILL IS CONSTRUED TO PASS ALL PROPERTY WHICH THE TESTATOR OWNS AT HIS DEATH INCLUDING PROPERTY ACQUIRED AFTER THE EXECUTION OF THE WILL.

14-2605. **Anti-lapse; deceased devisee; class gifts**

IF A DEVISEE WHO IS A GRANDPARENT OR A LINEAL DESCENDANT OF A GRANDPARENT OF THE TESTATOR IS DEAD AT THE TIME OF EXECUTION OF THE WILL, FAILS TO SURVIVE THE TESTATOR, OR IS TREATED AS IF HE PREDECEASED THE TESTATOR, THE ISSUE OF THE DECEASED DEVISEE WHO SURVIVE THE TESTATOR BY ONE HUNDRED TWENTY HOURS TAKE IN PLACE OF THE DECEASED DEVISEE AND IF THEY ARE ALL OF THE SAME DEGREE OF KINSHIP TO THE DEVISEE THEY TAKE EQUALLY, BUT IF OF UNEQUAL DEGREE THEN THOSE OF MORE REMOTE DEGREE TAKE BY REPRESENTATION. ONE WHO WOULD HAVE BEEN A DEVISEE UNDER A CLASS GIFT IF HE HAD SURVIVED THE TESTATOR IS TREATED AS A DEVISEE FOR PURPOSES OF THIS SECTION WHETHER HIS DEATH OCCURRED BEFORE OR AFTER THE EXECUTION OF THE WILL.

14-2606. **Failure of testamentary provision**

A. EXCEPT AS PROVIDED IN SECTION 14-2605, IF A DEVISE OTHER THAN A RESIDUARY DEVISE FAILS FOR ANY REASON, IT BECOMES A PART OF THE RESIDUE.

B. EXCEPT AS PROVIDED IN SECTION 14-2605, IF THE RESIDUE IS DEVISED TO TWO OR MORE PERSONS AND THE SHARE OF ONE OF THE RESIDUARY DEVISEES FAILS FOR ANY REASON, HIS SHARE PASSES TO THE OTHER RESIDUARY DEVISEE, OR TO OTHER RESIDUARY DEVISEES IN PROPORTION TO THEIR INTERESTS IN THE RESIDUE.

14-2607. **Change in securities; accessions; nonademption**

A. IF THE TESTATOR INTENDED A SPECIFIC DEVISE OF CERTAIN SECURITIES RATHER THAN THE EQUIVALENT VALUE THEREOF, THE SPECIFIC DEVISEE IS ENTITLED ONLY TO:

1. AS MUCH OF THE DEVISED SECURITIES AS IS A PART OF THE ESTATE AT TIME OF THE TESTATOR'S DEATH.

2. ANY ADDITIONAL OR OTHER SECURITIES OF THE SAME ENTITY OWNED BY THE TESTATOR BY REASON OF ACTION INITIATED BY THE ENTITY EXCLUDING ANY ACQUIRED BY EXERCISE OF PURCHASE OPTIONS.

3. SECURITIES OF ANOTHER ENTITY OWNED BY THE TESTATOR AS A RESULT OF A MERGER, CONSOLIDATION, REORGANIZATION OR OTHER SIMILAR ACTION INITIATED BY THE ENTITY.

4. ANY ADDITIONAL SECURITIES OF THE ENTITY OWNED BY THE TESTATOR AS A RESULT OF A PLAN OF REINVESTMENT IF IT IS A REGULATED INVESTMENT COMPANY.

B. DISTRIBUTIONS PRIOR TO DEATH WITH RESPECT TO A SPECIFICALLY DEVISED SECURITY NOT PROVIDED FOR IN SUBSECTION A ARE NOT PART OF THE SPECIFIC DEVISE.

14-2608. **Nonademption of specific devises in certain cases; sale by conservator; unpaid proceeds of sale, condemnation or insurance**

A. IF SPECIFICALLY DEVISED PROPERTY IS SOLD BY A CONSERVATOR, OR IF A CONDEMNATION AWARD OR INSURANCE PROCEEDS ARE PAID TO A CONSERVATOR AS A RESULT OF CONDEMNATION, FIRE OR CASUALTY, THE SPECIFIC DEVISEE HAS THE RIGHT TO A GENERAL PECUNIARY DEVISE EQUAL TO THE NET SALE PRICE, THE CONDEMNATION AWARD OR THE INSURANCE PROCEEDS. THIS SUBSECTION DOES NOT APPLY IF SUBSEQUENT TO THE SALE, CONDEMNATION OR CASUALTY, IT IS ADJUDICATED THAT THE DISABILITY OF THE TESTATOR HAS CEASED AND THE TESTATOR SURVIVES THE ADJUDICATION BY ONE YEAR. THE RIGHT OF THE SPECIFIC DEVISEE UNDER THIS SUBSECTION IS REDUCED BY ANY RIGHT HE HAS UNDER SUBSECTION B.

B. A SPECIFIC DEVISEE HAS THE RIGHT TO THE REMAINING SPECIFICALLY DEVISED PROPERTY AND:

1. ANY BALANCE OF THE PURCHASE PRICE, TOGETHER WITH ANY SECURITY INTEREST, OWING FROM A PURCHASER TO THE TESTATOR AT DEATH BY REASON OF SALE OF THE PROPERTY.

2. ANY AMOUNT OF A CONDEMNATION AWARD FOR THE TAKING OF THE PROPERTY UNPAID AT DEATH.

3. ANY PROCEEDS UNPAID AT DEATH ON FIRE OR CASUALTY INSURANCE ON THE PROPERTY.

4. PROPERTY OWNED BY TESTATOR AT HIS DEATH AS A

RESULT OF FORECLOSURE, OR OBTAINED IN LIEU OF FORECLOSURE, OF THE SECURITY FOR A SPECIFICALLY DEVISED OBLIGATION.

14-2609. **Non-exoneration**

A SPECIFIC DEVISE PASSES SUBJECT TO ANY MORTGAGE EXISTING AT THE DATE OF DEATH, WITHOUT RIGHT OF EXONERATION, REGARDLESS OF A GENERAL DIRECTIVE IN THE WILL TO PAY DEBTS.

14-2610. **Exercise of power of appointment**

A GENERAL RESIDUARY CLAUSE IN A WILL, OR A WILL MAKING GENERAL DISPOSITION OF ALL OF THE TESTATOR'S PROPERTY, DOES NOT EXERCISE A POWER OF APPOINTMENT HELD BY THE TESTATOR UNLESS SPECIFIC REFERENCE IS MADE TO THE POWER OR THERE IS SOME OTHER INDICATION OF INTENTION TO INCLUDE THE PROPERTY SUBJECT TO THE POWER.

14-2611. **Construction of generic terms to accord with relationships as defined for intestate succession**

HALFBLOODS, ADOPTED PERSONS AND PERSONS BORN OUT OF WEDLOCK ARE INCLUDED IN CLASS GIFT TERMINOLOGY AND TERMS OF RELATIONSHIP IN ACCORDANCE WITH RULES FOR DETERMINING RELATIONSHIPS FOR PURPOSES OF INTESTATE SUCCESSION.

14-2612. **Ademption by satisfaction**

PROPERTY WHICH A TESTATOR GAVE IN HIS LIFETIME TO A PERSON IS TREATED AS A SATISFACTION OF A DEVISE TO THAT PERSON IN WHOLE OR IN PART, ONLY IF THE WILL PROVIDES FOR DEDUCTION OF THE LIFETIME GIFT, THE TESTATOR DECLARES IN A CONTEMPORANEOUS WRITING THAT THE GIFT IS TO BE DEDUCTED FROM THE DEVISE OR IS IN SATISFACTION OF THE DEVISE, OR THE DEVISEE ACKNOWLEDGES IN WRITING THAT THE GIFT IS IN SATISFACTION. FOR PURPOSE OF PARTIAL SATISFACTION, PROPERTY GIVEN DURING LIFETIME IS VALUED AS OF THE TIME THE DEVISEE CAME INTO POSSESSION OR ENJOYMENT OF THE PROPERTY OR AS OF THE TIME OF DEATH OF THE TESTATOR, WHICHEVER OCCURS FIRST.

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ARTICLE 7. CONTRACTUAL ARRANGEMENTS RELATING TO DEATH

14-2701. **Contracts concerning successions**

A CONTRACT TO MAKE A WILL OR DEVISE, OR NOT TO REVOKE A WILL OR DEVISE, OR TO DIE INTESTATE, IF EXECUTED AFTER THE EFFECTIVE DATE OF THIS TITLE, CAN BE ESTABLISHED ONLY BY ONE OR MORE OF THE FOLLOWING:

1. PROVISIONS OF A WILL STATING MATERIAL PROVISIONS OF THE CONTRACT.

2. AN EXPRESS REFERENCE IN A WILL TO A CONTRACT AND EXTRINSIC EVIDENCE PROVING THE TERMS OF THE CONTRACT.

3. A WRITING SIGNED BY THE DECEDENT EVIDENCING THE CONTRACT. THE EXECUTION OF A JOINT WILL OR MUTUAL WILLS DOES NOT CREATE A PRESUMPTION OF A CONTRACT NOT TO REVOKE THE WILL OR WILLS.

ARTICLE 8. GENERAL PROVISIONS

14-2801. **Renunciation of succession**

A. A PERSON, OR HIS PERSONAL REPRESENTATIVE, WHO IS AN HEIR, DEVISEE, PERSON SUCCEEDING TO A RENOUNCED INTEREST, BENEFICIARY UNDER A TESTAMENTARY INSTRUMENT OR PERSON DESIGNATED TO TAKE PURSUANT TO A POWER OF APPOINTMENT EXERCISED BY A TESTAMENTARY INSTRUMENT MAY RENOUNCE IN WHOLE OR IN PART THE SUCCESSION TO ANY PROPERTY OR INTEREST THEREIN BY FILING A WRITTEN INSTRUMENT WITHIN THE TIME AND AT THE PLACE HEREINAFTER PROVIDED. THE INSTRUMENT SHALL:

1. DESCRIBE THE PROPERTY OR PART THEREOF OR INTEREST THEREIN RENOUNCED.

2. BE SIGNED BY THE PERSON RENOUNCING.

3. DECLARE THE RENUNCIATION AND THE EXTENT THEREOF.

B. THE WRITING SPECIFIED IN SUBSECTION A MUST BE FILED WITHIN SIX MONTHS AFTER THE DEATH OF THE DECEDENT OR THE DONEE OF THE POWER, OR IF THE TAKER OF THE

PROPERTY IS NOT THEN FINALLY ASCERTAINED NOT LATER THAN SIX MONTHS AFTER THE EVENT BY WHICH THE TAKER OR THE INTEREST IS FINALLY ASCERTAINED. THE WRITING MUST BE FILED IN THE COURT OF THE COUNTY WHERE PROCEEDINGS CONCERNING THE DECEDENT'S ESTATE ARE PENDING, OR WHERE THEY WOULD BE PENDING IF COMMENCED. A COPY OF THE WRITING ALSO SHALL BE MAILED TO THE PERSONAL REPRESENTATIVE OF THE DECEDENT.

C. UNLESS THE DECEDENT OR DONEE OF THE POWER HAS OTHERWISE INDICATED BY HIS WILL, THE INTEREST RENOUNCED AND ANY FUTURE INTEREST WHICH IS TO TAKE EFFECT IN POSSESSION OR ENJOYMENT AT OR AFTER THE TERMINATION OF THE INTEREST RENOUNCED, PASSES AS IF THE PERSON RENOUNCING HAD PREDECEASED THE DECEDENT, OR IF THE PERSON RENOUNCING IS ONE DESIGNATED TO TAKE PURSUANT TO A POWER OF APPOINTMENT EXERCISED BY A TESTAMENTARY INSTRUMENT, AS IF THE PERSON RENOUNCING HAD PREDECEASED THE DONEE OF THE POWER. IN EVERY CASE THE RENUNCIATION RELATES BACK FOR ALL PURPOSES TO THE DATE OF DEATH OF THE DECEDENT OR THE DONEE, AS THE CASE MAY BE.

D. ANY OF THE FOLLOWING:

1. ASSIGNMENT, CONVEYANCE, ENCUMBRANCE, PLEDGE OR TRANSFER OF PROPERTY THEREIN OR ANY CONTRACT THEREFOR;

2. WRITTEN WAIVER OF THE RIGHT TO RENOUNCE OR ANY ACCEPTANCE OF PROPERTY BY AN HEIR, DEVISEE, PERSON SUCCEEDING TO A RENOUNCED INTEREST, BENEFICIARY OR PERSON DESIGNATED TO TAKE PURSUANT TO A POWER OF APPOINTMENT EXERCISED BY TESTAMENTARY INSTRUMENT;

3. SALE OR OTHER DISPOSITION OF PROPERTY PURSUANT TO JUDICIAL PROCESS;

MADE BEFORE THE EXPIRATION OF THE PERIOD IN WHICH HE IS PERMITTED TO RENOUNCE, BARS THE RIGHT TO RENOUNCE AS TO THE PROPERTY.

E. THE RIGHT TO RENOUNCE GRANTED BY THIS SECTION EXISTS IRRESPECTIVE OF ANY LIMITATION ON THE INTEREST OF THE PERSON RENOUNCING IN THE NATURE OF A SPENDTHRIFT PROVISION OR SIMILAR RESTRICTION.

F. THIS SECTION DOES NOT ABRIDGE THE RIGHT OF ANY PERSON TO ASSIGN, CONVEY, RELEASE OR RENOUNCE ANY PROPERTY ARISING UNDER ANY OTHER SECTION OF THIS TITLE OR OTHER STATUE.

G. ANY INTEREST IN PROPERTY WHICH EXISTS ON THE EFFECTIVE DATE OF THIS SECTION, BUT WHICH HAS NOT THEN BECOME INDEFEASIBLY FIXED BOTH IN QUALITY AND QUANTITY, OR THE TAKER OF WHICH HAS NOT THEN BECOME FINALLY ASCERTAINED, MAY BE RENOUNCED AFTER THE EFFECTIVE DATE OF THIS SECTION AS PROVIDED HEREIN. AN INTEREST WHICH HAS ARISEN PRIOR TO THE EFFECTIVE DATE OF THIS SECTION IN ANY PERSON OTHER THAN THE PERSON RENOUNCING IS NOT DESTROYED OR DIMINISHED BY ANY ACTION OF THE PERSON RENOUNCING TAKEN UNDER THIS SECTION.

14-2802. **Effect of divorce, annulment and decree of separation**

A. A PERSON WHO IS DIVORCED FROM THE DECEDENT OR WHOSE MARRIAGE TO THE DECEDENT HAS BEEN ANNULLED IS NOT A SURVIVING SPOUSE UNLESS, BY VIRTUE OF A SUBSEQUENT MARRIAGE, HE IS MARRIED TO THE DECEDENT AT THE TIME OF DEATH. A DECREE OF SEPARATION WHICH DOES NOT TERMINATE THE STATUS OF HUSBAND AND WIFE IS NOT A DIVORCE FOR PURPOSES OF THIS SECTION.

B. FOR PURPOSES OF ARTICLES 1, 2, 3 AND 4 OF THIS CHAPTER AND OF SECTION 14-3203, A SURVIVING SPOUSE DOES NOT INCLUDE:

1. A PERSON WHO OBTAINS OR CONSENTS TO A FINAL DECREE OR JUDGMENT OF DIVORCE FROM THE DECEDENT OR AN ANNULMENT OF THEIR MARRIAGE, WHICH DECREE OR JUDGMENT IS NOT RECOGNIZED AS VALID IN THIS STATE, UNLESS THEY SUBSEQUENTLY PARTICIPATE IN A MARRIAGE CEREMONY PURPORTING TO MARRY EACH TO THE OTHER, OR SUBSEQUENTLY LIVE TOGETHER AS MAN AND WIFE.

2. A PERSON WHO, FOLLOWING A DECREE OR JUDGMENT OF DIVORCE OR ANNULMENT OBTAINED BY THE DECEDENT, PARTICIPATES IN A MARRIAGE CEREMONY WITH A THIRD PERSON.

3. A PERSON WHO WAS A PARTY TO A VALID PROCEEDING CONCLUDED BY AN ORDER PURPORTING TO TERMINATE ALL MARITAL PROPERTY RIGHTS.

14-2803. **Effect of homicide on intestate succession, wills, joint assets, life insurance and beneficiary designations**

A. A SPOUSE, HEIR OR DEVISEE WHO FELONIOUSLY AND INTENTIONALLY KILLS THE DECEDENT IS NOT ENTITLED TO ANY BENEFITS UNDER THE WILL OR UNDER THIS CHAPTER, AND THE ESTATE OF DECEDENT PASSES AS IF THE KILLER HAD PREDECEASED THE DECEDENT. PROPERTY APPOINTED BY THE WILL OF THE DECEDENT TO OR FOR THE BENEFIT OF THE KILLER PASSES AS IF THE KILLER HAD PREDECEASED THE DECEDENT.

B. ANY JOINT TENANT WHO FELONIOUSLY AND INTENTIONALLY KILLS ANOTHER JOINT TENANT THEREBY EFFECTS A SEVERANCE OF THE INTEREST OF THE DECEDENT SO THAT THE SHARE OF THE DECEDENT PASSES AS HIS PROPERTY AND THE KILLER HAS NO RIGHTS BY SURVIVORSHIP. THIS PROVISION APPLIES TO JOINT TENANCIES IN REAL AND PERSONAL PROPERTY, JOINT ACCOUNTS IN BANKS, SAVINGS AND LOAN ASSOCIATIONS, CREDIT UNIONS AND OTHER INSTITUTIONS, AND ANY OTHER FORM OF CO-OWNERSHIP WITH SURVIVORSHIP INCIDENTS.

C. A NAMED BENEFICIARY OF A BOND, LIFE INSURANCE POLICY OR OTHER CONTRACTUAL ARRANGEMENT WHO FELONIOUSLY AND INTENTIONALLY KILLS THE PRINCIPAL OBLIGEE OR THE PERSON UPON WHOSE LIFE THE POLICY IS ISSUED IS NOT ENTITLED TO ANY BENEFIT UNDER THE BOND, POLICY OR OTHER CONTRACTUAL ARRANGEMENT, AND IT BECOMES PAYABLE AS THOUGH THE KILLER HAD PREDECEASED THE DECEDENT.

D. ANY OTHER ACQUISITION OF PROPERTY OR INTEREST BY THE KILLER SHALL BE TREATED IN ACCORDANCE WITH THE PRINCIPLES OF THIS SECTION.

E. A FINAL JUDGMENT OF CONVICTION OF FELONIOUS AND INTENTIONAL KILLING IS CONCLUSIVE FOR PURPOSES OF THIS SECTION. IN THE ABSENCE OF A CONVICTION OF FELONIOUS AND INTENTIONAL KILLING THE COURT MAY DETERMINE BY A PREPONDERANCE OF EVIDENCE WHETHER THE KILLING WAS FELONIOUS AND INTENTIONAL FOR PURPOSES OF THIS SECTION.

F. THIS SECTION DOES NOT AFFECT THE RIGHTS OF ANY PERSON WHO, BEFORE RIGHTS UNDER THIS SECTION HAVE BEEN ADJUDICATED, PURCHASES FROM THE KILLER FOR VALUE AND WITHOUT NOTICE PROPERTY WHICH THE KILLER WOULD HAVE ACQUIRED EXCEPT FOR THIS SECTION, BUT THE KILLER IS LIABLE FOR THE AMOUNT OF THE PROCEEDS OR THE VALUE OF THE PROPERTY. ANY INSURANCE COMPANY, BANK, OR OTHER OBLIGOR MAKING PAYMENT ACCORDING TO THE TERMS OF ITS POLICY OR OBLIGATION IS NOT LIABLE BY REASON OF THIS SECTION UNLESS PRIOR TO PAYMENT IT HAS RECEIVED AT ITS HOME OFFICE OR PRINCIPAL ADDRESS WRITTEN NOTICE OF A CLAIM UNDER THIS SECTION.

ARTICLE 9. CUSTODY AND DEPOSIT OF WILLS

14-2901. **Deposit of will with court in testator's lifetime**

A WILL MAY BE DEPOSITED BY THE TESTATOR OR HIS AGENT WITH ANY COURT FOR SAFEKEEPING, UNDER RULES OF THE COURT. THE WILL SHALL BE KEPT CONFIDENTIAL. DURING THE TESTATOR'S LIFETIME A DEPOSITED WILL SHALL BE DELIVERED ONLY TO HIM OR TO A PERSON AUTHORIZED IN WRITING SIGNED BY HIM TO RECEIVE THE WILL. A CONSERVATOR MAY BE ALLOWED TO EXAMINE A DEPOSITED WILL OF A PROTECTED TESTATOR UNDER PROCEDURES DESIGNED TO MAINTAIN THE CONFIDENTIAL CHARACTER OF THE DOCUMENT TO THE EXTENT POSSIBLE, AND TO ASSURE THAT IT WILL BE RESEALED AND LEFT ON DEPOSIT AFTER THE EXAMINATION. UPON BEING INFORMED OF THE TESTATOR'S DEATH, THE COURT SHALL NOTIFY ANY PERSON DESIGNATED TO RECEIVE THE WILL AND DELIVER IT TO HIM ON REQUEST, OR THE COURT MAY DELIVER THE WILL TO THE APPROPRIATE COURT.

14-2902. **Duty of custodian of will; liability**

AFTER THE DEATH OF A TESTATOR AND ON REQUEST OF AN INTERESTED PERSON, ANY PERSON HAVING CUSTODY OF A WILL OF THE TESTATOR SHALL DELIVER IT WITH REASONABLE PROMPTNESS TO A PERSON ABLE TO SECURE ITS PROBATE AND IF NONE IS KNOWN, TO AN APPROPRIATE COURT. ANY PERSON WHO WILFULLY FAILS TO DELIVER A WILL IS LIABLE TO ANY PERSON AGGRIEVED FOR THE DAMAGES WHICH MAY BE SUSTAINED BY THE FAILURE. ANY PERSON WHO WILFULLY

REFUSES OR FAILS TO DELIVER A WILL AFTER BEING ORDERED BY THE COURT IN A PROCEEDING BROUGHT FOR THE PURPOSE OF COMPELLING DELIVERY IS SUBJECT TO PENALTY FOR CONTEMPT OF COURT.

CHAPTER 3.
PROBATE OF WILLS AND ADMINISTRATION
ARTICLE 1. GENERAL PROVISIONS

14-3101. Devolution of estate at death; administration on deaths of husband and wife

A. THE POWER OF A PERSON TO LEAVE PROPERTY BY WILL, AND THE RIGHTS OF CREDITORS, DEVISEES AND HEIRS TO HIS PROPERTY ARE SUBJECT TO THE RESTRICTIONS AND LIMITATIONS CONTAINED IN THIS TITLE TO FACILITATE THE PROMPT SETTLEMENT OF ESTATES. UPON THE DEATH OF A PERSON, HIS SEPARATE PROPERTY AND HIS SHARE OF COMMUNITY PROPERTY DEVOLVES TO THE PERSONS TO WHOM THE PROPERTY IS DEVISED BY HIS LAST WILL, OR TO THOSE INDICATED AS SUBSTITUTES FOR THEM IN CASES INVOLVING LAPSE, RENUNCIATION OR OTHER CIRCUMSTANCES AFFECTING THE DEVOLUTION OF TESTATE ESTATES, OR IN THE ABSENCE OF TESTAMENTARY DISPOSITION TO HIS HEIRS, OR TO THOSE INDICATED AS SUBSTITUTES FOR THEM IN CASES INVOLVING RENUNCIATION OR OTHER CIRCUMSTANCES AFFECTING THE DEVOLUTION OF INTESTATE ESTATES. THE DEVOLUTION OF SEPARATE PROPERTY AND DECEDENT'S SHARE OF COMMUNITY PROPERTY IS SUBJECT TO RIGHTS TO THE ALLOWANCE IN LIEU OF HOMESTEAD, EXEMPT PROPERTY AND FAMILY ALLOWANCE, TO RIGHTS OF CREDITORS AND TO ADMINISTRATION AS PROVIDED IN THIS TITLE. IN ADDITION, THE SURVIVING SPOUSE'S SHARE OF THE COMMUNITY PROPERTY IS SUBJECT TO ADMINISTRATION UNTIL THE TIME FOR PRESENTATION OF CLAIMS HAS EXPIRED, AND THEREAFTER ONLY TO THE EXTENT NECESSARY TO PAY COMMUNITY CLAIMS.

B. IF A HUSBAND AND WIFE BOTH DIE, AND THE ADMINISTRATION OF ONE OF THEIR ESTATES IS NOT COMPLETED PRIOR TO COMMENCEMENT OF ADMINISTRATION OF THE OTHER, THEIR ESTATES MAY BE COMBINED IN A SINGLE ADMINISTRATION WITH THE SAME PERSONAL REPRESENTATIVE, IF FEASIBLE. IF THEIR ESTATES DEVOLVE AS IF EACH SPOUSE SURVIVED THE OTHER BECAUSE OF APPLICATION OF SECTION 14-2804, SECTION

14-2104 OR SECTION 14-2601, AND THEIR ESTATES ARE NOT COMBINED, HALF OF THEIR COMMUNITY PROPERTY IS SUBJECT TO ADMINISTRATION IN EACH ESTATE AND COMMUNITY CLAIMS WILL BE CHARGED RATABLY TO EACH HALF OF THE COMMUNITY PROPERTY.

14-3102. **Necessity of order of probate for will**

EXCEPT AS PROVIDED IN SECTION 14-3971, TO BE EFFECTIVE TO PROVE THE TRANSFER OF ANY PROPERTY OR TO NOMINATE AN EXECUTOR, A WILL MUST BE DECLARED TO BE VALID BY AN ORDER OF INFORMAL PROBATE BY THE REGISTRAR, OR AN ADJUDICATION OF PROBATE BY THE COURT, EXCEPT THAT A DULY EXECUTED AND UNREVOKED WILL WHICH HAS NOT BEEN PROBATED MAY BE ADMITTED AS EVIDENCE OF A DEVISE IF BOTH:

1. NO COURT PROCEEDING CONCERNING THE SUCCESSION OR ADMINISTRATION OF THE ESTATE HAS OCCURRED.

2. EITHER THE DEVISEE OR HIS SUCCESSORS AND ASSIGNS POSSESSED THE PROPERTY DEVISED IN ACCORDANCE WITH THE PROVISIONS OF THE WILL, OR THE PROPERTY DEVISED WAS NOT POSSESSED OR CLAIMED BY ANYONE BY VIRTUE OF THE DECEDENT'S TITLE DURING THE TIME PERIOD FOR TESTACY PROCEEDINGS.

14-3103. **Necessity of appointment for administration**

EXCEPT AS OTHERWISE PROVIDED IN CHAPTER 4, TO ACQUIRE THE POWERS AND UNDERTAKE THE DUTIES AND LIABILITIES OF A PERSONAL REPRESENTATIVE OF A DECEDENT, A PERSON MUST BE APPOINTED BY ORDER OF THE COURT OR REGISTRAR, QUALIFY AND BE ISSUED LETTERS. ADMINISTRATION OF AN ESTATE IS COMMENCED BY THE ISSUANCE OF LETTERS.

14-3104. **Claims against decedent; necessity of administration**

NO PROCEEDING TO ENFORCE A CLAIM AGAINST THE ESTATE OF A DECEDENT OR HIS SUCCESSORS MAY BE REVIVED OR COMMENCED BEFORE THE APPOINTMENT OF A PERSONAL REPRESENTATIVE. AFTER THE APPOINTMENT AND UNTIL DISTRIBUTION, ALL PROCEEDINGS AND ACTIONS TO ENFORCE A CLAIM AGAINST THE ESTATE ARE GOVERNED BY THE

PROCEDURE PRESCRIBED BY THIS CHAPTER. AFTER DISTRIBUTION A CREDITOR WHOSE CLAIM HAS NOT BEEN BARRED MAY RECOVER FROM THE DISTRIBUTEES AS PROVIDED IN SECTION 14-3934 OR FROM A FORMER PERSONAL REPRESENTATIVE INDIVIDUALLY LIABLE AS PROVIDED IN SECTION 14-3935. THIS SECTION HAS NO APPLICATION TO A PROCEEDING BY A SECURED CREDITOR OF THE DECEDENT TO ENFORCE HIS RIGHT TO HIS SECURITY EXCEPT AS TO ANY DEFICIENCY JUDGMENT WHICH MIGHT BE SOUGHT THEREIN.

14-3105. **Proceedings affecting devolution and administration; jurisdiction of subject matter**

PERSONS INTERESTED IN DECEDENTS' ESTATES MAY APPLY TO THE REGISTRAR FOR DETERMINATION IN THE INFORMAL PROCEEDINGS PROVIDED IN THIS CHAPTER, AND MAY PETITION THE COURT FOR ORDERS IN FORMAL PROCEEDINGS WITHIN THE COURT'S JURISDICTION INCLUDING BUT NOT LIMITED TO THOSE DESCRIBED IN THIS ARTICLE. THE COURT MAY HEAR AND DETERMINE FORMAL PROCEEDINGS INVOLVING ADMINISTRATION AND DISTRIBUTION OF DECEDENTS' ESTATES AFTER NOTICE TO INTERESTED PERSONS IN CONFORMITY WITH SECTION 14-1401. PERSONS NOTIFIED ARE BOUND THOUGH LESS THAN ALL INTERESTED PERSONS MAY HAVE BEEN GIVEN NOTICE.

14-3106. (Blank)

14-3107. **Scope of proceedings; proceedings independent; exception**

UNLESS SUPERVISED ADMINISTRATION AS DESCRIBED IN ARTICLE 5 IS INVOLVED:

1. EACH PROCEEDING BEFORE THE COURT OR REGISTRAR IS INDEPENDENT OF ANY OTHER PROCEEDING INVOLVING THE SAME ESTATE.

2. PETITIONS FOR FORMAL ORDERS OF THE COURT MAY COMBINE VARIOUS REQUESTS FOR RELIEF IN A SINGLE PROCEEDING IF THE ORDERS SOUGHT MAY BE FINALLY GRANTED WITHOUT DELAY. EXCEPT AS REQUIRED FOR PROCEEDINGS WHICH ARE PARTICULARLY DESCRIBED BY OTHER SECTIONS OF THIS CHAPTER, NO PETITION IS DEFECTIVE BECAUSE IT FAILS TO EMBRACE ALL MATTERS WHICH MIGHT THEN BE THE SUBJECT OF A FINAL ORDER.

3. PROCEEDINGS FOR PROBATE OF WILLS OR ADJUDICATIONS OF NO WILL MAY BE COMBINED WITH PROCEEDINGS FOR APPOINTMENT OF PERSONAL REPRESENTATIVES.

4. A PROCEEDING FOR APPOINTMENT OF A PERSONAL REPRESENTATIVE IS CONCLUDED BY AN ORDER MAKING OR DECLINING THE APPOINTMENT.

14-3108. **Probate, testacy and appointment proceedings; ultimate time limit**

NO INFORMAL PROBATE OR APPOINTMENT PROCEEDING OR FORMAL TESTACY OR APPOINTMENT PROCEEDING, OTHER THAN A PROCEEDING TO PROBATE A WILL PREVIOUSLY PROBATED AT THE TESTATOR'S DOMICILE AND APPOINTMENT PROCEEDINGS RELATING TO AN ESTATE IN WHICH THERE HAS BEEN A PRIOR APPOINTMENT, MAY BE COMMENCED MORE THAN THREE YEARS AFTER THE DECEDENT'S DEATH, EXCEPT:

1. IF A PREVIOUS PROCEEDING WAS DISMISSED BECAUSE OF DOUBT ABOUT THE FACT OF THE DECEDENT'S DEATH, APPROPRIATE PROBATE, APPOINTMENT OR TESTACY PROCEEDINGS MAY BE MAINTAINED AT ANY TIME THEREAFTER UPON A FINDING THAT THE DECEDENT'S DEATH OCCURRED PRIOR TO THE INITIATION OF THE PREVIOUS PROCEEDING AND THE APPLICANT OR PETITIONER HAS NOT DELAYED UNDULY IN INITIATING THE SUBSEQUENT PROCEEDING.

2. APPROPRIATE PROBATE, APPOINTMENT OR TESTACY PROCEEDINGS MAY BE MAINTAINED IN RELATION TO THE ESTATE OF AN ABSENT, DISAPPEARED OR MISSING PERSON FOR WHOSE ESTATE A CONSERVATOR HAS BEEN APPOINTED, AT ANY TIME WITHIN THREE YEARS AFTER THE CONSERVATOR BECOMES ABLE TO ESTABLISH THE DEATH OF THE PROTECTED PERSON.

3. A PROCEEDING TO CONTEST AN INFORMALLY PROBATED WILL AND TO SECURE APPOINTMENT OF THE PERSON WITH LEGAL PRIORITY FOR APPOINTMENT IN THE EVENT THE CONTEST IS SUCCESSFUL, MAY BE COMMENCED WITHIN THE LATER OF TWELVE MONTHS FROM THE INFORMAL PROBATE OR THREE YEARS FROM THE DECEDENT'S DEATH.

4. AN INFORMAL APPOINTMENT OR A FORMAL TESTACY OR APPOINTMENT PROCEEDING MAY BE COMMENCED THEREAFTER

IF NO COURT PROCEEDING CONCERNING THE SUCCESSION OR ADMINISTRATION HAS OCCURRED WITHIN THE THREE YEAR PERIOD. IF PROCEEDINGS ARE BROUGHT UNDER THIS EXCEPTION, THE PERSONAL REPRESENTATIVE SHALL HAVE NO RIGHT TO POSSESS ESTATE ASSETS AS PROVIDED IN SECTION 14-3709 BEYOND THAT NECESSARY TO CONFIRM TITLE THERETO IN THE RIGHTFUL SUCCESSORS TO THE ESTATE; AND CLAIMS OTHER THAN EXPENSES OF ADMINISTRATION MAY NOT BE PRESENTED AGAINST THE ESTATE.

THESE LIMITATIONS DO NOT APPLY TO PROCEEDINGS TO CONSTRUE PROBATED WILLS OR DETERMINE HEIRS OF AN INTESTATE. IN CASES UNDER PARAGRAPH 1 OR 2, THE DATE ON WHICH A TESTACY OR APPOINTMENT PROCEEDING IS PROPERLY COMMENCED SHALL BE DEEMED TO BE THE DATE OF THE DECEDENT'S DEATH FOR PURPOSES OF OTHER LIMITATIONS PROVISIONS OF THIS TITLE WHICH RELATE TO THE DATE OF DEATH.

14-3109. **Statutes of limitation on decedent's cause of action**

UPON THE DEATH OF A PERSON IN WHOSE FAVOR THERE IS A CAUSE OF ACTION WHICH HAS NOT BEEN BARRED AS OF THE DATE OF HIS DEATH, THE LIMITATION OF THE ACTION CEASES TO RUN UNTIL A PERSONAL REPRESENTATIVE IS APPOINTED OR UNTIL TWELVE MONTHS AFTER THE DEATH, WHICHEVER FIRST OCCURS, BUT SHALL NOT BAR SUCH ACTION SOONER THAN FOUR MONTHS AFTER DEATH EVEN IF A PERSONAL REPRESENTATIVE IS APPOINTED EARLIER.

ARTICLE 2. VENUE FOR PROBATE AND ADMINISTRATION; PRIORITY TO ADMINISTER; DEMAND FOR NOTICE

14-3201. **Venue for first and subsequent estate proceedings; location of property**

A. VENUE FOR THE FIRST INFORMAL OR FORMAL TESTACY OR APPOINTMENT PROCEEDINGS AFTER A DECEDENT'S DEATH IS:

1. IN THE COUNTY WHERE THE DECEDENT HAD HIS DOMICILE AT THE TIME OF HIS DEATH.

2. IF THE DECEDENT WAS NOT DOMICILED IN THIS STATE, IN ANY COUNTY WHERE PROPERTY OF THE DECEDENT WAS LOCATED AT THE TIME OF HIS DEATH.

B. VENUE FOR ALL SUBSEQUENT PROCEEDINGS WITHIN THE EXCLUSIVE JURISDICTION OF THE COURT IS IN THE PLACE WHERE THE INITIAL PROCEEDING OCCURRED, UNLESS THE INITIAL PROCEEDING HAS BEEN TRANSFERRED AS PROVIDED IN SECTION 14-1303 OR SUBSECTION C OF THIS SECTION.

C. IF THE FIRST PROCEEDING WAS INFORMAL, ON APPLICATION OF AN INTERESTED PERSON AND AFTER NOTICE TO THE PROPONENT IN THE FIRST PROCEEDING, THE COURT, UPON FINDING THAT VENUE IS ELSEWHERE, MAY TRANSFER THE PROCEEDING AND THE FILE TO THE OTHER COURT.

D. FOR THE PURPOSE OF AIDING DETERMINATIONS CONCERNING LOCATION OF ASSETS WHICH MAY BE RELEVANT IN CASES INVOLVING NON-DOMICILIARIES, A DEBT, OTHER THAN ONE EVIDENCED BY INVESTMENT OR COMMERCIAL PAPER OR OTHER INSTRUMENT IN FAVOR OF A NON-DOMICILIARY, IS LOCATED WHERE THE DEBTOR RESIDES OR, IF THE DEBTOR IS A PERSON OTHER THAN AN INDIVIDUAL, AT THE PLACE WHERE IT HAS ITS PRINCIPAL OFFICE. COMMERCIAL PAPER, INVESTMENT PAPER AND OTHER INSTRUMENTS ARE LOCATED WHERE THE INSTRUMENT IS. AN INTEREST IN PROPERTY HELD IN TRUST IS LOCATED WHERE THE TRUSTEE MAY BE SUED.

14-3202. **Appointment or testacy proceedings; conflicting claim of domicle in another state**

IF CONFLICTING CLAIMS AS TO THE DOMICILE OF A DECEDENT ARE MADE IN A FORMAL TESTACY OR APPOINTMENT PROCEEDING COMMENCED IN THIS STATE, AND IN A TESTACY OR APPOINTMENT PROCEEDING AFTER NOTICE PENDING AT THE SAME TIME IN ANOTHER STATE, THE COURT OF THIS STATE MUST STAY, DISMISS OR PERMIT SUITABLE AMENDMENT IN, THE PROCEEDING HERE UNLESS IT IS DETERMINED THAT THE LOCAL PROCEEDING WAS COMMENCED BEFORE THE PROCEEDING ELSEWHERE. THE DETERMINATION OF DOMICILE IN THE PROCEEDING FIRST COMMENCED MUST BE ACCEPTED AS DETERMINATIVE IN THE FORMAL TESTACY OR APPOINTMENT PROCEEDING IN THIS STATE.

14-3203. **Priority among persons seeking appointment as personal representative**

A. WHETHER THE PROCEEDINGS ARE FORMAL OR INFORMAL,

PERSONS WHO ARE NOT DISQUALIFIED HAVE PRIORITY FOR APPOINTMENT IN THE FOLLOWING ORDER:

1. THE PERSON WITH PRIORITY AS DETERMINED BY A PROBATED WILL INCLUDING A PERSON NOMINATED BY A POWER CONFERRED IN A WILL.

2. THE SURVIVING SPOUSE OF THE DECEDENT WHO IS A DEVISEE OF THE DECEDENT.

3. OTHER DEVISEES OF THE DECEDENT.

4. THE SURVIVING SPOUSE OF THE DECEDENT.

5. OTHER HEIRS OF THE DECEDENT.

6. FORTY-FIVE DAYS AFTER THE DEATH OF THE DECEDENT, ANY CREDITOR.

B. AN OBJECTION TO AN APPOINTMENT CAN BE MADE ONLY IN FORMAL PROCEEDINGS. IN CASE OF OBJECTION THE PRIORITIES STATED IN SUBSECTION A APPLY EXCEPT THAT:

1. IF THE ESTATE APPEARS TO BE MORE THAN ADEQUATE TO MEET EXEMPTIONS AND COSTS OF ADMINISTRATION BUT INADEQUATE TO DISCHARGE ANTICIPATED UNSECURED CLAIMS, THE COURT, ON PETITION OF CREDITORS, MAY APPOINT ANY QUALIFIED PERSON.

2. IN CASE OF OBJECTION TO APPOINTMENT OF A PERSON OTHER THAN ONE WHOSE PRIORITY IS DETERMINED BY WILL BY AN HEIR OR DEVISEE APPEARING TO HAVE A SUBSTANTIAL INTEREST IN THE ESTATE, THE COURT MAY APPOINT A PERSON WHO IS ACCEPTABLE TO HEIRS AND DEVISEES WHOSE INTERESTS IN THE ESTATE APPEAR TO BE WORTH IN TOTAL MORE THAN HALF OF THE PROBABLE DISTRIBUTABLE VALUE, OR, IN DEFAULT OF THIS ACCORD ANY SUITABLE PERSON.

C. A PERSON ENTITLED TO LETTERS UNDER PARAGRAPHS 2 THROUGH 5 OF SUBSECTION A AND A PERSON AGED FOURTEEN AND OVER WHO WOULD BE ENTITLED TO LETTERS BUT FOR HIS AGE, MAY NOMINATE A QUALIFIED PERSON TO ACT AS PERSONAL REPRESENTATIVE. ANY PERSON AGED EIGHTEEN AND OVER MAY RENOUNCE HIS RIGHT TO NOMINATE OR TO AN

APPOINTMENT BY APPROPRIATE WRITING FILED WITH THE COURT. WHEN TWO OR MORE PERSONS SHARE A PRIORITY, THOSE OF THEM WHO DO NOT RENOUNCE MUST CONCUR IN NOMINATING ANOTHER TO ACT FOR THEM, OR IN APPLYING FOR APPOINTMENT.

D. CONSERVATORS OF THE ESTATES OF PROTECTED PERSONS, OR IF THERE IS NO CONSERVATOR, ANY GUARDIAN EXCEPT A GUARDIAN AD LITEM OF A MINOR OR INCAPACITATED PERSON, MAY EXERCISE THE SAME RIGHT TO NOMINATE, TO OBJECT TO ANOTHER'S APPOINTMENT, OR TO PARTICIPATE IN DETERMINING THE PREFERENCE OF A MAJORITY IN INTEREST OF THE HEIRS AND DEVISEES THAT THE PROTECTED PERSON OR WARD WOULD HAVE IF QUALIFIED FOR APPOINTMENT.

E. FORMAL PROCEEDINGS ARE REQUIRED TO APPOINT A PERSONAL REPRESENTATIVE IN ANY OF THE FOLLOWING SITUATIONS:

1. WHEN THERE IS A PERSON WITH A HIGHER ORDER OF PRIORITY WHO HAS NOT RENOUNCED OR WAIVED HIS RIGHT BY APPROPRIATE WRITING FILED WITH THE COURT;

2. WHEN A PRIORITY IS SHARED BY TWO OR MORE PERSONS, AS DEVISEES UNDER PARAGRAPH 3 OF SUBSECTION A OF THIS SECTION, OR AS HEIRS UNDER PARAGRAPH 5 OF SUBSECTION A OF THIS SECTION, AND ONE OR MORE OF THEM HAS NOT RENOUNCED OR CONCURRED IN NOMINATING THE PERSON WHOSE APPOINTMENT IS APPLIED FOR;

3. WHEN APPOINTMENT IS SOUGHT FOR A PERSON WHO DOES NOT HAVE ANY PRIORITY UNDER THIS SECTION, UNDER THIS PARAGRAPH THE COURT MUST DETERMINE THAT THOSE HAVING PRIORITY DO NOT OBJECT TO THE APPOINTMENT, AND THAT ADMINISTRATION IS NECESSARY.

F. NO PERSON IS QUALIFIED TO SERVE AS A PERSONAL REPRESENTATIVE WHO IS:

1. UNDER THE AGE OF MAJORITY AS DEFINED IN SECTION 1-215.

2. A PERSON WHOM THE COURT FINDS UNSUITABLE IN FORMAL PROCEEDINGS.

3. A FOREIGN CORPORATION.

G. A PERSONAL REPRESENTATIVE APPOINTED BY A COURT OF THE DECEDENT'S DOMICILE HAS PRIORITY OVER ALL OTHER PERSONS EXCEPT WHERE THE DECEDENT'S WILL NOMINATES DIFFERENT PERSONS TO BE PERSONAL REPRESENTATIVE IN THIS STATE AND IN THE STATE OF DOMICILE. THE DOMICILIARY PERSONAL REPRESENTATIVE MAY NOMINATE ANOTHER, WHO SHALL HAVE THE SAME PRIORITY AS THE DOMICILIARY PERSONAL REPRESENTATIVE.

H. THIS SECTION GOVERNS PRIORITY FOR APPOINTMENT OF A SUCCESSOR PERSONAL REPRESENTATIVE BUT DOES NOT APPLY TO THE SELECTION OF A SPECIAL ADMINISTRATOR.

14-3204. **Demand for notice of order or filing concerning decedent's estate**

ANY PERSON DESIRING NOTICE OF ANY ORDER OR FILING PERTAINING TO A DECEDENT'S ESTATE IN WHICH HE HAS A FINANCIAL OR PROPERTY INTEREST, MAY FILE A DEMAND FOR NOTICE WITH THE COURT AT ANY TIME AFTER THE DEATH OF THE DECEDENT STATING THE NAME OF THE DECEDENT, THE NATURE OF HIS INTEREST IN THE ESTATE AND THE DEMANDANT'S ADDRESS OR THAT OF HIS ATTORNEY. THE CLERK SHALL MAIL A COPY OF THE DEMAND TO THE PERSONAL REPRESENTATIVE IF ONE HAS BEEN APPOINTED. AFTER FILING OF A DEMAND, NO ORDER OR FILING TO WHICH THE DEMAND RELATES SHALL BE MADE OR ACCEPTED WITHOUT NOTICE AS PRESCRIBED IN SECTION 14-1401 TO THE DEMANDANT OR HIS ATTORNEY. THE VALIDITY OF AN ORDER WHICH IS ISSUED OR FILING WHICH IS ACCEPTED WITHOUT COMPLIANCE WITH THIS REQUIREMENT SHALL NOT BE AFFECTED BY THE ERROR, BUT THE PETITIONER RECEIVING THE ORDER OR THE PERSON MAKING THE FILING MAY BE LIABLE FOR ANY DAMAGE CAUSED BY THE ABSENCE OF NOTICE. THE REQUIREMENT OF NOTICE ARISING FROM A DEMAND UNDER THIS PROVISION MAY BE WAIVED IN WRITING BY THE DEMANDANT AND SHALL CEASE UPON THE TERMINATION OF HIS INTEREST IN THE ESTATE.

ARTICLE 3. INFORMAL PROBATE AND APPOINTMENT PROCEEDINGS

14-3301. **Informal probate or appointment proceedings; application; contents**

A. INFORMAL PROBATE OR INFORMAL APPOINTMENT MAY BE MADE ONLY BY APPLICATION OF ONE OF THE FOLLOWING:

1. THE SURVIVING SPOUSE OF THE DECEDENT.

2. AN ADULT CHILD OF THE DECEDENT.

3. A PERSON NOMINATED AS A PERSONAL REPRESENTATIVE BY A PROBATED WILL OR THE WILL FOR WHICH PROBATE IS ASKED OR PURSUANT TO A POWER CONFERRED BY THE WILL IF APPOINTMENT OF THAT PERSON IS ASKED BY THE APPLICATION AND THE PERSON IS A NATIONAL BANKING ASSOCIATION, A HOLDER OF A BANKING PERMIT UNDER THE LAWS OF THIS STATE, OR A TITLE INSURANCE COMPANY WHICH IS QUALIFIED TO DO BUSINESS WITH THE STATE TREASURER, OR A TRUST COMPANY HOLDING A CERTIFICATE TO ENGAGE IN TRUST BUSINESS FROM THE STATE SUPERINTENDENT OF BANKS.

4. ALL OF THE HEIRS, WHO EITHER JOIN IN THE APPLICATION OR CONSENT TO THE APPOINTMENT BY A SEPARATE WRITING FILED WITH THE COURT.

B. APPLICATIONS FOR INFORMAL PROBATE OR INFORMAL APPOINTMENT SHALL BE DIRECTED TO THE REGISTRAR, AND VERIFIED BY THE APPLICANT TO BE ACCURATE AND COMPLETE TO THE BEST OF HIS KNOWLEDGE AND BELIEF AS TO THE FOLLOWING INFORMATION:

1. EVERY APPLICATION FOR INFORMAL PROBATE OF A WILL OR FOR INFORMAL APPOINTMENT OF A PERSONAL REPRESENTATIVE, OTHER THAN A SPECIAL OR SUCCESSOR REPRESENTATIVE, SHALL CONTAIN THE FOLLOWING:

(a) A STATEMENT OF THE INTEREST OF THE APPLICANT.

(b) THE NAME, DATE OF DEATH OF THE DECEDENT, HIS AGE, THE COUNTY AND STATE OF HIS DOMICILE AT THE TIME OF DEATH, THE NAMES AND ADDRESSES OF THE SPOUSE, CHILDREN, HEIRS AND DEVISEES AND THE AGES OF ANY WHO ARE MINORS SO FAR AS KNOWN OR ASCERTAINABLE WITH REASONABLE DILIGENCE BY THE APPLICANT.

(c) IF THE DECEDENT WAS NOT DOMICILED IN THE STATE AT THE TIME OF HIS DEATH, A STATEMENT SHOWING VENUE.

(d) A STATEMENT IDENTIFYING AND INDICATING THE ADDRESS OF ANY PERSONAL REPRESENTATIVE OF THE DECEDENT APPOINTED IN THIS STATE OR ELSEWHERE WHOSE APPOINTMENT HAS NOT BEEN TERMINATED.

(e) A STATEMENT INDICATING WHETHER THE APPLICANT HAS RECEIVED A DEMAND FOR NOTICE, OR IS AWARE OF ANY DEMAND FOR NOTICE OF ANY PROBATE OR APPOINTMENT PROCEEDING CONCERNING THE DECEDENT THAT MAY HAVE BEEN FILED IN THIS STATE OR ELSEWHERE.

2. AN APPLICATION FOR INFORMAL PROBATE OF A WILL SHALL STATE THE FOLLOWING IN ADDITION TO THE STATEMENTS REQUIRED BY PARAGRAPH 1 OF THIS SUBSECTION:

(a) THAT THE ORIGINAL OF THE DECEDENT'S LAST WILL IS IN THE POSSESSION OF THE COURT, OR ACCOMPANIES THE APPLICATION, OR THAT AN AUTHENTICATED COPY OF A WILL PROBATED IN ANOTHER JURISDICTION ACCOMPANIES THE APPLICATION.

(b) THAT THE APPLICANT, TO THE BEST OF HIS KNOWLEDGE, BELIEVES THE WILL TO HAVE BEEN VALIDLY EXECUTED.

(c) THAT AFTER THE EXERCISE OF REASONABLE DILIGENCE, THE APPLICANT IS UNAWARE OF ANY INSTRUMENT REVOKING THE WILL, AND THAT THE APPLICANT BELIEVES THAT THE INSTRUMENT WHICH IS THE SUBJECT OF THE APPLICATION IS THE DECEDENT'S LAST WILL.

(d) THAT THE TIME LIMIT FOR INFORMAL PROBATE AS PROVIDED IN THIS CHAPTER HAS NOT EXPIRED EITHER BECAUSE THREE YEARS OR LESS HAVE PASSED SINCE THE DECEDENT'S DEATH, OR, IF MORE THAN THREE YEARS FROM DEATH HAVE PASSED, THAT CIRCUMSTANCES AS DESCRIBED BY SECTION 14-3108 AUTHORIZING TARDY PROBATE HAVE OCCURRED.

3. AN APPLICATION FOR INFORMAL APPOINTMENT OF A PERSONAL REPRESENTATIVE TO ADMINISTER AN ESTATE UNDER A WILL SHALL DESCRIBE THE WILL BY DATE OF EXECUTION AND STATE THE TIME AND PLACE OF PROBATE OR THE PENDING APPLICATION OR PETITION FOR PROBATE. THE APPLICATION FOR APPOINTMENT SHALL ADOPT THE STATEMENTS IN THE APPLICATION OR PETITION FOR PROBATE AND

STATE THE NAME, ADDRESS AND PRIORITY FOR APPOINTMENT OF THE PERSON WHOSE APPOINTMENT IS SOUGHT.

4. AN APPLICATION FOR INFORMAL APPOINTMENT OF AN ADMINISTRATOR IN INTESTACY SHALL STATE IN ADDITION TO THE STATEMENTS REQUIRED BY PARAGRAPH 1 OF SUBSECTION B OF THIS SECTION:

(a) THAT AFTER THE EXERCISE OF REASONABLE DILIGENCE, THE APPLICANT IS UNAWARE OF ANY UNREVOKED TESTAMENTARY INSTRUMENT RELATING TO PROPERTY HAVING A SITUS IN THIS STATE UNDER SECTION 14-1301, OR, A STATEMENT WHY ANY SUCH INSTRUMENT OF WHICH HE MAY BE AWARE IS NOT BEING PROBATED.

(b) THE PRIORITY OF THE PERSON WHOSE APPOINTMENT IS SOUGHT AND THE NAMES OF ANY OTHER PERSONS HAVING A PRIOR OR EQUAL RIGHT TO THE APPOINTMENT UNDER SECTION 14-3203.

5. AN APPLICATION FOR APPOINTMENT OF A PERSONAL REPRESENTATIVE TO SUCCEED A PERSONAL REPRESENTATIVE APPOINTED UNDER A DIFFERENT TESTACY STATUS SHALL REFER TO THE ORDER IN THE MOST RECENT TESTACY PROCEEDING, STATE THE NAME AND ADDRESS OF BOTH THE PERSON WHOSE APPOINTMENT IS SOUGHT AND OF THE PERSON WHOSE APPOINTMENT WILL BE TERMINATED IF THE APPLICATION IS GRANTED, AND DESCRIBE THE PRIORITY OF THE APPLICANT.

6. AN APPLICATION FOR APPOINTMENT OF A PERSONAL REPRESENTATIVE TO SUCCEED A PERSONAL REPRESENTATIVE WHO HAS TENDERED A RESIGNATION AS PROVIDED IN SECTION 14-3610, SUBSECTION C, OR WHOSE APPOINTMENT HAS BEEN TERMINATED BY DEATH, APPOINTMENT OF A CONSERVATOR OR REMOVAL, SHALL ADOPT THE STATEMENTS IN THE APPLICATION OR PETITION WHICH LED TO THE APPOINTMENT OF THE PERSON BEING SUCCEEDED EXCEPT AS SPECIFICALLY CHANGED OR CORRECTED, STATE THE NAME AND ADDRESS OF THE PERSON WHO SEEKS APPOINTMENT AS SUCCESSOR AND DESCRIBE THE PRIORITY OF THE APPLICANT.

14-3302. **Informal probate; duty of registrar; effect of informal probate**

UPON RECEIPT OF AN APPLICATION REQUESTING INFORMAL PROBATE OF A WILL, THE REGISTRAR, UPON MAKING THE FINDINGS REQUIRED BY SECTION 14-3303 SHALL ISSUE A WRITTEN STATEMENT OF INFORMAL PROBATE IF AT LEAST ONE HUNDRED TWENTY HOURS HAVE ELAPSED SINCE THE DECEDENT'S DEATH. INFORMAL PROBATE IS CONCLUSIVE AS TO ALL PERSONS UNTIL SUPERSEDED BY AN ORDER IN A FORMAL TESTACY PROCEEDING. NO DEFECT IN THE APPLICATION OR PROCEDURE RELATING THERETO WHICH LEADS TO INFORMAL PROBATE OF A WILL RENDERS THE PROBATE VOID.

14-3303. **Informal probate; proof and findings required**

A. IN AN INFORMAL PROCEEDING FOR ORIGINAL PROBATE OF A WILL, THE REGISTRAR SHALL DETERMINE WHETHER:

1. THE APPLICATION IS COMPLETE.

2. THE APPLICANT HAS MADE OATH OR AFFIRMATION THAT THE STATEMENTS CONTAINED IN THE APPLICATION ARE TRUE TO THE BEST OF HIS KNOWLEDGE AND BELIEF.

3. THE APPLICANT APPEARS FROM THE APPLICATION TO BE A PERSON PERMITTED TO APPLY AS PROVIDED IN SECTION 14-3301, SUBSECTION A.

4. ON THE BASIS OF THE STATEMENTS IN THE APPLICATION, VENUE IS PROPER.

5. AN ORIGINAL, DULY EXECUTED AND APPARENTLY UNREVOKED WILL IS IN THE REGISTRAR'S POSSESSION.

6. ANY NOTICE REQUIRED BY SECTION 14-3204 HAS BEEN GIVEN AND THAT THE APPLICATION IS NOT WITHIN SECTION 14-3304.

7. IT APPEARS FROM THE APPLICATION THAT THE TIME LIMIT FOR ORIGINAL PROBATE HAS NOT EXPIRED.

B. THE APPLICATION SHALL BE DENIED IF IT INDICATES THAT A PERSONAL REPRESENTATIVE HAS BEEN APPOINTED IN ANOTHER COUNTY OF THIS STATE OR EXCEPT AS PROVIDED IN SUBSECTION D OF THIS SECTION, IF IT APPEARS THAT THIS OR ANOTHER WILL OF THE DECEDENT HAS BEEN THE SUBJECT OF A PREVIOUS PROBATE ORDER.

C. A WILL WHICH APPEARS TO HAVE THE REQUIRED SIGNATURES AND WHICH CONTAINS AN ATTESTATION CLAUSE SHOWING THAT REQUIREMENTS OF EXECUTION UNDER SECTION 14-2502, 14-2503 OR 14-2506 HAVE BEEN MET SHALL BE PROBATED WITHOUT FURTHER PROOF. IN OTHER CASES, THE REGISTRAR MAY ASSUME EXECUTION IF THE WILL APPEARS TO HAVE BEEN PROPERLY EXECUTED, OR HE MAY ACCEPT A SWORN STATEMENT OR AFFIDAVIT OF ANY PERSON HAVING KNOWLEDGE OF THE CIRCUMSTANCES OF EXECUTION, WHETHER OR NOT THE PERSON WAS A WITNESS TO THE WILL.

D. INFORMAL PROBATE OF A WILL WHICH HAS BEEN PREVIOUSLY PROBATED IN ANOTHER JURISDICTION MAY BE GRANTED AT ANY TIME UPON WRITTEN APPLICATION BY ANY INTERESTED PERSON, TOGETHER WITH DEPOSIT OF AN AUTHENTICATED COPY OF THE WILL AND OF THE STATEMENT PROBATING IT FROM THE OFFICE OR COURT WHERE IT WAS FIRST PROBATED.

E. A WILL FROM A PLACE WHICH DOES NOT PROVIDE FOR PROBATE OF A WILL AFTER DEATH AND WHICH IS NOT ELIGIBLE FOR PROBATE UNDER SUBSECTION A OF THIS SECTION, MAY BE PROBATED IN THIS STATE UPON RECEIPT BY THE REGISTRAR OF A DULY AUTHENTICATED COPY OF THE WILL AND A DULY AUTHENTICATED CERTIFICATE OF ITS LEGAL CUSTODIAN THAT THE COPY FILED IS A TRUE COPY AND THAT THE WILL HAS BECOME OPERATIVE UNDER THE LAW OF THE OTHER PLACE.

14-3304. **Informal probate; unavailable in certain cases**

AN APPLICATION FOR INFORMAL PROBATE SHALL BE DECLINED IF IT RELATES TO ONE OR MORE OF A KNOWN SERIES OF TESTAMENTARY INSTRUMENTS THE LATEST OF WHICH DOES NOT EXPRESSLY REVOKE THE EARLIER, EXCEPT THAT A SERIES CONSISTING OF A WILL WITH ITS CODICILS MAY BE INFORMALLY PROBATED.

14-3305. **Informal probate; registrar not satisfied**

IF THE REGISTRAR IS NOT SATISFIED THAT A WILL IS ENTITLED TO BE PROBATED IN INFORMAL PROCEEDINGS BECAUSE OF FAILURE TO MEET THE REQUIREMENTS OF SECTIONS 14-3303 AND 14-3304 OR ANY OTHER REASON, HE MAY DECLINE THE APPLICATION. A DECLINATION OF INFORMAL PROBATE IS NOT

AN ADJUDICATION AND DOES NOT PRECLUDE FORMAL PROBATE PROCEEDINGS.

14-3306. **Informal probate; notice requirements**

A. THE MOVING PARTY MUST GIVE NOTICE AS DESCRIBED BY SECTION 14-1401 OF HIS APPLICATION FOR INFORMAL PROBATE:

1. TO ANY PERSON DEMANDING IT PURSUANT TO SECTION 14-3204.

2. TO ANY PERSONAL REPRESENTATIVE OF THE DECEDENT WHOSE APPOINTMENT HAS NOT BEEN TERMINATED.

NO OTHER NOTICE NEED BE GIVEN PRIOR TO ISSUANCE OF A STATEMENT OF INFORMAL PROBATE BY THE REGISTRAR.

B. UPON ISSUANCE OF A STATEMENT OF INFORMAL PROBATE, THE APPLICANT MUST WITHIN TEN DAYS GIVE WRITTEN INFORMATION TO ALL HEIRS AND DEVISEES OF THE ADMISSION OF THE WILL TO PROBATE, TOGETHER WITH A COPY OF THE WILL. THE INFORMATION SHALL DESCRIBE THE COURT WHERE PAPERS RELATING TO THE ESTATE ARE ON FILE AND STATE THAT AN HEIR HAS FOUR MONTHS FROM RECEIPT OF THE INFORMATION WITHIN WHICH TO COMMENCE A FORMAL TESTACY PROCEEDING IF HE WISHES TO CONTEST THE PROBATE. IF A PERSONAL REPRESENTATIVE HAS BEEN APPOINTED, THE INFORMATION GIVEN PURSUANT TO THIS SECTION MAY BE COMBINED WITH THE INFORMATION REQUIRED BY SECTION 14-3705 AND MAY IN THAT CASE BE GIVEN BY EITHER THE APPLICANT OR THE PERSONAL REPRESENTATIVE ON BEHALF OF BOTH. THIS INFORMATION SHALL BE DELIVERED OR SENT BY MAIL TO EACH OF THE HEIRS AND DEVISEES WHOSE ADDRESS IS REASONABLY AVAILABLE TO THE APPLICANT. AN HEIR TO WHOM THE INFORMATION IS GIVEN IS BARRED FROM COMMENCING A FORMAL TESTACY PROCEEDING TO CONTEST THE PROBATE OF THE WILL AFTER FOUR MONTHS HAVE ELAPSED FROM RECEIPT OF THE INFORMATION; BUT HE IS NOT BARRED FROM COMMENCING A FORMAL TESTACY PROCEEDING TO PROBATE A LATER DISCOVERED WILL. AN HEIR TO WHOM THE INFORMATION IS NOT GIVEN MAY CONTEST THE INFORMAL PROBATE WITHIN THE TIME LIMIT SPECIFIED IN SECTION 14-3108. THE APPLICANT SHALL BE LIABLE TO ANY HEIR OR DEVISEE DAMAGED BY FAILURE TO COMPLY WITH THIS SUBSECTION.

14-3307. **Informal appointment proceedings; delay in order; duty of registrar; effect of appointment**

A. UPON RECEIPT OF AN APPLICATION FOR INFORMAL APPOINTMENT OF A PERSONAL REPRESENTATIVE OTHER THAN A SPECIAL ADMINISTRATOR AS PROVIDED IN SECTION 14-3614, IF AT LEAST ONE HUNDRED TWENTY HOURS HAVE ELAPSED SINCE THE DECEDENT'S DEATH, THE REGISTRAR, AFTER MAKING THE FINDINGS REQUIRED BY SECTION 14-3308, SHALL APPOINT THE APPLICANT SUBJECT TO QUALIFICATION AND ACCEPTANCE, EXCEPT THAT IF THE DECEDENT WAS A NONRESIDENT THE REGISTRAR SHALL DELAY THE ORDER OF APPOINTMENT UNTIL THIRTY DAYS HAVE ELAPSED SINCE DEATH UNLESS THE PERSONAL REPRESENTATIVE APPOINTED AT THE DECEDENT'S DOMICILE IS THE APPLICANT OR THE DECEDENT'S WILL DIRECTS THAT HIS ESTATE BE SUBJECT TO THE LAWS OF THIS STATE.

B. THE STATUS OF PERSONAL REPRESENTATIVE AND THE POWERS AND DUTIES PERTAINING TO THE OFFICE ARE FULLY ESTABLISHED BY INFORMAL APPOINTMENT. AN APPOINTMENT, AND THE OFFICE OF PERSONAL REPRESENTATIVE CREATED THEREBY, IS SUBJECT TO TERMINATION AS PROVIDED IN SECTIONS 14-3608 THROUGH 14-3612, BUT IS NOT SUBJECT TO RETROACTIVE VACATION.

14-3308. **Informal appointment proceedings; proof and findings required**

A. IN INFORMAL APPOINTMENT PROCEEDINGS, THE REGISTRAR MUST DETERMINE WHETHER:

1. THE APPLICATION FOR INFORMAL APPOINTMENT OF A PERSONAL REPRESENTATIVE IS COMPLETE.

2. THE APPLICANT HAS MADE OATH OR AFFIRMATION THAT THE STATEMENTS CONTAINED IN THE APPLICATION ARE TRUE TO THE BEST OF HIS KNOWLEDGE AND BELIEF.

3. THE APPLICANT APPEARS FROM THE APPLICATION TO BE A PERSON PERMITTED TO APPLY AS PROVIDED IN SECTION 14-3301, SUBSECTION A.

4. ON THE BASIS OF THE STATEMENTS IN THE APPLICATION, VENUE IS PROPER.

5. ANY WILL TO WHICH THE REQUESTED APPOINTMENT RELATES HAS BEEN FORMALLY OR INFORMALLY PROBATED, EXCEPT THIS REQUIREMENT DOES NOT APPLY TO THE APPOINTMENT OF A SPECIAL ADMINISTRATOR.

6. ANY NOTICE REQUIRED BY SECTION 14-3204 HAS BEEN GIVEN.

7. FROM THE STATEMENTS IN THE APPLICATION, THE PERSON WHOSE APPOINTMENT IS SOUGHT HAS PRIORITY ENTITLING HIM TO THE APPOINTMENT.

8. THE WILL, IF ANY, REQUIRES SUPERVISED ADMINISTRATION.

B. UNLESS SECTION 14-3612 CONTROLS, THE APPLICATION MUST BE DENIED IF IT INDICATES ANY OF THE FOLLOWING:

1. A PERSONAL REPRESENTATIVE WHO HAS NOT FILED A WRITTEN STATEMENT OF RESIGNATION AS PROVIDED IN SECTION 14-3610, SUBSECTION C HAS BEEN APPOINTED IN THIS OR ANOTHER COUNTY OF THIS STATE.

2. THE DECEDENT WAS NOT DOMICILED IN THIS STATE, A PERSONAL REPRESENTATIVE WHOSE APPOINTMENT HAS NOT BEEN TERMINATED HAS BEEN APPOINTED BY A COURT IN THE STATE OF DOMICILE AND THE APPLICANT IS NOT THE DOMICILIARY PERSONAL REPRESENTATIVE OR HIS NOMINEE.

3. OTHER REQUIREMENTS OF THIS SECTION HAVE NOT BEEN MET.

14-3309. **Informal appointment proceedings; registrar not satisfied**

IF THE REGISTRAR IS NOT SATISFIED THAT A REQUESTED INFORMAL APPOINTMENT OF A PERSONAL REPRESENTATIVE SHOULD BE MADE BECAUSE OF FAILURE TO MEET THE REQUIREMENTS OF SECTIONS 14-3307, 14-3308 AND 14-3311, OR FOR ANY OTHER REASON, HE MAY DECLINE THE APPLICATION. A DECLINATION OF INFORMAL APPOINTMENT IS NOT AN ADJUDICATION AND DOES NOT PRECLUDE APPOINTMENT IN FORMAL PROCEEDINGS.

14-3310. **Informal appointment proceedings; notice requirements**

THE MOVING PARTY MUST GIVE NOTICE AS DESCRIBED BY SECTION 14-1401 OF HIS INTENTION TO SEEK AN APPOINTMENT INFORMALLY:

1. TO ANY PERSON DEMANDING IT PURSUANT TO SECTION 14-3204.

2. TO ANY PERSON HAVING A PRIOR OR EQUAL RIGHT TO APPOINTMENT NOT WAIVED IN WRITING AND FILED WITH THE COURT. NO OTHER NOTICE OF AN INFORMAL APPOINTMENT PROCEEDING IS REQUIRED.

14-3311. **Informal appointment unavailable in certain cases**

IF AN APPLICATION FOR INFORMAL APPOINTMENT INDICATES THE EXISTENCE OF A POSSIBLE UNREVOKED TESTAMENTARY INSTRUMENT WHICH MAY RELATE TO PROPERTY SUBJECT TO THE LAWS OF THIS STATE, AND WHICH IS NOT FILED FOR PROBATE IN THIS COURT, THE REGISTRAR SHALL DECLINE THE APPLICATION.

ARTICLE 4. FORMAL TESTACY AND APPOINTMENT PROCEEDINGS

14-3401. **Formal testacy proceedings; nature; when commenced**

A. A FORMAL TESTACY PROCEEDING IS LITIGATION TO DETERMINE WHETHER A DECEDENT LEFT A VALID WILL. A FORMAL TESTACY PROCEEDING MAY BE COMMENCED BY AN INTERESTED PERSON FILING A PETITION AS DESCRIBED IN SECTION 14-3402, SUBSECTION A IN WHICH HE REQUESTS THAT THE COURT, AFTER NOTICE AND HEARING, ENTER AN ORDER PROBATING A WILL, OR A PETITION TO SET ASIDE AN INFORMAL PROBATE OF A WILL OR TO PREVENT INFORMAL PROBATE OF A WILL WHICH IS THE SUBJECT OF A PENDING APPLICATION, OR A PETITION IN ACCORDANCE WITH SECTION 14-3402, SUBSECTION B FOR AN ORDER THAT THE DECEDENT DIED INTESTATE.

B. A PETITION MAY SEEK FORMAL PROBATE OF A WILL WITHOUT REGARD TO WHETHER THE SAME OR A CONFLICTING WILL HAS BEEN INFORMALLY PROBATED. A FORMAL TESTACY

PROCEEDING MAY INVOLVE A REQUEST FOR APPOINTMENT OF A PERSONAL REPRESENTATIVE.

C. DURING THE PENDENCY OF A FORMAL TESTACY PROCEEDING, THE REGISTRAR SHALL NOT ACT UPON ANY APPLICATION FOR INFORMAL PROBATE OF ANY WILL OF THE DECEDENT OR ANY APPLICATION FOR INFORMAL APPOINTMENT OF A PERSONAL REPRESENTATIVE OF THE DECEDENT.

D. UNLESS A PETITION IN A FORMAL TESTACY PROCEEDING ALSO REQUESTS CONFIRMATION OF THE PREVIOUS INFORMAL APPOINTMENT, A PREVIOUSLY APPOINTED PERSONAL REPRESENTATIVE, AFTER RECEIPT OF NOTICE OF THE COMMENCEMENT OF A FORMAL PROBATE PROCEEDING, MUST REFRAIN FROM EXERCISING HIS POWER TO MAKE ANY FURTHER DISTRIBUTION OF THE ESTATE DURING THE PENDENCY OF THE FORMAL PROCEEDING. A PETITIONER WHO SEEKS THE APPOINTMENT OF A DIFFERENT PERSONAL REPRESENTATIVE IN A FORMAL PROCEEDING ALSO MAY REQUEST AN ORDER RESTRAINING THE ACTING PERSONAL REPRESENTATIVE FROM EXERCISING ANY OF THE POWERS OF HIS OFFICE AND REQUESTING THE APPOINTMENT OF A SPECIAL ADMINISTRATOR. IN THE ABSENCE OF A REQUEST OR IF THE REQUEST IS DENIED, THE COMMENCEMENT OF A FORMAL PROCEEDING HAS NO EFFECT ON THE POWERS AND DUTIES OF A PREVIOUSLY APPOINTED PERSONAL REPRESENTATIVE OTHER THAN THOSE RELATING TO DISTRIBUTION.

14-3402. **Formal testacy or appointment proceedings; petition; contents**

A. PETITIONS FOR FORMAL PROBATE OF A WILL, OR FOR ADJUDICATION OF INTESTACY WITH OR WITHOUT REQUEST FOR APPOINTMENT OF A PERSONAL REPRESENTATIVE, MUST BE DIRECTED TO THE COURT, REQUEST A JUDICIAL ORDER AFTER NOTICE AND HEARING AND CONTAIN FURTHER STATEMENTS AS INDICATED IN THIS SECTION. A PETITION FOR FORMAL PROBATE OF A WILL MUST:

1. REQUEST AN ORDER AS TO THE TESTACY OF THE DECEDENT IN RELATION TO A PARTICULAR INSTRUMENT WHICH MAY OR MAY NOT HAVE BEEN INFORMALLY PROBATED AND DETERMINING THE HEIRS;

2. CONTAIN THE STATEMENTS REQUIRED FOR INFORMAL

APPLICATIONS AS STATED IN PARAGRAPH 1 OF SUBSECTION B OF SECTION 14-3301 AND THE STATEMENTS REQUIRED BY SUBDIVISIONS (b) AND (c), PARAGRAPH 2 OF SUBSECTION B OF SECTION 14-3301; AND

3. STATE WHETHER THE ORIGINAL OF THE LAST WILL OF THE DECEDENT IS IN THE POSSESSION OF THE COURT OR ACCOMPANIES THE PETITION. IF THE ORIGINAL WILL IS NEITHER IN THE POSSESSION OF THE COURT NOR ACCOMPANIES THE PETITION AND NO AUTHENTICATED COPY OF A WILL PROBATED IN ANOTHER JURISDICTION ACCOMPANIES THE PETITION, THE PETITION ALSO MUST STATE THE CONTENTS OF THE WILL, AND INDICATE THAT IT IS LOST, DESTROYED OR OTHERWISE UNAVAILABLE.

B. A PETITION FOR ADJUDICATION OF INTESTACY AND APPOINTMENT OF AN ADMINISTRATOR IN INTESTACY MUST REQUEST A JUDICIAL FINDING AND ORDER THAT THE DECEDENT LEFT NO WILL AND DETERMINING THE HEIRS, CONTAIN THE STATEMENTS REQUIRED BY PARAGRAPHS 1 AND 4 OF SUBSECTION B OF SECTION 14-3301 AND INDICATE WHETHER SUPERVISED ADMINISTRATION IS SOUGHT. A PETITION MAY REQUEST AN ORDER DETERMINING INTESTACY AND HEIRS WITHOUT REQUESTING THE APPOINTMENT OF AN ADMINISTRATOR, IN WHICH CASE, THE STATEMENTS REQUIRED BY SUBDIVISION (b), PARAGRAPH 4 OF SUBSECTION B OF SECTION 14-3301 MAY BE OMITTED.

14-3403. **Formal testacy proceeding; notice of hearing on petition**

A. UPON COMMENCEMENT OF A FORMAL TESTACY PROCEEDING, THE CLERK SHALL FIX A TIME AND PLACE OF HEARING. NOTICE SHALL BE GIVEN IN THE MANNER PRESCRIBED BY SECTION 14-1401 BY THE PETITIONER TO THE PERSONS SPECIFIED IN THIS SECTION AND TO ANY ADDITIONAL PERSON WHO HAS FILED A DEMAND FOR NOTICE UNDER SECTION 114-3204. NOTICE SHALL BE GIVEN TO THE FOLLOWING PERSONS: THE SURVIVING SPOUSE, CHILDREN AND OTHER HEIRS OF THE DECEDENT, THE DEVISEES AND EXECUTORS NAMED IN ANY WILL THAT IS BEING, OR HAS BEEN, PROBATED, OR OFFERED FOR INFORMAL OR FORMAL PROBATE IN THE COUNTY, OR THAT IS KNOWN BY THE PETITIONER TO HAVE BEEN PROBATED, OR OFFERED FOR INFORMAL OR FORMAL PROBATE IN ANOTHER JURISDICTION, AND ANY PERSONAL

REPRESENTATIVE OF THE DECEDENT WHOSE APPOINTMENT HAS NOT BEEN TERMINATED. NOTICE MAY BE GIVEN TO OTHER PERSONS. IN ADDITION, THE PETITIONER SHALL GIVE NOTICE BY PUBLICATION IN ACCORDANCE WITH SECTION 14-1401, SUBSECTION A, PARAGRAPH 3.

B. IF IT APPEARS BY THE PETITION OR OTHERWISE THAT THE FACT OF THE DEATH OF THE ALLEGED DECEDENT MAY BE IN DOUBT, OR ON THE WRITTEN DEMAND OF ANY INTERESTED PERSON, A COPY OF THE NOTICE OF THE HEARING ON THE PETITION SHALL BE SENT BY REGISTERED MAIL TO THE ALLEGED DECEDENT AT HIS LAST KNOWN ADDRESS. THE COURT SHALL DIRECT THE PETITIONER TO REPORT THE RESULTS OF, OR MAKE AND REPORT BACK CONCERNING, A REASONABLY DILIGENT SEARCH FOR THE ALLEGED DECEDENT IN ANY MANNER THAT MAY SEEM ADVISABLE, INCLUDING ANY OR ALL OF THE FOLLOWING METHODS:

1. BY INSERTING IN ONE OR MORE SUITABLE PERIODICALS A NOTICE REQUESTING INFORMATION FROM ANY PERSON HAVING KNOWLEDGE OF THE WHEREABOUTS OF THE ALLEGED DECEDENT.

2. BY NOTIFYING LAW ENFORCEMENT OFFICIALS AND PUBLIC WELFARE AGENCIES IN APPROPRIATE LOCATIONS OF THE DISAPPEARANCE OF THE ALLEGED DECEDENT.

3. BY ENGAGING THE SERVICES OF AN INVESTIGATOR. THE COSTS OF ANY SEARCH SO DIRECTED SHALL BE PAID BY THE PETITIONER IF THERE IS NO ADMINISTRATION OR BY THE ESTATE OF THE DECEDENT IN CASE THERE IS ADMINISTRATION.

14-3404. **Formal testacy proceedings; written objections to probate**

ANY PARTY TO A FORMAL PROCEEDING WHO OPPOSES THE PROBATE OF A WILL FOR ANY REASON SHALL STATE IN HIS PLEADINGS HIS OBJECTIONS TO PROBATE OF THE WILL.

14-3405. **Formal testacy proceedings; uncontested cases; hearings and proof**

IF A PETITION IN A TESTACY PROCEEDING IS UNOPPOSED, THE COURT MAY ORDER PROBATE OR INTESTACY ON THE STRENGTH OF THE PLEADINGS IF SATISFIED THAT THE

CONDITIONS OF SECTION 14-3409 HAVE BEEN MET, OR CONDUCT A HEARING IN OPEN COURT AND REQUIRE PROOF OF THE MATTERS NECESSARY TO SUPPORT THE ORDER SOUGHT. IF EVIDENCE CONCERNING EXECUTION OF THE WILL IS NECESSARY, THE AFFIDAVIT OR TESTIMONY OF ONE OF ANY ATTESTING WITNESSES TO THE INSTRUMENT IS SUFFICIENT. IF THE AFFIDAVIT OR TESTIMONY OF AN ATTESTING WITNESS IS NOT AVAILABLE, EXECUTION OF THE WILL MAY BE PROVED BY OTHER EVIDENCE OR AFFIDAVIT.

14-3406. **Formal testacy proceedings; contested cases; testimony of attesting witnesses**

A. IF EVIDENCE CONCERNING EXECUTION OF AN ATTESTED WILL WHICH IS NOT SELF-PROVED IS NECESSARY IN CONTESTED CASES, THE TESTIMONY OF AT LEAST ONE OF THE ATTESTING WITNESSES, IF WITHIN THE STATE, COMPETENT AND ABLE TO TESTIFY, IS REQUIRED. DUE EXECUTION OF AN ATTESTED OR UNATTESTED WILL MAY BE PROVED BY OTHER EVIDENCE.

B. IF THE WILL IS SELF-PROVED, COMPLIANCE WITH SIGNATURE REQUIREMENTS FOR EXECUTION IS CONCLUSIVELY PRESUMED AND OTHER REQUIREMENTS OF EXECUTION ARE PRESUMED SUBJECT TO REBUTTAL WITHOUT THE TESTIMONY OF ANY WITNESS UPON FILING THE WILL AND THE ACKNOWLEDGMENT AND AFFIDAVITS ANNEXED OR ATTACHED THERETO, UNLESS THERE IS PROOF OF FRAUD OR FORGERY AFFECTING THE ACKNOWLEDGMENT OR AFFIDAVIT.

14-3407. **Formal testacy proceedings; burdens in contested cases**

IN CONTESTED CASES, PETITIONERS WHO SEEK TO ESTABLISH INTESTACY HAVE THE BURDEN OF ESTABLISHING PRIMA FACIE PROOF OF DEATH, VENUE AND HEIRSHIP. PROPONENTS OF A WILL HAVE THE BURDEN OF ESTABLISHING PRIMA FACIE PROOF OF DUE EXECUTION IN ALL CASES, AND IF THEY ARE ALSO PETITIONERS, PRIMA FACIE PROOF OF DEATH AND VENUE. CONTESTANTS OF A WILL HAVE THE BURDEN OF ESTABLISHING LACK OF TESTAMENTARY INTENT OR CAPACITY, UNDUE INFLUENCE, FRAUD, DURESS, MISTAKE OR REVOCATION. PARTIES HAVE THE ULTIMATE BURDEN OF PERSUASION AS TO MATTERS WITH RESPECT TO WHICH THEY HAVE THE INITIAL BURDEN OF PROOF. IF A WILL IS OPPOSED BY THE PETITION FOR PROBATE OF A LATER WILL REVOKING THE FORMER, IT SHALL BE

DETERMINED FIRST WHETHER THE LATER WILL IS ENTITLED TO PROBATE, AND IF A WILL IS OPPOSED BY A PETITION FOR A DECLARATION OF INTESTACY, IT SHALL BE DETERMINED FIRST WHETHER THE WILL IS ENTITLED TO PROBATE.

14-3408. **Formal testacy proceedings; will construction; effect of final order in another jurisdiction**

A FINAL ORDER OF A COURT OF ANOTHER STATE DETERMINING TESTACY, THE VALIDITY OR CONSTRUCTION OF A WILL, MADE IN A PROCEEDING INVOLVING NOTICE TO AND AN OPPORTUNITY FOR CONTEST BY ALL INTERESTED PERSONS MUST BE ACCEPTED AS DETERMINATIVE BY THE COURTS OF THIS STATE IF IT INCLUDES, OR IS BASED UPON, A FINDING THAT THE DECEDENT WAS DOMICILED AT HIS DEATH IN THE STATE WHERE THE ORDER WAS MADE.

14-3409. **Formal testacy proceedings; orders; foreign will**

AFTER THE TIME REQUIRED FOR ANY NOTICE HAS EXPIRED, UPON PROOF OF NOTICE, AND AFTER ANY HEARING THAT MAY BE NECESSARY, IF THE COURT FINDS THAT THE TESTATOR IS DEAD, VENUE IS PROPER AND THAT THE PROCEEDING WAS COMMENCED WITHIN THE LIMITATION PRESCRIBED BY SECTION 14-3108, IT SHALL DETERMINE THE DECEDENT'S DOMICILE AT DEATH, HIS HEIRS AND HIS STATE OF TESTACY. ANY WILL FOUND TO BE VALID AND UNREVOKED SHALL BE FORMALLY PROBATED. TERMINATION OF ANY PREVIOUS INFORMAL APPOINTMENT OF A PERSONAL REPRESENTATIVE, WHICH MAY BE APPROPRIATE IN VIEW OF THE RELIEF REQUESTED AND FINDINGS, IS GOVERNED BY SECTION 14-3612. THE PETITION SHALL BE DISMISSED OR APPROPRIATE AMENDMENT ALLOWED IF THE COURT IS NOT SATISFIED THAT THE ALLEGED DECEDENT IS DEAD. A WILL FROM A PLACE WHICH DOES NOT PROVIDE FOR PROBATE OF A WILL AFTER DEATH, MAY BE PROVED FOR PROBATE IN THIS STATE BY A DULY AUTHENTICATED CERTIFICATE OF ITS LEGAL CUSTODIAN THAT THE COPY INTRODUCED IS A TRUE COPY AND THAT THE WILL HAS BECOME EFFECTIVE UNDER THE LAW OF THE OTHER PLACE.

14-3410. **Formal testacy proceedings; probate of more than one instrument**

IF TWO OR MORE INSTRUMENTS ARE OFFERED FOR PROBATE BEFORE A FINAL ORDER IS ENTERED IN A FORMAL TESTACY

PROCEEDING, MORE THAN ONE INSTRUMENT MAY BE PROBATED IF NEITHER EXPRESSLY REVOKES THE OTHER OR CONTAINS PROVISIONS WHICH WORK A TOTAL REVOCATION BY IMPLICATION. IF MORE THAN ONE INSTRUMENT IS PROBATED, THE ORDER SHALL INDICATE WHAT PROVISIONS CONTROL IN RESPECT TO THE NOMINATION OF AN EXECUTOR, IF ANY. THE ORDER MAY, BUT NEED NOT, INDICATE HOW ANY PROVISIONS OF A PARTICULAR INSTRUMENT ARE AFFECTED BY THE OTHER INSTRUMENT. AFTER A FINAL ORDER IN A TESTACY PROCEEDING HAS BEEN ENTERED, NO PETITION FOR PROBATE OF ANY OTHER INSTRUMENT OF THE DECEDENT MAY BE ENTERTAINED, EXCEPT INCIDENT TO A PETITION TO VACATE OR MODIFY A PREVIOUS PROBATE ORDER AND SUBJECT TO THE TIME LIMITS OF SECTION 14-3412.

14-3411. **Formal testacy proceedings; partial intestacy**

IF IT BECOMES EVIDENT IN THE COURSE OF A FORMAL TESTACY PROCEEDING THAT, THOUGH ONE OR MORE INSTRUMENTS ARE ENTITLED TO BE PROBATED, THE DECEDENT'S ESTATE IS OR MAY BE PARTIALLY INTESTATE, THE COURT SHALL ENTER AN ORDER TO THAT EFFECT.

14-3412. **Formal testacy proceedings; effect of order; vacation**

A. SUBJECT TO APPEAL AND SUBJECT TO VACATION AS PROVIDED IN THIS SECTION AND IN SECTION 14-3413, A FORMAL TESTACY ORDER UNDER SECTIONS 14-3409 THROUGH 14-3411, INCLUDING AN ORDER THAT THE DECEDENT LEFT NO VALID WILL AND DETERMINING HEIRS, IS FINAL AS TO ALL PERSONS WITH RESPECT TO ALL ISSUES CONCERNING THE DECEDENT'S ESTATE THAT THE COURT CONSIDERED OR MIGHT HAVE CONSIDERED INCIDENT TO ITS RENDITION RELEVANT TO THE QUESTION OF WHETHER THE DECEDENT LEFT A VALID WILL, AND TO THE DETERMINATION OF HEIRS, EXCEPT THAT:

1. NOT LATER THAN SIXTY DAYS AFTER ENTRY OF A FORMAL TESTACY ORDER PROBATING A WILL OR A FORMAL ADJUDICATION OF INTESTACY, ANY INTERESTED PERSON WHO DID NOT OPPOSE THE PROBATE OF THE WILL OR THE ALLEGATIONS OF INTESTACY AT THE ORIGINAL HEARING MAY PETITION THE COURT TO VACATE ITS ORDER AND REOPEN THE MATTER; THE COURT SHALL THEREUPON FIX A TIME AND PLACE OF HEARING, WITH NOTICE TO THE HEIRS, THE DEVISEES NAMED IN THE

WILL, THE PERSONAL REPRESENTATIVE, AND OTHER PERSONS AS DIRECTED BY THE COURT. THE COURT SHALL PROCEED AS IN ANY CONTESTED TESTACY CASE; THE COURT MAY VACATE THE ORIGINAL ORDER AND MAKE A NEW ORDER DETERMINING THE DECEDENT'S STATE OF TESTACY, OR DENY THE PETITION TO VACATE AND CONFIRM THE ORIGINAL ORDER.

2. THE COURT SHALL ENTERTAIN A PETITION FOR MODIFICATION OR VACATION OF ITS ORDER AND PROBATE OF ANOTHER WILL OF THE DECEDENT IF IT IS SHOWN THAT THE PROPONENTS OF THE LATER-OFFERED WILL WERE UNAWARE OF ITS EXISTENCE AT THE TIME OF THE EARLIER PROCEEDING OR WERE UNAWARE OF THE EARLIER PROCEEDING AND WERE GIVEN NO NOTICE THEREOF, EXCEPT BY PUBLICATION.

3. IF INTESTACY OF ALL OR PART OF THE ESTATE HAS BEEN ORDERED, THE DETERMINATION OF HEIRS OF THE DECEDENT MAY BE RECONSIDERED IF IT IS SHOWN THAT ONE OR MORE PERSONS WERE OMITTED FROM THE DETERMINATION AND IT IS ALSO SHOWN THAT THE PERSONS WERE UNAWARE OF THEIR RELATIONSHIP TO THE DECEDENT, WERE UNAWARE OF HIS DEATH OR WERE GIVEN NO NOTICE OF ANY PROCEEDING CONCERNING HIS ESTATE, EXCEPT BY PUBLICATION.

4. A PETITION FOR VACATION UNDER EITHER PARAGRAPH 2 OR 3 OF THIS SUBSECTION MUST BE FILED PRIOR TO THE EARLIER OF THE FOLLOWING TIME LIMITS:

(a) IF A PERSONAL REPRESENTATIVE HAS BEEN APPOINTED FOR THE ESTATE, THE TIME OF ENTRY OF ANY ORDER APPROVING FINAL DISTRIBUTION OF THE ESTATE, OR, IF THE ESTATE IS CLOSED BY STATEMENT, SIX MONTHS AFTER THE FILING OF THE CLOSING STATEMENT.

(b) WHETHER OR NOT A PERSONAL REPRESENTATIVE HAS BEEN APPOINTED FOR THE ESTATE OF THE DECEDENT, THE TIME PRESCRIBED BY SECTION 14-3108 WHEN IT IS NO LONGER POSSIBLE TO INITIATE AN ORIGINAL PROCEEDING TO PROBATE A WILL OF THE DECEDENT.

(c) TWELVE MONTHS AFTER THE ENTRY OF THE ORDER SOUGHT TO BE VACATED.

5. THE ORDER ORIGINALLY RENDERED IN THE TESTACY PROCEEDING MAY BE MODIFIED OR VACATED, IF APPROPRIATE

UNDER THE CIRCUMSTANCES, BY THE ORDER OF PROBATE OF THE LATER-OFFERED WILL OR THE ORDER REDETERMINING HEIRS.

6. THE FINDING OF THE FACT OF DEATH IS CONCLUSIVE AS TO THE ALLEGED DECEDENT ONLY IF NOTICE OF THE HEARING ON THE PETITION IN THE FORMAL TESTACY PROCEEDING WAS SENT BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO THE ALLEGED DECEDENT AT HIS LAST KNOWN ADDRESS AND THE COURT FINDS THAT A SEARCH UNDER SECTION 14-3403, SUBSECTION B WAS MADE.

B. IF THE ALLEGED DECEDENT IS NOT DEAD, EVEN IF NOTICE WAS SENT AND SEARCH WAS MADE, HE MAY RECOVER ESTATE ASSETS IN THE HANDS OF THE PERSONAL REPRESENTATIVE. IN ADDITION TO ANY REMEDIES AVAILABLE TO THE ALLEGED DECEDENT BY REASON OF ANY FRAUD OR INTENTIONAL WRONGDOING, THE ALLEGED DECEDENT MAY RECOVER ANY ESTATE OR ITS PROCEEDS FROM DISTRIBUTEES THAT IS IN THEIR HANDS, OR THE VALUE OF DISTRIBUTIONS RECEIVED BY THEM, TO THE EXTENT THAT ANY RECOVERY FROM DISTRIBUTEES IS EQUITABLE IN VIEW OF THE CIRCUMSTANCES.

14-3413. **Formal testacy proceedings; vacation of order for other cause**

FOR GOOD CAUSE SHOWN, AN ORDER IN A FORMAL TESTACY PROCEEDING MAY BE MODIFIED OR VACATED WITHIN THE TIME ALLOWED FOR APPEAL.

14-3414. **Formal proceedings concerning appointment of personal representative**

A. A FORMAL PROCEEDING FOR ADJUDICATION REGARDING THE PRIORITY OR QUALIFICATION OF ONE WHO IS AN APPLICANT FOR APPOINTMENT AS PERSONAL REPRESENTATIVE, OR OF ONE WHO PREVIOUSLY HAS BEEN APPOINTED PERSONAL REPRESENTATIVE IN INFORMAL PROCEEDINGS, IF AN ISSUE CONCERNING THE TESTACY OF THE DECEDENT IS OR MAY BE INVOLVED, IS GOVERNED BY SECTION 14-3402, AS WELL AS BY THIS SECTION. IN OTHER CASES, THE PETITION SHALL CONTAIN OR ADOPT THE STATEMENTS REQUIRED BY SECTION 14-3301, PARAGRAPH 1 AND DESCRIBE THE QUESTION RELATING TO PRIORITY OR QUALIFICATION OF THE PERSONAL REPRESENTATIVE WHICH IS TO BE RESOLVED. IF THE PROCEEDING

PRECEDES ANY APPOINTMENT OF A PERSONAL REPRESENTATIVE, IT SHALL STAY ANY PENDING INFORMAL APPOINTMENT PROCEEDINGS AS WELL AS ANY COMMENCED THEREAFTER. IF THE PROCEEDING IS COMMENCED AFTER APPOINTMENT, THE PREVIOUSLY APPOINTED PERSONAL REPRESENTATIVE, AFTER RECEIPT OF NOTICE THEREOF, SHALL REFRAIN FROM EXERCISING ANY POWER OF ADMINISTRATION EXCEPT AS NECESSARY TO PRESERVE THE ESTATE OR UNLESS THE COURT ORDERS OTHERWISE.

B. AFTER NOTICE TO INTERESTED PERSONS, INCLUDING ALL PERSONS INTERESTED IN THE ADMINISTRATION OF THE ESTATE AS SUCCESSORS UNDER THE APPLICABLE ASSUMPTION CONCERNING TESTACY, ANY PREVIOUSLY APPOINTED PERSONAL REPRESENTATIVE AND ANY PERSON HAVING OR CLAIMING PRIORITY FOR APPOINTMENT AS PERSONAL REPRESENTATIVE, THE COURT SHALL DETERMINE WHO IS ENTITLED TO APPOINTMENT UNDER SECTION 14-3203, MAKE A PROPER APPOINTMENT AND, IF APPROPRIATE, TERMINATE ANY PRIOR APPOINTMENT FOUND TO HAVE BEEN IMPROPER AS PROVIDED IN CASES OF REMOVAL UNDER SECTION 14-3611.

14-3415. **Proof of missing will**

IF THE ORIGINAL WILL, OR AN AUTHENTICATED COPY OF THE WILL AS PROBATED IN ANOTHER JURISDICTION, IS NOT AVAILABLE, THE CONTENTS OF THE WILL CAN BE PROVED BY A COPY OF THE WILL AND TESTIMONY OF AT LEAST ONE CREDIBLE WITNESS THAT THE COPY IS A TRUE COPY OF THE ORIGINAL. IF A COPY OF THE WILL IS UNAVAILABLE, CONTENTS OF THE WILL CAN BE PROVED ONLY BY CLEAR AND CONVINCING PROOF. A WITNESS NEED NOT BE AN ATTESTING WITNESS TO THE WILL. IF THE MISSING WILL IS ALLOWED FOR PROBATE, THE ORDER OF THE COURT SHALL SET FORTH THE CONTENTS OF THE WILL AS FOUND BY THE COURT.

ARTICLE 5. SUPERVISED ADMINISTRATION

14-3501. **Supervised administration; nature of proceeding**

SUPERVISED ADMINISTRATION IS A SINGLE IN REM PROCEEDING TO SECURE COMPLETE ADMINISTRATION AND SETTLEMENT OF A DECEDENT'S ESTATE UNDER THE CONTINUING AUTHORITY OF THE COURT WHICH EXTENDS UNTIL ENTRY OF

AN ORDER APPROVING DISTRIBUTION OF THE ESTATE AND DISCHARGING THE PERSONAL REPRESENTATIVE OR OTHER ORDER TERMINATING THE PROCEEDING. A SUPERVISED PERSONAL REPRESENTATIVE IS RESPONSIBLE TO THE COURT, AS WELL AS TO THE INTERESTED PARTIES, AND IS SUBJECT TO DIRECTIONS CONCERNING THE ESTATE MADE BY THE COURT ON ITS OWN MOTION OR ON THE MOTION OF ANY INTERESTED PARTY. EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE, OR AS OTHERWISE ORDERED BY THE COURT, A SUPERVISED PERSONAL REPRESENTATIVE HAS THE SAME DUTIES AND POWERS AS A PERSONAL REPRESENTATIVE WHO IS NOT SUPERVISED.

14-3502. **Supervised administration; petition; order**

A PETITION FOR SUPERVISED ADMINISTRATION MAY BE FILED BY ANY INTERESTED PERSON OR BY A PERSONAL REPRESENTATIVE AT ANY TIME OR THE PRAYER FOR SUPERVISED ADMINISTRATION MAY BE JOINED WITH A PETITION IN A TESTACY OR APPOINTMENT PROCEEDING. IF THE TESTACY OF THE DECEDENT AND THE PRIORITY AND QUALIFICATION OF ANY PERSONAL REPRESENTATIVE HAVE NOT BEEN ADJUDICATED PREVIOUSLY, THE PETITION FOR SUPERVISED ADMINISTRATION SHALL INCLUDE THE MATTERS REQUIRED OF A PETITION IN A FORMAL TESTACY PROCEEDING AND THE NOTICE REQUIREMENTS AND PROCEDURES APPLICABLE TO A FORMAL TESTACY PROCEEDING APPLY. IF NOT PREVIOUSLY ADJUDICATED, THE COURT SHALL ADJUDICATE THE TESTACY OF THE DECEDENT AND QUESTIONS RELATING TO THE PRIORITY AND QUALIFICATIONS OF THE PERSONAL REPRESENTATIVE IN ANY CASE INVOLVING A REQUEST FOR SUPERVISED ADMINISTRATION, EVEN THOUGH THE REQUEST FOR SUPERVISED ADMINISTRATION MAY BE DENIED. AFTER NOTICE TO INTERESTED PERSONS, THE COURT SHALL ORDER SUPERVISED ADMINISTRATION OF A DECEDENT'S ESTATE:

1. IF THE DECEDENT'S WILL DIRECTS SUPERVISED ADMINISTRATION, IT SHALL BE ORDERED UNLESS THE COURT FINDS THAT CIRCUMSTANCES BEARING ON THE NEED FOR SUPERVISED ADMINISTRATION HAVE CHANGED SINCE THE EXECUTION OF THE WILL AND THAT THERE IS NO NECESSITY FOR SUPERVISED ADMINISTRATION.

2. IF THE DECEDENT'S WILL DIRECTS UNSUPERVISED ADMINISTRATION, SUPERVISED ADMINISTRATION SHALL BE ORDERED

ONLY UPON A FINDING THAT IT IS NECESSARY FOR PROTECTION OF PERSONS INTERESTED IN THE ESTATE.

3. IN OTHER CASES IF THE COURT FINDS THAT SUPERVISED ADMINISTRATION IS NECESSARY UNDER THE CIRCUMSTANCES.

14-3503. **Supervised administration; effect on other proceedings**

A. THE PENDENCY OF A PROCEEDING FOR SUPERVISED ADMINISTRATION OF A DECEDENT'S ESTATE STAYS ACTION ON ANY INFORMAL APPLICATION THEN PENDING OR THEREAFTER FILED.

B. IF A WILL HAS BEEN PREVIOUSLY PROBATED IN INFORMAL PROCEEDINGS, THE EFFECT OF THE FILING OF A PETITION FOR SUPERVISED ADMINISTRATION IS AS PROVIDED FOR FORMAL TESTACY PROCEEDINGS BY SECTION 14-3401.

C. AFTER HE HAS RECEIVED NOTICE OF THE FILING OF A PETITION FOR SUPERVISED ADMINISTRATION, A PERSONAL REPRESENTATIVE WHO HAS BEEN APPOINTED PREVIOUSLY SHALL NOT EXERCISE HIS POWER TO DISTRIBUTE ANY ESTATE. THE FILING OF THE PETITION DOES NOT AFFECT HIS OTHER POWERS AND DUTIES UNLESS THE COURT RESTRICTS THE EXERCISE OF ANY OF THEM PENDING FULL HEARING ON THE PETITION.

14-3504. **Supervised administration; powers of personal representative**

UNLESS RESTRICTED BY THE COURT, A SUPERVISED PERSONAL REPRESENTATIVE HAS, WITHOUT INTERIM ORDERS APPROVING EXERCISE OF A POWER, ALL POWERS OF PERSONAL REPRESENTATIVES UNDER THIS TITLE, BUT ALL SALES OF REAL PROPERTY SHALL BE SUBJECT TO COURT CONFIRMATION AS PROVIDED IN SECTIONS 14-3506 AND 14-3507, AND THE PERSONAL REPRESENTATIVE SHALL NOT EXERCISE HIS POWER TO MAKE ANY DISTRIBUTION OF THE ESTATE WITHOUT PRIOR ORDER OF THE COURT. ANY OTHER RESTRICTION ON THE POWER OF A PERSONAL REPRESENTATIVE WHICH MAY BE ORDERED BY THE COURT MUST BE ENDORSED ON HIS LETTERS OF APPOINTMENT AND, UNLESS SO ENDORSED, IS INEFFECTIVE AS TO PERSONS DEALING IN GOOD FAITH WITH THE PERSONAL REPRESENTATIVE.

14-3505. **Supervised administration; interim orders; distribution and closing orders; annual accounts; accounting on closing**

A. UNLESS OTHERWISE ORDERED BY THE COURT, SUPERVISED ADMINISTRATION IS TERMINATED BY ORDER IN ACCORDANCE WITH TIME RESTRICTIONS, NOTICES AND CONTENTS OF ORDERS PRESCRIBED FOR PROCEEDINGS UNDER SECTION 14-3931. INTERIM ORDERS APPROVING OR DIRECTING PARTIAL DISTRIBUTIONS OR GRANTING OTHER RELIEF MAY BE ISSUED BY THE COURT AT ANY TIME DURING THE PENDENCY OF A SUPERVISED ADMINISTRATION ON THE APPLICATION OF THE PERSONAL REPRESENTATIVE OR ANY INTERESTED PERSON.

B. A SUPERVISED PERSONAL REPRESENTATIVE SHALL FILE AN ACCOUNT WITH THE COURT NOT LESS THAN ANNUALLY DURING HIS ADMINISTRATION, AND ON CLOSING SHALL FILE A FINAL ACCOUNT TO BE APPROVED UNDER SECTION 14-3931. HE SHALL ALSO ACCOUNT TO THE COURT ON RESIGNATION OR REMOVAL. SUBJECT TO APPEAL OR VACATION WITHIN THE TIME PERMITTED, AN ORDER MADE ON NOTICE AND HEARING ALLOWING AN INTERMEDIATE ACCOUNT OF A PERSONAL REPRESENTATIVE ADJUDICATES HIS LIABILITIES CONCERNING MATTERS CONSIDERED IN CONNECTION THEREWITH. A COPY OF THE INTERMEDIATE ACCOUNT MUST BE SENT TO ALL INTERESTED PARTIES ALONG WITH NOTICE OF HEARING ON THE ACCOUNT. IN CONNECTION WITH ANY ACCOUNT, THE COURT MAY REQUIRE THE PERSONAL REPRESENTATIVE TO SUBMIT TO PHYSICAL CHECK OF THE ESTATE IN HIS CONTROL, TO BE MADE IN ANY MATTER THE COURT MAY SPECIFY.

14-3508. **Additional bond for sale of real property; exception**

THE COURT MAY REQUIRE AN ADDITIONAL BOND IF THE SALE OF REAL PROPERTY OF THE ESTATE IS BEING CONFIRMED, BUT AN ADDITIONAL BOND SHALL NOT BE REQUIRED IF IT APPEARS TO THE COURT THAT THE PENALTY OF THE BOND GIVEN BEFORE RECEIVING LETTERS, OR A BOND GIVEN IN PLACE THEREOF, IS SUFFICIENT.

ARTICLE 6. PERSONAL REPRESENTATIVE; APPOINTMENT, CONTROL AND TERMINATION OF AUTHORITY

14-3601. **Qualification**

PRIOR TO RECEIVING LETTERS, A PERSONAL REPRESENTATIVE SHALL QUALIFY BY FILING WITH THE APPOINTING COURT ANY REQUIRED BOND AND A STATEMENT OF ACCEPTANCE OF THE DUTIES OF THE OFFICE.

14-3602. **Acceptance of appointment; consent to jurisdiction**

BY ACCEPTING APPOINTMENT, A PERSONAL REPRESENTATIVE SUBMITS PERSONALLY TO THE JURISDICTION OF THE COURT IN ANY PROCEEDING RELATING TO THE ESTATE THAT MAY BE INSTITUTED BY ANY INTERESTED PERSON. NOTICE OF ANY PROCEEDING SHALL BE DELIVERED TO THE PERSONAL REPRESENTATIVE, OR MAILED TO HIM BY ORDINARY FIRST CLASS MAIL AT HIS ADDRESS AS LISTED IN THE APPLICATION OR PETITION FOR APPOINTMENT OR AS THEREAFTER REPORTED TO THE COURT AND TO HIS ADDRESS AS THEN KNOWN TO PETITIONER.

14-3603. **Bond required; exceptions**

A. A BOND IS REQUIRED OF A PERSONAL REPRESENTATIVE UNLESS EITHER:

1. THE WILL EXPRESSLY WAIVES THE BOND.

2. ALL OF THE HEIRS IF NO WILL HAS BEEN PROBATED, OR ALL OF THE DEVISEES UNDER A WILL WHICH DOES NOT PROVIDE FOR WAIVER OF THE BOND, FILE WITH THE COURT A WRITTEN WAIVER OF THE BOND REQUIREMENT. A DULY APPOINTED GUARDIAN OR CONSERVATOR MAY WAIVE ON BEHALF OF HIS WARD OR PROTECTED PERSON UNLESS THE GUARDIAN OR CONSERVATOR IS THE PERSONAL REPRESENTATIVE.

3. THE PERSONAL REPRESENTATIVE IS A NATIONAL BANKING ASSOCIATION, A HOLDER OF A BANKING PERMIT UNDER THE LAWS OF THIS STATE, A TITLE INSURANCE COMPANY WHICH IS QUALIFIED TO DO BUSINESS UNDER THE LAWS OF THE STATE AND MAINTAINS THE REQUIRED DEPOSIT WITH THE STATE TREASURER, OR A TRUST COMPANY HOLDING A CERTIFICATE TO ENGAGE IN TRUST BUSINESS FROM THE STATE SUPERINTENDENT OF BANKS.

4. THE PETITION FOR FORMAL OR INFORMAL APPOINTMENT ALLEGES THAT THE PROBABLE VALUE OF THE ENTIRE ESTATE WILL PERMIT SUMMARY PROCEDURES UNDER SECTION 14-3973 AND THE SURVIVING SPOUSE, OR THE NOMINEE OF THE SURVIVING SPOUSE, IS APPLYING FOR APPOINTMENT AS PERSONAL REPRESENTATIVE.

B. IN ANY CASE WHERE BOND IS NOT REQUIRED UNDER SUBSECTION A, THE COURT MAY, UPON PETITION OF ANY INTERESTED PERSON AND UPON REASONABLE PROOF THAT THE INTEREST OF THE PETITIONING PERSON IS IN DANGER OF BEING LOST BECAUSE OF THE ADMINISTRATION OF THE ESTATE, REQUIRE A BOND IN SUCH AMOUNT AS THE COURT MAY DIRECT TO PROTECT THE INTEREST OF THE PETITIONER OR OF THE PETITIONER AND OTHERS. AN HEIR OR DEVISEE WHO INITIALLY WAIVED BOND MAY BE A PETITIONER UNDER THIS SUBSECTION.

C. IF A BOND IS NOT INITIALLY REQUIRED BECAUSE THE PETITION FOR APPOINTMENT ALLEGES THAT THE PROBABLE VALUE OF THE ENTIRE ESTATE WILL PERMIT SUMMARY PROCEDURES UNDER SECTION 14-3973, AND IT LATER APPEARS FROM THE INVENTORY AND APPRAISAL THAT THE VALUE OF THE ESTATE WILL NOT PERMIT USE OF SUCH PROCEDURES, THEN THE PERSONAL REPRESENTATIVE MUST PROMPTLY FILE A BOND UNLESS ONE IS NOT REQUIRED FOR SOME OTHER REASON UNDER SUBSECTION A.

14-3604. **Bond amount; security; procedure; reduction**

A. IF BOND IS REQUIRED AND THE PROVISIONS OF THE WILL OR ORDER DO NOT SPECIFY THE AMOUNT, UNLESS STATED IN HIS APPLICATION OR PETITION, THE PERSON QUALIFYING SHALL FILE A STATEMENT UNDER OATH WITH THE REGISTRAR INDICATING HIS BEST ESTIMATE OF THE VALUE OF THE PERSONAL ESTATE OF THE DECEDENT, REAL ESTATE, LESS ENCUMBRANCES THEREON AND OF THE INCOME EXPECTED FROM THE PERSONAL AND REAL ESTATE DURING THE NEXT YEAR, AND HE SHALL EXECUTE AND FILE A BOND WITH THE REGISTRAR, OR GIVE OTHER SUITABLE SECURITY, IN AN AMOUNT NOT LESS THAN THE ESTIMATE PROVIDED, HOWEVER, THAT SAID BOND MAY BE REDUCED BY THE AMOUNT OF ANY REAL ESTATE, LESS ENCUMBRANCES THEREON, IF THE LETTERS ISSUED TO THE PERSONAL REPRESENTATIVE CONTAIN THE RESTRICTION THAT SALES OF REAL PROPERTY BY THE PERSONAL REPRESENTATIVE ARE SUBJECT TO THE PROVISIONS OF SECTIONS 14-3506 AND 14-3507 OF THIS CHAPTER. THE REGISTRAR SHALL DETERMINE THAT THE BOND IS DULY EXECUTED BY A CORPORATE SURETY, OR ONE OR MORE INDIVIDUAL SURETIES WHOSE PERFORMANCE IS SECURED BY PLEDGE OF PERSONAL PROPERTY, MORTGAGE ON REAL PROPERTY OR OTHER ADEQUATE

SECURITY. THE REGISTRAR MAY PERMIT THE AMOUNT OF THE BOND TO BE REDUCED BY THE VALUE OF ASSETS OF THE ESTATE DEPOSITED WITH THE CLERK OF THE COURT OR A DOMESTIC FINANCIAL INSTITUTION, AS DEFINED IN SECTION 14-6101, IN A MANNER THAT PREVENTS THEIR UNAUTHORIZED DISPOSITION. ON PETITION OF THE PERSONAL REPRESENTATIVE OR ANOTHER INTERESTED PERSON THE COURT MAY EXCUSE A REQUIREMENT OF BOND, INCREASE OR REDUCE THE AMOUNT OF THE BOND, RELEASE SURETIES, OR PERMIT THE SUBSTITUTION OF ANOTHER BOND WITH THE SAME OR DIFFERENT SURETIES.

B. WHEN A SURETY OF A PERSONAL REPRESENTATIVE DESIRES TO BE RELEASED FROM RESPONSIBILITY FOR FUTURE ACTS, HE MAY APPLY TO THE COURT FOR A RELEASE. THE COURT SHALL CAUSE A CITATION TO BE ISSUED TO THE PERSONAL REPRESENTATIVE, REQUIRING HIM TO APPEAR AT A TIME AND PLACE THEREIN SPECIFIED, AND TO GIVE OTHER SECURITY. NOTICE SHALL BE GIVEN TO THE PERSONAL REPRESENTATIVE AS PROVIDED IN SECTION 14-3602. IF NEW SECURITY IS GIVEN AND APPROVED BY THE JUDGE HE MAY THEREUPON ORDER THAT THE SURETY WHO APPLIED FOR RELEASE SHALL NOT BE LIABLE ON HIS BOND FOR ANY SUBSEQUENT ACT, DEFAULT OR MISCONDUCT OF THE PERSONAL REPRESENTATIVE. IF THE PERSONAL REPRESENTATIVE NEGLECTS OR REFUSES TO GIVE NEW AND SUFFICIENT SECURITY ON THE RETURN OF THE CITATION, OR WITHIN SUCH REASONABLE TIME AS THE JUDGE ALLOWS, UNLESS THE SURETY MAKING THE APPLICATION CONSENTS TO AN EXTENSION OF TIME, THE COURT SHALL REVOKE THE LETTERS.

14-3605. (Blank)

14-3606. **Terms and conditions of bonds**

A. THE FOLLOWING REQUIREMENTS AND PROVISIONS APPLY TO ANY BOND REQUIRED BY THIS ARTICLE:

1. BONDS SHALL NAME THE STATE AS OBLIGEE FOR THE BENEFIT OF THE PERSONS INTERESTED IN THE ESTATE AND SHALL BE CONDITIONED UPON THE FAITHFUL DISCHARGE BY THE FIDUCIARY OF ALL DUTIES ACCORDING TO LAW.

2. UNLESS OTHERWISE PROVIDED BY THE TERMS OF THE

APPROVED BOND, SURETIES ARE JOINTLY AND SEVERALLY LIABLE WITH THE PERSONAL REPRESENTATIVE AND WITH EACH OTHER. THE ADDRESS OF SURETIES SHALL BE STATED IN THE BOND.

3. BY EXECUTING AN APPROVED BOND OF A PERSONAL REPRESENTATIVE, THE SURETY CONSENTS TO THE JURISDICTION OF THE COURT WHICH ISSUED LETTERS TO THE PRIMARY OBLIGOR IN ANY PROCEEDINGS PERTAINING TO THE FIDUCIARY DUTIES OF THE PERSONAL REPRESENTATIVE AND NAMING THE SURETY AS A PARTY. NOTICE OF ANY PROCEEDING SHALL BE DELIVERED TO THE SURETY OR MAILED TO HIM BY REGISTERED OR CERTIFIED MAIL AT HIS ADDRESS AS LISTED WITH THE COURT WHERE THE BOND IS FILED AND TO HIS ADDRESS AS THEN KNOWN TO THE PETITIONER.

4. ON PETITION OF A SUCCESSOR PERSONAL REPRESENTATIVE, ANY OTHER PERSONAL REPRESENTATIVE OF THE SAME DECEDENT, OR ANY INTERESTED PERSON, A PROCEEDING IN THE COURT MAY BE INITIATED AGAINST A SURETY FOR BREACH OF THE OBLIGATION OF THE BOND OF THE PERSONAL REPRESENTATIVE.

5. THE BOND OF THE PERSONAL REPRESENTATIVE IS NOT VOID AFTER THE FIRST RECOVERY BUT MAY BE PROCEEDED AGAINST FROM TIME TO TIME UNTIL THE WHOLE PENALTY IS EXHAUSTED.

B. NO ACTION OR PROCEEDING MAY BE COMMENCED AGAINST THE SURETY ON ANY MATTER AS TO WHICH AN ACTION OR PROCEEDING AGAINST THE PRIMARY OBLIGOR IS BARRED BY ADJUDICATION OR LIMITATION.

14-3607. **Order restraining personal representative**

A. ON PETITION OF ANY PERSON WHO APPEARS TO HAVE AN INTEREST IN THE ESTATE, THE COURT BY TEMPORARY ORDER MAY RESTRAIN A PERSONAL REPRESENTATIVE FROM PERFORMING SPECIFIED ACTS OF ADMINISTRATION, DISBURSEMENT OR DISTRIBUTION, OR MAY EXERCISE ANY POWERS OR DISCHARGE ANY DUTIES OF HIS OFFICE, OR MAY MAKE ANY OTHER ORDER TO SECURE PROPER PERFORMANCE OF HIS DUTY, IF IT APPEARS TO THE COURT THAT THE PERSONAL REPRESENTATIVE OTHERWISE MAY TAKE SOME ACTION WHICH

WOULD JEOPARDIZE UNREASONABLY THE INTEREST OF THE APPLICANT OR OF SOME OTHER INTERESTED PERSON. PERSONS WITH WHOM THE PERSONAL REPRESENTATIVE MAY TRANSACT BUSINESS MAY BE MADE PARTIES.

B. THE MATTER SHALL BE SET FOR HEARING WITHIN TEN DAYS UNLESS THE PARTIES OTHERWISE AGREE. NOTICE AS THE COURT DIRECTS SHALL BE GIVEN TO THE PERSONAL REPRESENTATIVE AND HIS ATTORNEY OF RECORD, IF ANY, AND TO ANY OTHER PARTIES NAMED DEFENDANT IN THE PETITION.

14-3608. **Termination of appointment; general**

TERMINATION OF APPOINTMENT OF A PERSONAL REPRESENTATIVE OCCURS AS INDICATED IN SECTIONS 14-3609 THROUGH 14-3612. TERMINATION ENDS THE RIGHT AND POWER PERTAINING TO THE OFFICE OF PERSONAL REPRESENTATIVE AS CONFERRED BY THIS TITLE OR ANY WILL, EXCEPT THAT A PERSONAL REPRESENTATIVE, AT ANY TIME PRIOR TO DISTRIBUTION OR UNTIL RESTRAINED OR ENJOINED BY COURT ORDER, MAY PERFORM ACTS NECESSARY TO PROTECT THE ESTATE AND MAY DELIVER THE ASSETS TO A SUCCESSOR REPRESENTATIVE. TERMINATION DOES NOT DISCHARGE A PERSONAL REPRESENTATIVE FROM LIABILITY FOR TRANSACTIONS OR OMISSIONS OCCURRING BEFORE TERMINATION, OR RELIEVE HIM OF THE DUTY TO PRESERVE ASSETS SUBJECT TO HIS CONTROL, TO ACCOUNT THEREFOR AND TO DELIVER THE ASSETS. TERMINATION DOES NOT AFFECT THE JURISDICTION OF THE COURT OVER THE PERSONAL REPRESENTATIVE, BUT TERMINATES HIS AUTHORITY TO REPRESENT THE ESTATE IN ANY PENDING OR FUTURE PROCEEDING.

14-3609. **Termination of appointment; death or disability**

THE DEATH OF A PERSONAL REPRESENTATIVE OR THE APPOINTMENT OF A CONSERVATOR FOR THE ESTATE OF A PERSONAL REPRESENTATIVE, TERMINATES HIS APPOINTMENT. UNTIL APPOINTMENT AND QUALIFICATION OF A SUCCESSOR OR SPECIAL REPRESENTATIVE TO REPLACE THE DECEASED OR PROTECTED REPRESENTATIVE, THE REPRESENTATIVE OF THE ESTATE OF THE DECEASED OR PROTECTED PERSONAL REPRESENTATIVE, IF ANY, HAS THE DUTY TO PROTECT THE ESTATE POSSESSED AND BEING ADMINISTERED BY HIS DECEDENT OR WARD AT THE TIME HIS APPOINTMENT TERMINATES, HAS THE

POWER TO PERFORM ACTS NECESSARY FOR PROTECTION AND SHALL ACCOUNT FOR AND DELIVER THE ESTATE ASSETS TO A SUCCESSOR OR SPECIAL PERSONAL REPRESENTATIVE UPON HIS APPOINTMENT AND QUALIFICATION.

14-3610. **Termination of appointment; voluntary**

A. AN APPOINTMENT OF A PERSONAL REPRESENTATIVE TERMINATES AS PROVIDED IN SECTION 14-3933, ONE YEAR AFTER THE FILING OF A CLOSING STATEMENT.

B. AN ORDER CLOSING AN ESTATE AS PROVIDED IN SECTION 14-3931 OR 14-3932 TERMINATES AN APPOINTMENT OF A PERSONAL REPRESENTATIVE.

C. A PERSONAL REPRESENTATIVE MAY RESIGN HIS POSITION BY FILING A WRITTEN STATEMENT OF RESIGNATION WITH THE REGISTRAR AFTER HE HAS GIVEN AT LEAST FIFTEEN DAYS WRITTEN NOTICE TO THE PERSONS KNOWN TO BE INTERESTED IN THE ESTATE. IF NO ONE APPLIES OR PETITIONS FOR APPOINTMENT OF A SUCCESSOR REPRESENTATIVE WITHIN THE TIME INDICATED IN THE NOTICE, THE FILED STATEMENT OF RESIGNATION IS INEFFECTIVE AS A TERMINATION OF APPOINTMENT AND IN ANY EVENT IS EFFECTIVE ONLY UPON THE APPOINTMENT AND QUALIFICATION OF A SUCCESSOR REPRESENTATIVE AND DELIVERY OF THE ASSETS TO HIM.

14-3611. **Termination of appointment by removal; cause; procedure**

A. A PERSON INTERESTED IN THE ESTATE MAY PETITION FOR REMOVAL OF A PERSONAL REPRESENTATIVE FOR CAUSE AT ANY TIME. UPON FILING OF THE PETITION, THE COURT SHALL FIX A TIME AND PLACE FOR HEARING. NOTICE SHALL BE GIVEN BY THE PETITIONER TO THE PERSONAL REPRESENTATIVE, AND TO OTHER PERSONS AS THE COURT MAY ORDER. EXCEPT AS OTHERWISE ORDERED AS PROVIDED IN SECTION 14-3607, AFTER RECEIPT OF NOTICE OF REMOVAL PROCEEDINGS, THE PERSONAL REPRESENTATIVE SHALL NOT ACT EXCEPT TO ACCOUNT, TO CORRECT MALADMINISTRATION OR PRESERVE THE ESTATE. IF REMOVAL IS ORDERED, THE COURT ALSO SHALL DIRECT BY ORDER THE DISPOSITION OF THE ASSETS REMAINING IN THE NAME OF, OR UNDER THE CONTROL OF, THE PERSONAL REPRESENTATIVE BEING REMOVED.

B. CAUSE FOR REMOVAL EXISTS:

1. WHEN REMOVAL WOULD BE IN THE BEST INTERESTS OF THE ESTATE.
2. IF IT IS SHOWN THAT A PERSONAL REPRESENTATIVE OR THE PERSON SEEKING HIS APPOINTMENT INTENTIONALLY MISREPRESENTED MATERIAL FACTS IN THE PROCEEDINGS LEADING TO HIS APPOINTMENT.

3. IF IT IS SHOWN THAT THE PERSONAL REPRESENTATIVE HAS DISREGARDED AN ORDER OF THE COURT, HAS BECOME INCAPABLE OF DISCHARGING THE DUTIES OF HIS OFFICE, HAS MISMANAGED THE ESTATE OR FAILED TO PERFORM ANY DUTY PERTAINING TO THE OFFICE.

UNLESS THE DECEDENT'S WILL DIRECTS OTHERWISE, A PERSONAL REPRESENTATIVE APPOINTED AT THE DECEDENT'S DOMICILE, INCIDENT TO SECURING APPOINTMENT OF HIMSELF OR HIS NOMINEE AS ANCILLARY PERSONAL REPRESENTATIVE, MAY OBTAIN REMOVAL OF ANOTHER WHO WAS APPOINTED PERSONAL REPRESENTATIVE IN THIS STATE TO ADMINISTER LOCAL ASSETS.

14-3612. **Termination of appointment; change of testacy status**

EXCEPT AS OTHERWISE ORDERED IN FORMAL PROCEEDINGS, THE PROBATE OF A WILL SUBSEQUENT TO THE APPOINTMENT OF A PERSONAL REPRESENTATIVE IN INTESTACY OR UNDER A WILL WHICH IS SUPERSEDED BY FORMAL PROBATE OF ANOTHER WILL, OR THE VACATION OF AN INFORMAL PROBATE OF A WILL SUBSEQUENT TO THE APPOINTMENT OF THE PERSONAL REPRESENTATIVE THEREUNDER, DOES NOT TERMINATE THE APPOINTMENT OF THE PERSONAL REPRESENTATIVE ALTHOUGH HIS POWERS MAY BE REDUCED AS PROVIDED IN SECTION 14-3401. TERMINATION OCCURS UPON APPOINTMENT IN INFORMAL OR FORMAL APPOINTMENT PROCEEDINGS OF A PERSON ENTITLED TO APPOINTMENT UNDER THE LATER ASSUMPTION CONCERNING TESTACY. IF NO REQUEST FOR NEW APPOINTMENT IS MADE WITHIN THIRTY DAYS AFTER EXPIRATION OF TIME FOR APPEAL FROM THE ORDER IN FORMAL TESTACY PROCEEDINGS, OR FROM THE INFORMAL PROBATE, CHANGING THE ASSUMPTION CONCERNING TESTACY, THE PREVIOUSLY APPOINTED PERSONAL REPRESENTATIVE UPON REQUEST MAY BE APPOINTED PERSONAL REPRESENTATIVE UNDER THE SUBSEQUENTLY PROBATED WILL, OR AS IN INTESTACY AS THE CASE MAY BE.

14-3613. **Successor personal representative**

ARTICLES 3 AND 4 OF THIS CHAPTER GOVERN PROCEEDINGS FOR APPOINTMENT OF A PERSONAL REPRESENTATIVE TO SUCCEED ONE WHOSE APPOINTMENT HAS BEEN TERMINATED. AFTER APPOINTMENT AND QUALIFICATION, A SUCCESSOR PERSONAL REPRESENTATIVE MAY BE SUBSTITUTED IN ALL ACTIONS AND PROCEEDINGS TO WHICH THE FORMER PERSONAL REPRESENTATIVE WAS A PARTY, AND NO NOTICE, PROCESS OR CLAIM WHICH WAS GIVEN OR SERVED UPON THE FORMER PERSONAL REPRESENTATIVE NEED BE GIVEN TO OR SERVED UPON THE SUCCESSOR IN ORDER TO PRESERVE ANY POSITION OR RIGHT THE PERSON GIVING THE NOTICE OR FILING THE CLAIM MAY THEREBY HAVE OBTAINED OR PRESERVED WITH REFERENCE TO THE FORMER PERSONAL REPRESENTATIVE. EXCEPT AS OTHERWISE ORDERED BY THE COURT, THE SUCCESSOR PERSONAL REPRESENTATIVE HAS THE POWERS AND DUTIES IN RESPECT TO THE CONTINUED ADMINISTRATION WHICH THE FORMER PERSONAL REPRESENTATIVE WOULD HAVE HAD IF HIS APPOINTMENT HAD NOT BEEN TERMINATED.

14-3614. **Special administrator; appointment**

A SPECIAL ADMINISTRATOR MAY BE APPOINTED:

1. INFORMALLY BY THE REGISTRAR ON THE APPLICATION OF ANY INTERESTED PERSON WHEN NECESSARY TO PROTECT THE ESTATE OF A DECEDENT PRIOR TO THE APPOINTMENT OF A GENERAL PERSONAL REPRESENTATIVE OR IF A PRIOR APPOINTMENT HAS BEEN TERMINATED AS PROVIDED IN SECTION 14-3609.

2. IN A FORMAL PROCEEDING BY ORDER OF THE COURT ON THE PETITION OF ANY INTERESTED PERSON AND FINDING, AFTER NOTICE AND HEARING, THAT APPOINTMENT IS NECESSARY TO PRESERVE THE ESTATE OR TO SECURE ITS PROPER ADMINISTRATION INCLUDING ITS ADMINISTRATION IN CIRCUMSTANCES WHERE A GENERAL PERSONAL REPRESENTATIVE CANNOT OR SHOULD NOT ACT. IF IT APPEARS TO THE COURT THAT AN EMERGENCY EXISTS, APPOINTMENT MAY BE ORDERED WITHOUT NOTICE.

14-3615. **Special administrator; who may be appointed**

A. IF A SPECIAL ADMINISTRATOR IS TO BE APPOINTED PENDING THE PROBATE OF A WILL WHICH IS THE SUBJECT OF A

PENDING APPLICATION OR PETITION FOR PROBATE, THE PERSON NAMED EXECUTOR IN THE WILL SHALL BE APPOINTED IF AVAILABLE, AND QUALIFIED.

B. IN OTHER CASES, ANY PROPER PERSON MAY BE APPOINTED SPECIAL ADMINISTRATOR.

14-3616. **Special administrator; appointed informally; powers and duties**

A SPECIAL ADMINISTRATOR APPOINTED BY THE REGISTRAR IN INFORMAL PROCEEDINGS PURSUANT TO SECTION 14-3614, PARAGRAPH 1 HAS THE DUTY TO COLLECT AND MANAGE THE ASSETS OF THE ESTATE, TO PRESERVE THEM, TO ACCOUNT THEREFOR AND TO DELIVER THEM TO THE GENERAL PERSONAL REPRESENTATIVE UPON HIS QUALIFICATION. THE SPECIAL ADMINISTRATOR HAS THE POWER OF A PERSONAL REPRESENTATIVE UNDER THIS TITLE NECESSARY TO PERFORM HIS DUTIES.

14-3617. **Special administrator; formal proceedings; power and duties**

A SPECIAL ADMINISTRATOR APPOINTED BY ORDER OF THE COURT IN ANY FORMAL PROCEEDING HAS THE POWER OF A GENERAL PERSONAL REPRESENTATIVE EXCEPT AS LIMITED IN THE APPOINTMENT AND DUTIES AS PRESCRIBED IN THE ORDER. THE APPOINTMENT MAY BE FOR A SPECIFIED TIME, TO PERFORM PARTICULAR ACTS OR ON OTHER TERMS AS THE COURT MAY DIRECT.

14-3618. **Termination of appointment; special administrator**

THE APPOINTMENT OF A SPECIAL ADMINISTRATOR TERMINATES IN ACCORDANCE WITH THE PROVISIONS OF THE ORDER OF APPOINTMENT OR ON THE APPOINTMENT OF A GENERAL PERSONAL REPRESENTATIVE. IN OTHER CASES, THE APPOINTMENT OF A SPECIAL ADMINISTRATOR IS SUBJECT TO TERMINATION AS PROVIDED IN SECTIONS 14-3608 THROUGH 14-3611.

ARTICLE 7. DUTIES AND POWERS OF PERSONAL REPRESENTATIVES

14-3701. **Time of accrual of duties and powers**

THE DUTIES AND POWERS OF A PERSONAL REPRESENTATIVE COMMENCE UPON HIS APPOINTMENT. THE POWERS OF A

PERSONAL REPRESENTATIVE RELATE BACK IN TIME TO GIVE ACTS BY THE PERSON APPOINTED WHICH ARE BENEFICIAL TO THE ESTATE OCCURRING PRIOR TO APPOINTMENT THE SAME EFFECT AS THOSE OCCURRING THEREAFTER. PRIOR TO APPOINTMENT, A PERSON NAMED EXECUTOR IN A WILL MAY CARRY OUT WRITTEN INSTRUCTIONS OF THE DECEDENT RELATING TO HIS BODY, FUNERAL AND BURIAL ARRANGEMENTS. A PERSONAL REPRESENTATIVE MAY RATIFY AND ACCEPT ACTS ON BEHALF OF THE ESTATE DONE BY OTHERS WHERE THE ACTS WOULD HAVE BEEN PROPER FOR A PERSONAL REPRESENTATIVE.

14-3702. **Priority among different letters**

A PERSON TO WHOM GENERAL LETTERS ARE ISSUED FIRST HAS EXCLUSIVE AUTHORITY UNDER THE LETTERS UNTIL HIS APPOINTMENT IS TERMINATED OR MODIFIED. IF, THROUGH ERROR, GENERAL LETTERS ARE AFTERWARDS ISSUED TO ANOTHER, THE FIRST APPOINTED REPRESENTATIVE MAY RECOVER ANY PROPERTY OF THE ESTATE IN THE HANDS OF THE REPRESENTATIVE SUBSEQUENTLY APPOINTED, BUT THE ACTS OF THE LATTER DONE IN GOOD FAITH BEFORE NOTICE OF THE FIRST LETTERS ARE NOT VOID FOR WANT OF VALIDITY OF APPOINTMENT.

14-3703. **General duties; relation and liability to persons interested in estate; standing to sue**

A. A PERSONAL REPRESENTATIVE IS A FIDUCIARY WHO SHALL OBSERVE THE STANDARDS OF CARE APPLICABLE TO TRUSTEES AS DESCRIBED BY SECTION 14-7302. A PERSONAL REPRESENTATIVE IS UNDER A DUTY TO SETTLE AND DISTRIBUTE THE ESTATE OF THE DECEDENT IN ACCORDANCE WITH THE TERMS OF ANY PROBATED AND EFFECTIVE WILL AND THIS TITLE, AND AS EXPEDITIOUSLY AND EFFICIENTLY AS IS CONSISTENT WITH THE BEST INTERESTS OF THE ESTATE. HE SHALL USE THE AUTHORITY CONFERRED UPON HIM BY THIS TITLE, THE TERMS OF THE WILL, IF ANY, AND ANY ORDER IN PROCEEDINGS TO WHICH HE IS PARTY FOR THE BEST INTERESTS OF SUCCESSORS TO THE ESTATE.

B. A PERSONAL REPRESENTATIVE SHALL NOT BE SURCHARGED FOR ACTS OF ADMINISTRATION OR DISTRIBUTION IF THE CONDUCT IN QUESTION WAS AUTHORIZED AT THE TIME.

SUBJECT TO OTHER OBLIGATIONS OF ADMINISTRATION, AN INFORMALLY PROBATED WILL IS AUTHORITY TO ADMINISTER AND DISTRIBUTE THE ESTATE ACCORDING TO ITS TERMS. AN ORDER OF APPOINTMENT OF A PERSONAL REPRESENTATIVE, WHETHER ISSUED IN INFORMAL OR FORMAL PROCEEDINGS, IS AUTHORITY TO DISTRIBUTE APPARENTLY INTESTATE ASSETS TO THE HEIRS OF THE DECEDENT IF, AT THE TIME OF DISTRIBUTION, THE PERSONAL REPRESENTATIVE IS NOT AWARE OF A PENDING TESTACY PROCEEDING, A PROCEEDING TO VACATE AN ORDER ENTERED IN AN EARLIER TESTACY PROCEEDING, A FORMAL PROCEEDING QUESTIONING HIS APPOINTMENT OR FITNESS TO CONTINUE, OR A SUPERVISED ADMINISTRATION PROCEEDING. NOTHING IN THIS SECTION AFFECTS THE DUTY OF THE PERSONAL REPRESENTATIVE TO ADMINISTER AND DISTRIBUTE THE ESTATE IN ACCORDANCE WITH THE RIGHTS OF CLAIMANTS, THE SURVIVING SPOUSE, ANY DEPENDENT CHILDREN AND ANY PRETERMITTED CHILD OF THE DECEDENT AS DESCRIBED ELSEWHERE IN THIS TITLE.

C. EXCEPT AS TO PROCEEDINGS WHICH DO NOT SURVIVE THE DEATH OF THE DECEDENT, A PERSONAL REPRESENTATIVE OF A DECEDENT DOMICILED IN THIS STATE AT HIS DEATH HAS THE SAME STANDING TO SUE AND BE SUED IN THE COURTS OF THIS STATE AND THE COURTS OF ANY OTHER JURISDICTION AS HIS DECEDENT HAD IMMEDIATELY PRIOR TO DEATH.

14-3704. **Personal representative to proceed without court order; exception**

A PERSONAL REPRESENTATIVE SHALL PROCEED EXPEDITIOUSLY WITH THE SETTLEMENT AND DISTRIBUTION OF A DECEDENT'S ESTATE AND, EXCEPT AS OTHERWISE SPECIFIED OR ORDERED IN REGARD TO A SUPERVISED PERSONAL REPRESENTATIVE, DO SO WITHOUT ADJUDICATION, ORDER OR DIRECTION OF THE COURT, BUT HE MAY INVOKE THE JURISDICTION OF THE COURT, IN PROCEEDINGS AUTHORIZED BY THIS TITLE, TO RESOLVE QUESTIONS CONCERNING THE ESTATE OR ITS ADMINISTRATION.

14-3705. **Duty of personal representative; information to heirs, devisees and state tax commission**

NOT LATER THAN TEN DAYS AFTER HIS APPOINTMENT EVERY PERSONAL REPRESENTATIVE, EXCEPT ANY SPECIAL

ADMINISTRATOR, SHALL GIVE INFORMATION OF HIS APPOINTMENT TO THE HEIRS AND DEVISEES, INCLUDING, IF THERE HAS BEEN NO FORMAL TESTACY PROCEEDING AND IF THE PERSONAL REPRESENTATIVE WAS APPOINTED ON THE ASSUMPTION THAT THE DECEDENT DIED INTESTATE, THE DEVISEES IN ANY WILL MENTIONED IN THE APPLICATION FOR APPOINTMENT OF A PERSONAL REPRESENTATIVE; INFORMATION SHALL ALSO BE GIVEN TO THE STATE TAX COMMISSION. THE INFORMATION SHALL BE DELIVERED OR SENT BY ORDINARY MAIL TO THE STATE TAX COMMISSION AND TO EACH OF THE HEIRS AND DEVISEES WHOSE ADDRESS IS REASONABLY AVAILABLE TO THE PERSONAL REPRESENTATIVE. THE DUTY DOES NOT EXTEND TO REQUIRE INFORMATION TO PERSONS WHO HAVE BEEN ADJUDICATED IN A PRIOR FORMAL TESTACY PROCEEDING TO HAVE NO INTEREST IN THE ESTATE. THE INFORMATION SHALL INCLUDE THE NAME AND ADDRESS OF THE PERSONAL REPRESENTATIVE, INDICATE THAT IT IS BEING SENT TO PERSONS WHO HAVE OR MAY HAVE SOME INTEREST IN THE ESTATE BEING ADMINISTERED, INDICATE WHETHER BOND HAS BEEN FILED, AND DESCRIBE THE COURT WHERE PAPERS RELATING TO THE ESTATE ARE ON FILE. THE PERSONAL REPRESENTATIVE'S FAILURE TO GIVE THIS INFORMATION IS A BREACH OF HIS DUTY TO THE PERSONS CONCERNED BUT DOES NOT AFFECT THE VALIDITY OF HIS APPOINTMENT, HIS POWERS OR OTHER DUTIES. A PERSONAL REPRESENTATIVE MAY INFORM OTHER PERSONS OF HIS APPOINTMENT BY DELIVERY OR ORDINARY FIRST CLASS MAIL.

14-3706. **Duty of personal representative; inventory and appraisement**

A. WITHIN THREE MONTHS AFTER HIS APPOINTMENT, A PERSONAL REPRESENTATIVE, WHO IS NOT A SPECIAL ADMINISTRATOR OR A SUCCESSOR TO ANOTHER REPRESENTATIVE WHO HAS PREVIOUSLY DISCHARGED THIS DUTY, SHALL PREPARE AN INVENTORY OF PROPERTY OWNED BY THE DECEDENT AT THE TIME OF HIS DEATH, LISTING IT WITH REASONABLE DETAIL, AND INDICATING AS TO EACH LISTED ITEM, ITS FAIR MARKET VALUE AS OF THE DATE OF THE DECEDENT'S DEATH, ITS NATURE AS COMMUNITY OR SEPARATE PROPERTY AND THE TYPE AND AMOUNT OF ANY ENCUMBRANCE THAT MAY EXIST WITH REFERENCE TO ANY ITEM.

B. THE PERSONAL REPRESENTATIVE MAY FILE THE ORIGINAL OF THE INVENTORY WITH THE COURT AND SEND A COPY OF

THE INVENTORY ONLY TO INTERESTED PERSONS WHO REQUEST IT; OR, IF HE ELECTS NOT TO FILE THE INVENTORY WITH THE COURT, HE MUST MAIL A COPY OF THE INVENTORY TO EACH OF THE HEIRS IN AN INTESTATE ESTATE, OR TO EACH OF THE DEVISEES IF A WILL HAS BEEN PROBATED, AND TO ANY OTHER INTERESTED PERSONS WHO REQUEST IT.

14-3707. **Employment of appraisers**

THE PERSONAL REPRESENTATIVE MAY EMPLOY A QUALIFIED AND DISINTERESTED APPRAISER TO ASSIST HIM IN ASCERTAINING THE FAIR MARKET VALUE AS OF THE DATE OF THE DECEDENT'S DEATH OF ANY ASSET THE VALUE OF WHICH MAY BE SUBJECT TO REASONABLE DOUBT. DIFFERENT PERSONS MAY BE EMPLOYED TO APPRAISE DIFFERENT KINDS OF ASSETS INCLUDED IN THE ESTATE. THE NAMES AND ADDRESSES OF ANY APPRAISER SHALL BE INDICATED ON THE INVENTORY WITH THE ITEM OR ITEMS HE APPRAISED.

14-3708. **Duty of personal representative; supplementary inventory**

IF ANY PROPERTY NOT INCLUDED IN THE ORIGINAL INVENTORY COMES TO THE KNOWLEDGE OF A PERSONAL REPRESENTATIVE OR IF THE PERSONAL REPRESENTATIVE LEARNS THAT THE VALUE OR DESCRIPTION INDICATED IN THE ORIGINAL INVENTORY FOR ANY ITEM IS ERRONEOUS OR MISLEADING, HE SHALL MAKE A SUPPLEMENTARY INVENTORY OR APPRAISEMENT SHOWING THE MARKET VALUE AS OF THE DATE OF THE DECEDENT'S DEATH OF THE NEW ITEM OR THE REVISED MARKET VALUE OR DESCRIPTIONS, AND THE APPRAISERS OR OTHER DATA RELIED UPON, IF ANY, AND FILE IT WITH THE COURT IF THE ORIGINAL INVENTORY WAS FILED, OR FURNISH COPIES THEREOF OR INFORMATION THEREOF TO PERSONS INTERESTED IN THE NEW INFORMATION.

14-3709. **Duty of personal representative; possession of estate**

EXCEPT AS OTHERWISE PROVIDED BY A DECEDENT'S WILL, EVERY PERSONAL REPRESENTATIVE HAS A RIGHT TO, AND SHALL TAKE POSSESSION OR CONTROL OF, THE DECEDENT'S PROPERTY, EXCEPT THAT ANY REAL PROPERTY OR TANGIBLE PERSONAL PROPERTY MAY BE LEFT WITH OR SURRENDERED TO THE PERSON PRESUMPTIVELY ENTITLED THERETO UNLESS OR UNTIL, IN THE JUDGMENT OF THE PERSONAL REPRESENTATIVE, POSSESSION OF THE PROPERTY BY HIM WILL BE NECESSARY

FOR PURPOSES OF ADMINISTRATION. THE REQUEST BY A PERSONAL REPRESENTATIVE FOR DELIVERY OF ANY PROPERTY POSSESSED BY AN HEIR OR DEVISEE IS CONCLUSIVE EVIDENCE, IN ANY ACTION AGAINST THE HEIR OR DEVISEE FOR POSSESSION THEREOF, THAT THE POSSESSION OF THE PROPERTY BY THE PERSONAL REPRESENTATIVE IS NECESSARY FOR PURPOSES OF ADMINISTRATION. THE PERSONAL REPRESENTATIVE SHALL PAY TAXES ON, AND TAKE ALL STEPS REASONABLY NECESSARY FOR THE MANAGEMENT, PROTECTION AND PRESERVATION OF, THE ESTATE IN HIS POSSESSION. HE MAY MAINTAIN AN ACTION TO RECOVER POSSESSION OF PROPERTY OR TO DETERMINE THE TITLE THERETO.

14-3710. **Power to avoid transfers; action to set aside fraudulent conveyances**

A. THE PROPERTY LIABLE FOR THE PAYMENT OF UNSECURED DEBTS OF A DECEDENT INCLUDES ALL PROPERTY TRANSFERRED BY HIM BY ANY MEANS WHICH IS IN LAW VOID OR VOIDABLE AS AGAINST HIS CREDITORS AND SUBJECT TO PRIOR LIENS. THE RIGHT TO RECOVER THIS PROPERTY, SO FAR AS NECESSARY FOR THE PAYMENT OF UNSECURED DEBTS OF THE DECEDENT, IS EXCLUSIVELY IN THE PERSONAL REPRESENTATIVE.

B. WHEN THERE IS A DEFICIENCY OF ASSETS IN CUSTODY OF A PERSONAL REPRESENTATIVE, AND DECEDENT IN HIS LIFETIME HAS CONVEYED OR TRANSFERRED PROPERTY, OR ANY RIGHTS OR INTERESTS THEREIN, WITH INTENT TO DEFRAUD CREDITORS, OR TO AVOID A RIGHT, DEBT OR DUTY OF ANY PERSON, OR HAS CONVEYED OR TRANSFERRED THE PROPERTY SO THAT THE CONVEYANCE OR TRANSFER BY LAW IS VOID OR VOIDABLE AS AGAINST CREDITORS, THE PERSONAL REPRESENTATIVE SHALL COMMENCE AND PROSECUTE AN ACTION FOR THE RECOVERY OF THE PROPERTY FOR THE BENEFIT OF THE CREDITORS, AND SHALL RECOVER PROPERTY WHICH HAS BEEN SO CONVEYED OR TRANSFERRED, WHATEVER MAY HAVE BEEN THE MANNER OF THE CONVEYANCE OR TRANSFER.

C. THE PERSONAL REPRESENTATIVE IS NOT BOUND TO BRING THE ACTION UNLESS THE CREDITORS PAY SUCH PART OF THE COSTS AND EXPENSES OF THE ACTION, OR GIVE SUCH SURETY TO THE PERSONAL REPRESENTATIVE THEREFOR AS THE COURT ON APPLICATION BY THE CREDITORS MAY DIRECT.

D. THE PROPERTY RECOVERED SHALL BE SUBJECT TO PAYMENT OF THE DEBTS OF DECEDENT AS OTHER PROPERTY IN CUSTODY OF THE PERSONAL REPRESENTATIVE.

14-3711. **Powers of personal representatives; in general**

UNTIL TERMINATION OF HIS APPOINTMENT A PERSONAL REPRESENTATIVE HAS THE SAME POWER OVER THE TITLE TO PROPERTY OF THE ESTATE THAT AN ABSOLUTE OWNER WOULD HAVE, IN TRUST HOWEVER, FOR THE BENEFIT OF THE CREDITORS AND OTHERS INTERESTED IN THE ESTATE. THIS POWER MAY BE EXERCISED WITHOUT NOTICE, HEARING OR ORDER OF COURT.

14-3712. **Improper exercise of power; breach of fiduciary duty**

IF THE EXERCISE OF POWER CONCERNING THE ESTATE IS IMPROPER, THE PERSONAL REPRESENTATIVE IS LIABLE TO INTERESTED PERSONS FOR DAMAGE OR LOSS RESULTING FROM BREACH OF HIS FIDUCIARY DUTY TO THE SAME EXTENT AS A TRUSTEE OF AN EXPRESS TRUST. THE RIGHTS OF PURCHASERS AND OTHERS DEALING WITH A PERSONAL REPRESENTATIVE SHALL BE DETERMINED AS PROVIDED IN SECTIONS 14-3713 AND 14-3714.

14-3713. **Sale, encumbrance or transaction involving conflict of interest; voidable; exceptions**

ANY SALE OR ENCUMBRANCE TO THE PERSONAL REPRESENTATIVE, HIS SPOUSE, AGENT OR ATTORNEY, OR ANY CORPORATION OR TRUST IN WHICH HE HAS A SUBSTANTIAL BENEFICIAL INTEREST, OR ANY TRANSACTION WHICH IS AFFECTED BY A SUBSTANTIAL CONFLICT OF INTEREST ON THE PART OF THE PERSONAL REPRESENTATIVE, IS VOIDABLE BY ANY PERSON INTERESTED IN THE ESTATE EXCEPT ONE WHO HAS CONSENTED AFTER FAIR DISCLOSURE, UNLESS EITHER:

1. THE WILL OR A CONTRACT ENTERED INTO BY THE DECEDENT EXPRESSLY AUTHORIZED THE TRANSACTION.

2. THE TRANSACTION IS APPROVED BY THE COURT AFTER NOTICE TO INTERESTED PERSONS.

14-3714. **Persons dealing with personal representative; protection**

A PERSON WHO IN GOOD FAITH EITHER ASSISTS OR DEALS WITH ANOTHER PERSON ACTING AS A PERSONAL REPRESENTATIVE, ON THE BASIS OF A COPY OF LETTERS CERTIFIED BY OR UNDER THE DIRECTION OF THE COURT OR AN OFFICER THEREOF WITHIN SIXTY DAYS OF THE TRANSACTION, IS PROTECTED AS IF THE PERSONAL REPRESENTATIVE PROPERLY EXERCISED HIS POWER AND EVEN THOUGH THE AUTHORITY OF THAT PERSON AS PERSONAL REPRESENTATIVE HAS BEEN TERMINATED. THE FACT THAT A PERSON KNOWINGLY DEALS WITH ONE WHO PURPORTS TO ACT AS A PERSONAL REPRESENTATIVE DOES NOT ALONE REQUIRE THE PERSON TO INQUIRE INTO THE EXISTENCE OF A POWER, THE PROPRIETY OF ITS EXERCISE, OR THE CURRENT AUTHORITY OF THE PURPORTED PERSONAL REPRESENTATIVE. EXCEPT FOR RESTRICTIONS ON POWERS OF SUPERVISED PERSONAL REPRESENTATIVES WHICH ARE ENDORSED ON LETTERS AS PROVIDED IN SECTION 14-3504, NO PROVISION IN ANY WILL OR ORDER OF COURT PURPORTING TO LIMIT THE POWER OF A PERSONAL REPRESENTATIVE IS EFFECTIVE EXCEPT AS TO PERSONS WITH ACTUAL KNOWLEDGE THEREOF. A PERSON IS NOT BOUND TO SEE TO THE PROPER APPLICATION OF ESTATE ASSETS PAID OR DELIVERED TO A PERSONAL REPRESENTATIVE. THE PROTECTION HERE EXPRESSED EXTENDS TO INSTANCES IN WHICH SOME PROCEDURAL IRREGULARITY OR JURISDICTIONAL DEFECT OCCURRED IN PROCEEDINGS LEADING TO THE ISSUANCE OF LETTERS, INCLUDING A CASE IN WHICH THE ALLEGED DECEDENT IS FOUND TO BE ALIVE. THE PROTECTION HERE EXPRESSED IS NOT BY SUBSTITUTION FOR THAT PROVIDED BY COMPARABLE PROVISIONS OF THE LAWS RELATING TO COMMERCIAL TRANSACTIONS AND LAWS SIMPLIFYING TRANSFERS OF SECURITIES BY FIDUCIARIES. IF PROPERTY IS WRONGFULLY TRANSFERRED BY A PERSON ACTING AS A PERSONAL REPRESENTATIVE TO A PERSON WHO IS NOT IN GOOD FAITH, ANY PERSON WHO SUBSEQUENTLY PURCHASES THE PROPERTY IN GOOD FAITH IS PROTECTED AS IF THE ORIGINAL TRANSFEREE DEALT IN GOOD FAITH.

14-3715. **Transactions authorized for personal representatives; exceptions**

EXCEPT AS RESTRICTED OR OTHERWISE PROVIDED BY THE WILL OR BY AN ORDER IN A FORMAL PROCEEDING AND SUBJECT TO THE PRIORITIES STATED IN SECTION 14-3902, A PERSONAL

REPRESENTATIVE, ACTING REASONABLY FOR THE BENEFIT OF THE INTERESTED PERSONS, MAY PROPERLY:

1. RETAIN ASSETS OWNED BY THE DECEDENT PENDING DISTRIBUTION OR LIQUIDATION INCLUDING THOSE IN WHICH THE REPRESENTATIVE IS PERSONALLY INTERESTED OR WHICH ARE OTHERWISE IMPROPER FOR TRUST INVESTMENT.

2. RECEIVE ASSETS FROM FIDUCIARIES OR OTHER SOURCES.

3. PERFORM, COMPROMISE OR REFUSE PERFORMANCE OF THE DECEDENT'S CONTRACTS THAT CONTINUE AS OBLIGATIONS OF THE ESTATE, AS HE MAY DETERMINE UNDER THE CIRCUMSTANCES. IN PERFORMING ENFORCEABLE CONTRACTS BY THE DECEDENT TO CONVEY OR LEASE LAND, THE PERSONAL REPRESENTATIVE, AMONG OTHER POSSIBLE COURSES OF ACTION, MAY EITHER:

(a) EXECUTE AND DELIVER A DEED OF CONVEYANCE FOR CASH PAYMENT OF ALL SUMS REMAINING DUE OR THE PURCHASER'S NOTE FOR THE SUM REMAINING DUE SECURED BY A MORTGAGE OR DEED OF TRUST ON THE LAND.

(b) DELIVER A DEED IN ESCROW WITH DIRECTIONS THAT THE PROCEEDS, WHEN PAID IN ACCORDANCE WITH THE ESCROW AGREEMENT, BE PAID TO THE SUCCESSORS OF THE DECEDENT, AS DESIGNATED IN THE ESCROW AGREEMENT.

4. SATISFY WRITTEN CHARITABLE PLEDGES OF THE DECEDENT IRRESPECTIVE OF WHETHER THE PLEDGES CONSTITUTED BINDING OBLIGATIONS OF THE DECEDENT OR WERE PROPERLY PRESENTED AS CLAIMS, IF IN THE JUDGMENT OF THE PERSONAL REPRESENTATIVE THE DECEDENT WOULD HAVE WANTED THE PLEDGES COMPLETED UNDER THE CIRCUMSTANCES.

5. IF FUNDS ARE NOT NEEDED TO MEET DEBTS AND EXPENSES CURRENTLY PAYABLE AND ARE NOT IMMEDIATELY DISTRIBUTABLE, DEPOSIT OR INVEST LIQUID ASSETS OF THE ESTATE, INCLUDING MONIES RECEIVED FROM THE SALE OF OTHER ASSETS, IN FEDERALLY INSURED INTEREST-BEARING ACCOUNTS, READILY MARKETABLE SECURED LOAN ARRANGEMENTS OR OTHER PRUDENT INVESTMENTS WHICH WOULD BE REASONABLE FOR USE BY TRUSTEES GENERALLY.

6. ACQUIRE OR DISPOSE OF AN ASSET, INCLUDING LAND IN THIS OR ANOTHER STATE, FOR CASH OR ON CREDIT AND AT PUBLIC OR PRIVATE SALE AND MANAGE, DEVELOP, IMPROVE, EXCHANGE, PARTITION, CHANGE THE CHARACTER OF OR ABANDON AN ESTATE ASSET.

7. MAKE ORDINARY OR EXTRAORDINARY REPAIRS OR ALTERATIONS IN BUILDINGS OR OTHER STRUCTURES, DEMOLISH ANY IMPROVEMENTS, RAZE EXISTING OR ERECT NEW PARTY WALLS OR BUILDINGS.

8. SUBDIVIDE, DEVELOP OR DEDICATE LAND TO PUBLIC USE, MAKE OR OBTAIN THE VACATION OF PLATS AND ADJUST BOUNDARIES, ADJUST DIFFERENCES IN VALUATION ON EXCHANGE OR PARTITION BY GIVING OR RECEIVING CONSIDERATIONS OR DEDICATE EASEMENTS TO PUBLIC USE WITHOUT CONSIDERATION.

9. ENTER FOR ANY PURPOSE INTO A LEASE AS LESSOR OR LESSEE, WITH OR WITHOUT OPTION TO PURCHASE OR RENEW, FOR A TERM WITHIN OR EXTENDING BEYOND THE PERIOD OF ADMINISTRATION.

10. ENTER INTO A LEASE OR ARRANGEMENT FOR EXPLORATION AND REMOVAL OF MINERALS OR OTHER NATURAL RESOURCES OR ENTER INTO A POOLING OR UNITIZATION AGREEMENT.

11. ABANDON PROPERTY WHEN, IN THE OPINION OF THE PERSONAL REPRESENTATIVE, IT IS VALUELESS, IS SO ENCUMBERED, OR IS IN CONDITION THAT IT IS OF NO BENEFIT TO THE ESTATE.

12. VOTE STOCKS OR OTHER SECURITIES IN PERSON OR BY GENERAL OR LIMITED PROXY.

13. PAY CALLS, ASSESSMENTS, AND OTHER SUMS CHARGEABLE OR ACCRUING AGAINST OR ON ACCOUNT OF SECURITIES, UNLESS BARRED BY THE PROVISIONS RELATING TO CLAIMS.

14. HOLD A SECURITY IN THE NAME OF A NOMINEE OR IN OTHER FORM WITHOUT DISCLOSURE OF THE INTEREST OF THE ESTATE BUT THE PERSONAL REPRESENTATIVE IS LIABLE FOR ANY ACT OF THE NOMINEE IN CONNECTION WITH THE SECURITY SO HELD.

15. INSURE THE ASSETS OF THE ESTATE AGAINST DAMAGE, LOSS AND LIABILITY AND HIMSELF AGAINST LIABILITY AS TO THIRD PERSONS.

16. BORROW MONEY WITH OR WITHOUT SECURITY TO BE REPAID FROM THE ESTATE ASSETS OR OTHERWISE, AND ADVANCE MONEY FOR THE PROTECTION OF THE ESTATE.

17. EFFECT A FAIR AND REASONABLE COMPROMISE WITH ANY DEBTOR OR OBLIGOR, OR EXTEND, RENEW OR IN ANY MANNER MODIFY THE TERMS OF ANY OBLIGATION OWING TO THE ESTATE. IF THE PERSONAL REPRESENTATIVE HOLDS A MORTGAGE, PLEDGE OR OTHER LIEN UPON PROPERTY OF ANOTHER PERSON, HE MAY, IN LIEU OF FORECLOSURE, ACCEPT A CONVEYANCE OR TRANSFER OF ENCUMBERED ASSETS FROM THE OWNER THEREOF IN SATISFACTION OF THE INDEBTEDNESS SECURED BY LIEN.

18. PAY TAXES, ASSESSMENTS, COMPENSATION OF THE PERSONAL REPRESENTATIVE AND OTHER EXPENSES INCIDENT TO THE ADMINISTRATION OF THE ESTATE.

19. SELL OR EXERCISE STOCK SUBSCRIPTION OR CONVERSION RIGHTS. AND CONSENT, DIRECTLY OR THROUGH A COMMITTEE OR OTHER AGENT, TO THE REORGANIZATION, CONSOLIDATION, MERGER, DISSOLUTION OR LIQUIDATION OF A CORPORATION OR OTHER BUSINESS ENTERPRISE.

20. ALLOCATE ITEMS OF INCOME OR EXPENSE TO EITHER ESTATE INCOME OR PRINCIPAL, AS PERMITTED OR PROVIDED BY LAW.

21. EMPLOY PERSONS, INCLUDING ATTORNEYS, AUDITORS, INVESTMENT ADVISORS OR AGENTS, EVEN IF THEY ARE ASSOCIATED WITH THE PERSONAL REPRESENTATIVE, TO ADVISE OR ASSIST THE PERSONAL REPRESENTATIVE IN THE PERFORMANCE OF HIS ADMINISTRATIVE DUTIES, ACT WITHOUT INDEPENDENT INVESTIGATION UPON THEIR RECOMMENDATIONS AND INSTEAD OF ACTING PERSONALLY, EMPLOY ONE OR MORE AGENTS TO PERFORM ANY ACT OF ADMINISTRATION, WHETHER OR NOT DISCRETIONARY.

22. PROSECUTE OR DEFEND CLAIMS, OR PROCEEDINGS IN ANY JURISDICTION FOR THE PROTECTION OF THE ESTATE AND OF

THE PERSONAL REPRESENTATIVE IN THE PERFORMANCE OF HIS DUTIES.

23. SELL, MORTGAGE OR LEASE ANY REAL OR PERSONAL PROPERTY OF THE ESTATE OR ANY INTEREST THEREIN FOR CASH, CREDIT OR FOR PART CASH AND PART CREDIT, AND WITH OR WITHOUT SECURITY FOR UNPAID BALANCES.

24. CONTINUE ANY UNINCORPORATED BUSINESS OR VENTURE IN WHICH THE DECEDENT WAS ENGAGED AT THE TIME OF HIS DEATH:

(a) IN THE SAME BUSINESS FORM FOR A PERIOD OF NOT MORE THAN FOUR MONTHS FROM THE DATE OF APPOINTMENT OF A GENERAL PERSONAL REPRESENTATIVE IF CONTINUATION IS A REASONABLE MEANS OF PRESERVING THE VALUE OF THE BUSINESS INCLUDING GOODWILL.

(b) IN THE SAME BUSINESS FORM FOR ANY ADDITIONAL PERIOD OF TIME THAT MAY BE APPROVED BY ORDER OF THE COURT IN A FORMAL PROCEEDING WITH NOTICE TO INTERESTED PERSONS.

(c) THROUGHOUT THE PERIOD OF ADMINISTRATION IF THE BUSINESS IS INCORPORATED BY THE PERSONAL REPRESENTATIVE AND IF NONE OF THE PROBABLE DISTRIBUTEES OF THE BUSINESS WHO ARE COMPETENT ADULTS OBJECT TO ITS INCORPORATION AND RETENTION IN THE ESTATE.

25. INCORPORATE ANY BUSINESS OR VENTURE IN WHICH THE DECEDENT WAS ENGAGED AT THE TIME OF HIS DEATH.

26. PROVIDE FOR EXONERATION OF THE PERSONAL REPRESENTATIVE FROM PERSONAL LIABILITY IN ANY CONTRACT ENTERED INTO ON BEHALF OF THE ESTATE.

27. SATISFY AND SETTLE CLAIMS AND DISTRIBUTE THE ESTATE AS PROVIDED IN THIS TITLE.

14-3716. **Powers and duties of successor personal representative**

A SUCCESSOR PERSONAL REPRESENTATIVE HAS THE SAME POWER AND DUTY AS THE ORIGINAL PERSONAL REPRESENTATIVE TO COMPLETE THE ADMINISTRATION AND DISTRIBUTION

OF THE ESTATE, AS EXPEDITIOUSLY AS POSSIBLE, BUT HE SHALL NOT EXERCISE ANY POWER EXPRESSLY MADE PERSONAL TO THE EXECUTOR NAMED IN THE WILL.

14-3717. **Co-representatives; when joint action required**

IF TWO OR MORE PERSONS ARE APPOINTED CO-REPRESENTATIVES AND UNLESS THE WILL PROVIDES OTHERWISE, THE CONCURRENCE OF ALL IS REQUIRED ON ALL ACTS CONNECTED WITH THE ADMINISTRATION AND DISTRIBUTION OF THE ESTATE. THIS RESTRICTION DOES NOT APPLY WHEN ANY CO-REPRESENTATIVE RECEIVES AND RECEIPTS FOR PROPERTY DUE THE ESTATE, WHEN THE CONCURRENCE OF ALL CANNOT READILY BE OBTAINED IN THE TIME REASONABLY AVAILABLE FOR EMERGENCY ACTION NECESSARY TO PRESERVE THE ESTATE, OR WHEN A CO-REPRESENTATIVE HAS BEEN DELEGATED TO ACT FOR THE OTHERS. PERSONS DEALING WITH A CO-REPRESENTATIVE IF ACTUALLY UNAWARE THAT ANOTHER HAS BEEN APPOINTED TO SERVE WITH HIM OR IF ADVISED BY THE PERSONAL REPRESENTATIVE WITH WHOM THEY DEAL THAT HE HAS AUTHORITY TO ACT ALONE FOR ANY OF THE REASONS MENTIONED HEREIN, ARE AS FULLY PROTECTED AS IF THE PERSON WITH WHOM THEY DEALT HAD BEEN THE SOLE PERSONAL REPRESENTATIVE.

14-3718. **Powers of surviving personal representative**

UNLESS THE TERMS OF THE WILL OTHERWISE PROVIDE, EVERY POWER EXERCISABLE BY PERSONAL CO-REPRESENTATIVES MAY BE EXERCISED BY THE ONE OR MORE REMAINING AFTER THE APPOINTMENT OF ONE OR MORE IS TERMINATED, AND IF ONE OF TWO OR MORE NOMINATED AS CO-EXECUTORS IS NOT APPOINTED, THOSE APPOINTED MAY EXERCISE ALL THE POWERS INCIDENT TO THE OFFICE.

14-3719. **Compensation of personal representative**

A PERSONAL REPRESENTATIVE IS ENTITLED TO REASONABLE COMPENSATION FOR HIS SERVICES. IF A WILL PROVIDES FOR COMPENSATION OF THE PERSONAL REPRESENTATIVE AND THERE IS NO CONTRACT WITH THE DECEDENT REGARDING COMPENSATION, HE MAY RENOUNCE THE PROVISION BEFORE QUALIFYING AND BE ENTITLED TO REASONABLE COMPENSATION. A PERSONAL REPRESENTATIVE ALSO MAY RENOUNCE HIS

RIGHT TO ALL OR ANY PART OF THE COMPENSATION. A WRITTEN RENUNCIATION OF FEE MAY BE FILED WITH THE COURT.

14-3720. **Expenses in estate litigation**

IF ANY PERSONAL REPRESENTATIVE OR PERSON NOMINATED AS PERSONAL REPRESENTATIVE DEFENDS OR PROSECUTES ANY PROCEEDING IN GOOD FAITH, WHETHER SUCCESSFUL OR NOT HE IS ENTITLED TO RECEIVE FROM THE ESTATE HIS NECESSARY EXPENSES AND DISBURSEMENTS INCLUDING REASONABLE ATTORNEYS' FEES INCURRED.

14-3721. **Proceedings for review of employment of agents and compensation of personal representatives and employees of estate**

AFTER NOTICE TO ALL INTERESTED PERSONS, ON PETITION OF AN INTERESTED PERSON, INCLUDING ANY PERSON EMPLOYED BY THE PERSONAL REPRESENTATIVE, OR ON APPROPRIATE MOTION IF ADMINISTRATION IS SUPERVISED, THE COURT MAY REVIEW THE PROPRIETY OF EMPLOYMENT OF ANY PERSON BY THE PERSONAL REPRESENTATIVE, THE REASONABLENESS OF THE COMPENSATION OF ANY PERSON SO EMPLOYED, OR THE REASONABLENESS OF THE COMPENSATION DETERMINED BY THE PERSONAL REPRESENTATIVE FOR HIS OWN SERVICES. ANY PERSON WHO HAS RECEIVED EXCESSIVE COMPENSATION FROM AN ESTATE FOR SERVICES RENDERED MAY BE ORDERED TO MAKE APPROPRIATE REFUND.

14-3722. **Demand for court confirmation of sale; court confirmation on petition of personal representative**

ANY PERSON INTERESTED IN AN ESTATE MAY GIVE WRITTEN DEMAND TO THE PERSONAL REPRESENTATIVE THAT ANY SALE OF SPECIFIED REAL PROPERTY IN THE ESTATE SHOULD BE CONFIRMED BY THE COURT AS THOUGH IT WERE A SALE IN SUPERVISED ADMINISTRATION UNDER SECTIONS 14-3506 AND 14-3507. IF THE PERSONAL REPRESENTATIVE, AFTER RECEIPT OF A DEMAND, THEREAFTER CONTRACTS TO SELL OR ENTERS INTO A SALE OF THE SPECIFIED PROPERTY WITHOUT OBTAINING COURT CONFIRMATION, HE SHALL BE LIABLE TO ALL INTERESTED PERSONS FOR DAMAGES. IN ANY SALE OF REAL PROPERTY, WHETHER OR NOT A DEMAND HAS BEEN MADE, THE PERSONAL REPRESENTATIVE MAY PETITION THE COURT FOR

CONFIRMATION OF THE SALE UNDER THE SAME PROCEDURES AS THOUGH IT WERE A SALE IN SUPERVISED ADMINISTRATION UNDER SECTIONS 14-3506 AND 14-3507, EXCEPT THAT NOTICE SHALL BE GIVEN PURSUANT TO SECTION 14-1401 TO THE HEIRS IN AN INTESTATE ESTATE OR TO DEVISEES AFFECTED BY THE SALE UNDER A WILL. THIS SECTION DOES NOT PRECLUDE REMEDIES UNDER SECTION 14-3607 OR OTHER TYPES OF PROCEEDINGS UNDER SECTION 14-3704 IN RELATION TO THE SALE.

ARTICLE 8. CREDITORS' CLAIMS

14-3801. **Notice to creditors**

UNLESS NOTICE HAS ALREADY BEEN GIVEN UNDER THIS SECTION, A PERSONAL REPRESENTATIVE UPON HIS APPOINTMENT SHALL PUBLISH A NOTICE ONCE A WEEK FOR THREE SUCCESSIVE WEEKS IN A NEWSPAPER OF GENERAL CIRCULATION IN THE COUNTY ANNOUNCING HIS APPOINTMENT AND ADDRESS AND NOTIFYING CREDITORS OF THE ESTATE TO PRESENT THEIR CLAIMS WITHIN FOUR MONTHS AFTER THE DATE OF THE FIRST PUBLICATION OF THE NOTICE OR BE FOREVER BARRED.

14-3802. **Statutes of limitations**

UNLESS AN ESTATE IS INSOLVENT THE PERSONAL REPRESENTATIVE, WITH THE CONSENT OF ALL SUCCESSORS, MAY WAIVE ANY DEFENSE OF LIMITATIONS AVAILABLE TO THE ESTATE. IF THE DEFENSE IS NOT WAIVED, NO CLAIM WHICH WAS BARRED BY ANY STATUTE OF LIMITATIONS AT THE TIME OF THE DECEDENT'S DEATH SHALL BE ALLOWED OR PAID. THE RUNNING OF ANY STATUTE OF LIMITATIONS MEASURED FROM SOME OTHER EVENT THAN DEATH AND ADVERTISEMENT FOR CLAIMS AGAINST A DECEDENT IS SUSPENDED DURING THE FOUR MONTHS FOLLOWING THE DECEDENT'S DEATH BUT RESUMES THEREAFTER AS TO CLAIMS NOT BARRED PURSUANT TO THE SECTIONS WHICH FOLLOW. FOR PURPOSES OF ANY STATUTE OF LIMITATIONS, THE PROPER PRESENTATION OF A CLAIM UNDER SECTION 14-3804 IS EQUIVALENT TO COMMENCEMENT OF A PROCEEDING ON THE CLAIM.

14-3803. **Limitations on presentation of claims**

A. ALL CLAIMS AGAINST A DECEDENT'S ESTATE WHICH AROSE BEFORE THE DEATH OF THE DECEDENT, INCLUDING CLAIMS OF

THE STATE AND ANY SUBDIVISION THEREOF, WHETHER DUE OR TO BECOME DUE, ABSOLUTE OR CONTINGENT, LIQUIDATED OR UNLIQUIDATED, FOUNDED ON CONTRACT, TORT OR OTHER LEGAL BASIS, IF NOT BARRED EARLIER BY OTHER STATUTE OF LIMITATIONS, ARE BARRED AGAINST THE ESTATE, THE PERSONAL REPRESENTATIVE AND THE HEIRS AND DEVISEES OF THE DECEDENT, UNLESS PRESENTED AS FOLLOWS:

1. WITHIN FOUR MONTHS AFTER THE DATE OF THE FIRST PUBLICATION OF NOTICE TO CREDITORS IF NOTICE IS GIVEN IN COMPLIANCE WITH SECTION 14-3801, EXCEPT CLAIMS BARRED BY THE NONCLAIM STATUTE AT THE DECEDENT'S DOMICILE BEFORE THE FIRST PUBLICATION FOR CLAIMS IN THIS STATE ARE ALSO BARRED IN THIS STATE.

2. WITHIN THREE YEARS AFTER THE DECEDENT'S DEATH, IF NOTICE TO CREDITORS HAS NOT BEEN PUBLISHED.

B. ALL CLAIMS OTHER THAN ADMINISTRATION EXPENSES AGAINST A DECEDENT'S ESTATE WHICH ARISE AT OR AFTER THE DEATH OF THE DECEDENT, INCLUDING CLAIMS OF THE STATE AND ANY SUBDIVISION THEREOF, WHETHER DUE OR TO BECOME DUE, ABSOLUTE OR CONTINGENT, LIQUIDATED OR UNLIQUIDATED, FOUNDED ON CONTRACT, TORT OR OTHER LEGAL BASIS, ARE BARRED AGAINST THE ESTATE, THE PERSONAL REPRESENTATIVE AND THE HEIRS AND DEVISEES OF THE DECEDENT, UNLESS PRESENTED AS FOLLOWS:

1. A CLAIM BASED ON A CONTRACT WITH THE PERSONAL REPRESENTATIVE, WITHIN FOUR MONTHS AFTER PERFORMANCE BY THE PERSONAL REPRESENTATIVE IS DUE.

2. ANY OTHER CLAIM, WITHIN FOUR MONTHS AFTER IT ARISES.

C. NOTHING IN THIS SECTION AFFECTS OR PREVENTS:

1. ANY PROCEEDING TO ENFORCE ANY MORTGAGE, PLEDGE OR OTHER LIEN UPON PROPERTY OF THE ESTATE.

2. TO THE LIMITS OF THE INSURANCE PROTECTION ONLY, ANY PROCEEDING TO ESTABLISH LIABILITY OF THE DECEDENT OR THE PERSONAL REPRESENTATIVE FOR WHICH HE IS PROTECTED BY LIABILITY INSURANCE.

14-3804. **Manner of presentation of claims**

CLAIMS AGAINST A DECEDENT'S ESTATE MAY BE PRESENTED AS FOLLOWS:

1. THE CLAIMANT MAY DELIVER OR MAIL TO THE PERSONAL REPRESENTATIVE A WRITTEN STATEMENT OF THE CLAIM INDICATING ITS BASIS, THE NAME AND ADDRESS OF THE CLAIMANT AND THE AMOUNT CLAIMED, OR MAY FILE A WRITTEN STATEMENT OF THE CLAIM, IN THE FORM PRESCRIBED BY RULE, WITH THE CLERK OF THE COURT. THE CLAIM IS DEEMED PRESENTED ON THE FIRST TO OCCUR OF RECEIPT OF THE WRITTEN STATEMENT OF CLAIM BY THE PERSONAL REPRESENTATIVE. OR THE FILING OF THE CLAIM WITH THE COURT. IF A CLAIM IS NOT YET DUE, THE DATE WHEN IT WILL BECOME DUE SHALL BE STATED. IF THE CLAIM IS CONTINGENT OR UNLIQUIDATED, THE NATURE OF THE UNCERTAINTY SHALL BE STATED. IF THE CLAIM IS SECURED, THE SECURITY SHALL BE DESCRIBED. FAILURE TO DESCRIBE CORRECTLY THE SECURITY, THE NATURE OF ANY UNCERTAINTY, AND THE DUE DATE OF A CLAIM NOT YET DUE DOES NOT INVALIDATE THE PRESENTATION MADE.

2. THE CLAIMANT MAY COMMENCE A PROCEEDING AGAINST THE PERSONAL REPRESENTATIVE IN ANY COURT WHERE THE PERSONAL REPRESENTATIVE MAY BE SUBJECTED TO JURISDICTION, TO OBTAIN PAYMENT OF HIS CLAIM AGAINST THE ESTATE, BUT THE COMMENCEMENT OF THE PROCEEDING MUST OCCUR WITHIN THE TIME LIMITED FOR PRESENTING THE CLAIM. NO PRESENTATION OF CLAIM IS REQUIRED IN REGARD TO MATTERS CLAIMED IN PROCEEDINGS AGAINST THE DECEDENT WHICH WERE PENDING AT THE TIME OF HIS DEATH.

3. IF A CLAIM IS PRESENTED UNDER PARAGRAPH 1, NO PROCEEDING THEREON MAY BE COMMENCED MORE THAN SIXTY DAYS AFTER THE PERSONAL REPRESENTATIVE HAS MAILED A NOTICE OF DISALLOWANCE; BUT, IN THE CASE OF A CLAIM WHICH IS NOT PRESENTLY DUE OR WHICH IS CONTINGENT OR UNLIQUIDATED, THE PERSONAL REPRESENTATIVE MAY CONSENT TO AN EXTENSION OF THE SIXTY DAY PERIOD, OR TO AVOID INJUSTICE THE COURT, ON PETITION, MAY ORDER AN EXTENSION OF THE SIXTY DAY PERIOD, EXCEPT NO EXTENSION MAY RUN BEYOND THE APPLICABLE STATUTE OF LIMITATIONS.

14-3805. **Priority of claims**

A. IF THE APPLICABLE ASSETS OF THE ESTATE ARE INSUFFICIENT TO PAY ALL CLAIMS IN FULL, THE PERSONAL REPRESENTATIVE SHALL MAKE PAYMENT IN THE FOLLOWING ORDER:

1. COSTS AND EXPENSES OF ADMINISTRATION.

2. REASONABLE FUNERAL EXPENSES.

3. DEBTS AND TAXES WITH PREFERENCE UNDER FEDERAL LAW.

4. REASONABLE AND NECESSARY MEDICAL AND HOSPITAL EXPENSES OF THE LAST ILLNESS OF THE DECEDENT, INCLUDING COMPENSATION OF PERSONS ATTENDING HIM.

5. DEBTS AND TAXES WITH PREFERENCE UNDER THE LAWS OF THIS STATE.

6. ALL OTHER CLAIMS.

B. NO PREFERENCE SHALL BE GIVEN IN THE PAYMENT OF ANY CLAIM OVER ANY OTHER CLAIM OF THE SAME CLASS AND A CLAIM DUE AND PAYABLE SHALL NOT BE ENTITLED TO A PREFERENCE OVER CLAIMS NOT DUE.

14-3806. **Allowance of claims**

A. AS TO CLAIMS PRESENTED IN THE MANNER DESCRIBED IN SECTION 14-3804 WITHIN THE TIME LIMIT PRESCRIBED IN SECTION 14-3803, THE PERSONAL REPRESENTATIVE MAY MAIL A NOTICE TO ANY CLAIMANT STATING THAT THE CLAIM HAS BEEN DISALLOWED. IF, AFTER ALLOWING OR DISALLOWING A CLAIM, THE PERSONAL REPRESENTATIVE CHANGES HIS DECISION CONCERNING THE CLAIM, HE SHALL NOTIFY THE CLAIMANT. THE PERSONAL REPRESENTATIVE MAY NOT CHANGE A DISALLOWANCE OF A CLAIM AFTER THE TIME FOR THE CLAIMANT TO FILE A PETITION FOR ALLOWANCE OR TO COMMENCE A PROCEEDING ON THE CLAIM HAS RUN AND THE CLAIM HAS BEEN BARRED. EVERY CLAIM WHICH IS DISALLOWED IN WHOLE OR IN PART BY THE PERSONAL REPRESENTATIVE IS BARRED SO FAR AS NOT ALLOWED UNLESS THE CLAIMANT FILES A PETITION FOR ALLOWANCE IN THE COURT OR COM-

MENCES A PROCEEDING AGAINST THE PERSONAL REPRESENTATIVE NOT LATER THAN SIXTY DAYS AFTER THE MAILING OF THE NOTICE OF DISALLOWANCE OR PARTIAL ALLOWANCE IF THE NOTICE WARNS THE CLAIMANT OF THE IMPENDING BAR. FAILURE OF THE PERSONAL REPRESENTATIVE TO MAIL NOTICE TO A CLAIMANT OF ACTION ON HIS CLAIM FOR SIXTY DAYS AFTER THE TIME FOR ORIGINAL PRESENTATION OF THE CLAIM HAS EXPIRED HAS THE EFFECT OF A NOTICE OF ALLOWANCE. THE PERSONAL REPRESENTATIVE OF THE ESTATE OF A DECEASED SPOUSE MAY CLASSIFY A CLAIM AS A COMMUNITY CLAIM PAYABLE OUT OF COMMUNITY PROPERTY, OR AS A SEPARATE CLAIM PAYABLE OUT OF SEPARATE PROPERTY AND THE BALANCE OF THE DECEDENT'S HALF OF COMMUNITY PROPERTY. EITHER CLASSIFICATION CONSTITUTES A DISALLOWANCE IN PART; FAILURE TO GIVE NOTICE OF THE CLASSIFICATION TO THE CLAIMANT AS PROVIDED IN THIS SUBSECTION, OR FAILURE TO CLASSIFY AN ALLOWED CLAIM, HAS THE EFFECT OF ALLOWING THE CLAIM AS PAYABLE OUT OF BOTH SEPARATE AND COMMUNITY PROPERTY.

B. UPON THE PETITION OF THE PERSONAL REPRESENTATIVE OR OF A CLAIMANT IN A PROCEEDING FOR THE PURPOSE, THE COURT MAY ALLOW IN WHOLE OR IN PART ANY CLAIM OR CLAIMS PRESENTED TO THE PERSONAL REPRESENTATIVE OR FILED WITH THE CLERK OF THE COURT IN DUE TIME AND NOT BARRED BY SUBSECTION A OF THIS SECTION. NOTICE IN THIS PROCEEDING SHALL BE GIVEN TO THE CLAIMANT, THE PERSONAL REPRESENTATIVE AND THOSE OTHER PERSONS INTERESTED IN THE ESTATE AS THE COURT MAY DIRECT BY ORDER ENTERED AT THE TIME THE PROCEEDING IS COMMENCED.

C. A JUDGMENT IN A PROCEEDING IN ANOTHER COURT AGAINST A PERSONAL REPRESENTATIVE TO ENFORCE A CLAIM AGAINST A DECEDENT'S ESTATE IS AN ALLOWANCE OF THE CLAIM.

D. UNLESS OTHERWISE PROVIDED IN ANY JUDGMENT IN ANOTHER COURT ENTERED AGAINST THE PERSONAL REPRESENTATIVE, ALLOWED CLAIMS BEAR INTEREST AT THE LEGAL RATE FOR THE PERIOD COMMENCING SIXTY DAYS AFTER THE TIME FOR ORIGINAL PRESENTATION OF THE CLAIM HAS EXPIRED UNLESS BASED ON A CONTRACT MAKING A PROVISION FOR INTEREST, IN WHICH CASE THEY BEAR INTEREST IN ACCORDANCE WITH THAT PROVISION.

14-3807. **Payment of claims**

A. UPON THE EXPIRATION OF FOUR MONTHS FROM THE DATE OF THE FIRST PUBLICATION OF THE NOTICE TO CREDITORS, THE PERSONAL REPRESENTATIVE SHALL PROCEED TO PAY THE CLAIMS ALLOWED AGAINST THE ESTATE IN THE ORDER OF PRIORITY PRESCRIBED, AFTER MAKING PROVISION FOR ALLOWANCE IN LIEU OF HOMESTEAD, EXEMPT PROPERTY AND FAMILY ALLOWANCE, FOR CLAIMS ALREADY PRESENTED WHICH HAVE NOT YET BEEN ALLOWED OR WHOSE ALLOWANCE HAS BEEN APPEALED, AND FOR UNBARRED CLAIMS WHICH MAY YET BE PRESENTED, INCLUDING COSTS AND EXPENSES OF ADMINISTRATION. BY PETITION TO THE COURT IN A PROCEEDING FOR THE PURPOSE, OR BY APPROPRIATE MOTION IF THE ADMINISTRATION IS SUPERVISED, A CLAIMANT WHOSE CLAIM HAS BEEN ALLOWED BUT NOT PAID AS PROVIDED HEREIN MAY SECURE AN ORDER DIRECTING THE PERSONAL REPRESENTATIVE TO PAY THE CLAIM TO THE EXTENT THAT FUNDS OF THE ESTATE ARE AVAILABLE FOR THE PAYMENT.

B. THE PERSONAL REPRESENTATIVE AT ANY TIME MAY PAY ANY JUST CLAIM WHICH HAS NOT BEEN BARRED, WITH OR WITHOUT FORMAL PRESENTATION, BUT HE IS PERSONALLY LIABLE TO ANY OTHER CLAIMANT WHOSE CLAIM IS ALLOWED AND WHO IS INJURED BY SUCH PAYMENT IF EITHER:

1. THE PAYMENT WAS MADE BEFORE THE EXPIRATION OF THE TIME LIMIT STATED IN SUBSECTION A AND THE PERSONAL REPRESENTATIVE FAILED TO REQUIRE THE PAYEE TO GIVE ADEQUATE SECURITY FOR THE REFUND OF ANY OF THE PAYMENT NECESSARY TO PAY OTHER CLAIMANTS.

2. THE PAYMENT WAS MADE, DUE TO THE NEGLIGENCE OR WILFUL FAULT OF THE PERSONAL REPRESENTATIVE, IN SUCH MANNER AS TO DEPRIVE THE INJURED CLAIMANT OF HIS PRIORITY.

14-3808. **Individual liability of personal representative**

A. UNLESS OTHERWISE PROVIDED IN THE CONTRACT, A PERSONAL REPRESENTATIVE IS NOT INIDIVIDUALLY LIABLE ON A CONTRACT PROPERLY ENTERED INTO IN HIS FIDUCIARY CAPACITY IN THE COURSE OF ADMINISTRATION OF THE ESTATE UNLESS HE FAILS TO REVEAL HIS REPRESENTATIVE CAPACITY AND IDENTIFY THE ESTATE IN THE CONTRACT.

B. A PERSONAL REPRESENTATIVE IS INDIVIDUALLY LIABLE FOR OBLIGATIONS ARISING FROM OWNERSHIP OR CONTROL OF THE ESTATE OR FOR TORTS COMMITTED IN THE COURSE OF ADMINISTRATION OF THE ESTATE ONLY IF HE IS PERSONALLY AT FAULT.

C. CLAIMS BASED ON CONTRACTS ENTERED INTO BY A PERSONAL REPRESENTATIVE IN HIS FIDUCIARY CAPACITY, ON OBLIGATIONS ARISING FROM OWNERSHIP OR CONTROL OF THE ESTATE, OR ON TORTS COMMITTED IN THE COURSE OF ESTATE ADMINISTRATION MAY BE ASSERTED AGAINST THE ESTATE BY PROCEEDING AGAINST THE PERSONAL REPRESENTATIVE IN HIS FIDUCIARY CAPACITY, WHETHER OR NOT THE PERSONAL REPRESENTATIVE IS INDIVIDUALLY LIABLE THEREFOR.

D. ISSUES OF LIABILITY AS BETWEEN THE ESTATE AND THE PERSONAL REPRESENTATIVE INDIVIDUALLY MAY BE DETERMINED IN A PROCEEDING FOR ACCOUNTING, SURCHARGE OR INDEMNIFICATION OR OTHER APPROPRIATE PROCEEDING.

14-3809. **Secured claims**

PAYMENT OF A SECURED CLAIM IS UPON THE BASIS OF THE AMOUNT ALLOWED IF THE CREDITOR SURRENDERS HIS SECURITY, OTHERWISE PAYMENT IS UPON THE BASIS OF ONE OF THE FOLLOWING:

1. IF THE CREDITOR EXHAUSTS HIS SECURITY BEFORE RECEIVING PAYMENT, UNLESS PRECLUDED BY OTHER LAW, UPON THE AMOUNT OF THE CLAIM ALLOWED LESS THE FAIR VALUE OF THE SECURITY.

2. IF THE CREDITOR DOES NOT HAVE THE RIGHT TO EXHAUST HIS SECURITY OR HAS NOT DONE SO, UPON THE AMOUNT OF THE CLAIM ALLOWED LESS THE VALUE OF THE SECURITY DETERMINED BY CONVERTING IT INTO MONEY ACCORDING TO THE TERMS OF THE AGREEMENT PURSUANT TO WHICH THE SECURITY WAS DELIVERED TO THE CREDITOR, OR BY THE CREDITOR AND PERSONAL REPRESENTATIVE BY AGREEMENT, ARBITRATION, COMPROMISE OR LITIGATION.

14-3810. **Claims not due and contingent or unliquidated claims**

A. IF A CLAIM WHICH WILL BECOME DUE AT A FUTURE TIME OR A CONTINGENT OR UNLIQUIDATED CLAIM BECOMES DUE OR

CERTAIN BEFORE THE DISTRIBUTION OF THE ESTATE, AND IF THE CLAIM HAS BEEN ALLOWED OR ESTABLISHED BY A PROCEEDING, IT IS PAID IN THE SAME MANNER AS PRESENTLY DUE AND ABSOLUTE CLAIMS OF THE SAME CLASS.

B. IN OTHER CASES THE PERSONAL REPRESENTATIVE OR, ON PETITION OF THE PERSONAL REPRESENTATIVE OR THE CLAIMANT IN A SPECIAL PROCEEDING FOR THE PURPOSE, THE COURT MAY PROVIDE FOR PAYMENT AS FOLLOWS:

1. IF THE CLAIMANT CONSENTS, HE MAY BE PAID THE PRESENT OR AGREED VALUE OF THE CLAIM, TAKING ANY UNCERTAINTY INTO ACCOUNT.

2. ARRANGEMENT FOR FUTURE PAYMENT, OR POSSIBLE PAYMENT, ON THE HAPPENING OF THE CONTINGENCY OR ON LIQUIDATION MAY BE MADE BY CREATING A TRUST, GIVING A MORTGAGE, OBTAINING A BOND OR SECURITY FROM A DISTRIBUTEE, OR OTHERWISE.

14-3811. **Counterclaims**

IN ALLOWING A CLAIM THE PERSONAL REPRESENTATIVE MAY DEDUCT ANY COUNTERCLAIM WHICH THE ESTATE HAS AGAINST THE CLAIMANT. IN DETERMINING A CLAIM AGAINST AN ESTATE A COURT SHALL REDUCE THE AMOUNT ALLOWED BY THE AMOUNT OF ANY COUNTERCLAIMS AND, IF THE COUNTERCLAIMS EXCEED THE CLAIM, RENDER A JUDGMENT AGAINST THE CLAIMANT IN THE AMOUNT OF THE EXCESS. A COUNTERCLAIM, LIQUIDATED OR UNLIQUIDATED, MAY ARISE FROM A TRANSACTION OTHER THAN THAT UPON WHICH THE CLAIM IS BASED. A COUNTERCLAIM MAY GIVE RISE TO RELIEF EXCEEDING IN AMOUNT OR DIFFERENT IN KIND FROM THAT SOUGHT IN THE CLAIM.

14-3812. **Execution and levies prohibited**

NO EXECUTION MAY ISSUE UPON NOR MAY ANY LEVY BE MADE AGAINST ANY PROPERTY OF THE ESTATE UNDER ANY JUDGMENT AGAINST A DECEDENT OR A PERSONAL REPRESENTATIVE, BUT THIS SECTION SHALL NOT BE CONSTRUED TO PREVENT THE ENFORCEMENT OF MORTGAGES, PLEDGES OR LIENS UPON REAL OR PERSONAL PROPERTY IN AN APPROPRIATE PROCEEDING.

14-3813. **Compromise of claims**

WHEN A CLAIM AGAINST THE ESTATE HAS BEEN PRESENTED IN ANY MANNER, THE PERSONAL REPRESENTATIVE MAY, IF IT APPEARS FOR THE BEST INTEREST OF THE ESTATE, COMPROMISE THE CLAIM, WHETHER DUE OR NOT DUE, ABSOLUTE OR CONTINGENT, LIQUIDATED OR UNLIQUIDATED.

14-3814. **Encumbered assets**

IF ANY ASSETS OF THE ESTATE ARE ENCUMBERED BY MORTGAGE, PLEDGE, LIEN OR OTHER SECURITY INTEREST, THE PERSONAL REPRESENTATIVE MAY PAY THE ENCUMBRANCE OR ANY PART THEREOF, RENEW OR EXTEND ANY OBLIGATION SECURED BY THE ENCUMBRANCE OR CONVEY OR TRANSFER THE ASSETS TO THE CREDITOR IN SATISFACTION OF HIS LIEN, IN WHOLE OR IN PART, WHETHER OR NOT THE HOLDER OF THE ENCUMBRANCE HAS FILED A CLAIM, IF IT APPEARS TO BE FOR THE BEST INTEREST OF THE ESTATE. PAYMENT OF AN ENCUMBRANCE DOES NOT INCREASE THE SHARE OF THE DISTRIBUTEE ENTITLED TO THE ENCUMBERED ASSETS UNLESS THE DISTRIBUTEE IS ENTITLED TO EXONERATION.

14-3815. **Administration in more than one state; duty of personal representative**

A. ALL ASSETS OF ESTATES BEING ADMINISTERED IN THIS STATE ARE SUBJECT TO ALL CLAIMS, ALLOWANCES AND CHARGES EXISTING OR ESTABLISHED AGAINST THE PERSONAL REPRESENTATIVE WHEREVER APPOINTED.

B. IF THE ESTATE EITHER IN THIS STATE OR AS A WHOLE IS INSUFFICIENT TO COVER ALL FAMILY EXEMPTIONS AND ALLOWANCES DETERMINED BY THE LAW OF THE DECEDENT'S DOMICILE, PRIOR CHARGES AND CLAIMS, AFTER SATISFACTION OF THE EXEMPTIONS, ALLOWANCES AND CHARGES, EACH CLAIMANT WHOSE CLAIM HAS BEEN ALLOWED EITHER IN THIS STATE OR IN ANOTHER JURISDICTION IN ADMINISTRATIONS OF WHICH THE PERSONAL REPRESENTATIVE IS AWARE, IS ENTITLED TO RECEIVE PAYMENT OF AN EQUAL PROPORTION OF HIS CLAIM. IF A PREFERENCE OR SECURITY IN REGARD TO A CLAIM IS ALLOWED IN ANOTHER JURISDICTION BUT NOT IN THIS STATE, THE CREDITOR SO BENEFITED IS TO RECEIVE DIVIDENDS FROM LOCAL ASSETS ONLY UPON THE BALANCE OF HIS CLAIM AFTER DEDUCTING THE AMOUNT OF THE BENEFIT.

C. IN CASE THE FAMILY EXEMPTIONS AND ALLOWANCES, PRIOR CHARGES AND CLAIMS OF THE ENTIRE ESTATE EXCEED THE TOTAL VALUE OF THE PORTIONS OF THE ESTATE BEING ADMINISTERED SEPARATELY AND THIS STATE IS NOT THE STATE OF THE DECEDENT'S LAST DOMICILE, THE CLAIMS ALLOWED IN THIS STATE SHALL BE PAID THEIR PROPORTION IF LOCAL ASSETS ARE ADEQUATE FOR THE PURPOSE, AND THE BALANCE OF LOCAL ASSETS SHALL BE TRANSFERRED TO THE DOMICILIARY PERSONAL REPRESENTATIVE. IF LOCAL ASSETS ARE NOT SUFFICIENT TO PAY ALL CLAIMS ALLOWED IN THIS STATE THE AMOUNT TO WHICH THEY ARE ENTITLED, LOCAL ASSETS SHALL BE MARSHALLED SO THAT EACH CLAIM ALLOWED IN THIS STATE IS PAID ITS PROPORTION AS FAR AS POSSIBLE, AFTER TAKING INTO ACCOUNT ALL DIVIDENDS ON CLAIMS ALLOWED IN THIS STATE FROM ASSETS IN OTHER JURISDICTIONS.

14-3816. **Final distribution to domiciliary representative**

THE ESTATE OF A NONRESIDENT DECEDENT BEING ADMINISTERED BY A PERSONAL REPRESENTATIVE APPOINTED IN THIS STATE SHALL, IF THERE IS A PERSONAL REPRESENTATIVE OF THE DECEDENT'S DOMICILE WILLING TO RECEIVE IT, BE DISTRIBUTED TO THE DOMICILIARY PERSONAL REPRESENTATIVE FOR THE BENEFIT OF THE SUCCESSORS OF THE DECEDENT UNLESS ANY OF THE FOLLOWING APPLY:

1. BY VIRTUE OF THE DECEDENT'S WILL, IF ANY, AND APPLICABLE CHOICE OF LAW RULES, THE SUCCESSORS ARE IDENTIFIED PURSUANT TO THE LOCAL LAW OF THIS STATE WITHOUT REFERENCE TO THE LOCAL LAW OF THE DECEDENT'S DOMICILE.

2. THE PERSONAL REPRESENTATIVE OF THIS STATE, AFTER REASONABLE INQUIRY, IS UNAWARE OF THE EXISTENCE OR IDENTITY OF A DOMICILIARY PERSONAL REPRESENTATIVE.

3. THE COURT ORDERS OTHERWISE IN A PROCEEDING FOR A CLOSING ORDER UNDER SECTION 14-3931 OR INCIDENT TO THE CLOSING OF A SUPERVISED ADMINISTRATION.

IN OTHER CASES, DISTRIBUTION OF THE ESTATE OF A DECEDENT SHALL BE MADE IN ACCORDANCE WITH THE OTHER ARTICLES OF THIS CHAPTER.

ARTICLE 9. SPECIAL PROVISIONS RELATING TO DISTRIBUTION

14-3901. Successors' rights if no administration

IN THE ABSENCE OF ADMINISTRATION, THE HEIRS AND DEVISEES ARE ENTITLED TO THE ESTATE IN ACCORDANCE WITH THE TERMS OF A PROBATED WILL OR THE LAWS OF INTESTATE SUCCESSION. DEVISEES MAY ESTABLISH TITLE BY THE PROBATED WILL TO DEVISED PROPERTY. PERSONS ENTITLED TO PROPERTY BY ALLOWANCE IN LIEU OF HOMESTEAD, EXEMPTION OR INTESTACY MAY ESTABLISH TITLE THERETO BY PROOF OF THE DECEDENT'S OWNERSHIP, HIS DEATH AND THEIR RELATIONSHIP TO THE DECEDENT. SUCCESSORS TAKE SUBJECT TO ALL CHARGES INCIDENT TO ADMINISTRATION, INCLUDING THE CLAIMS OF CREDITORS AND ALLOWANCES OF SURVIVING SPOUSE AND DEPENDENT CHILDREN, AND SUBJECT TO THE RIGHTS OF OTHERS RESULTING FROM ABATEMENT, RETAINER, ADVANCEMENT AND ADEMPTION.

14-3902. Distribution; order in which assets appropriated; abatement

A. EXCEPT AS PROVIDED IN SUBSECTION B, SHARES OF DISTRIBUTEES ABATE, WITHOUT ANY PREFERENCE OR PRIORITY AS BETWEEN REAL AND PERSONAL PROPERTY, IN THE FOLLOWING ORDER:

1. PROPERTY NOT DISPOSED OF BY THE WILL.

2. RESIDUARY DEVISES.

3. GENERAL DEVISES.

4. SPECIFIC DEVISES.

FOR PURPOSES OF ABATEMENT, A GENERAL DEVISE CHARGED ON ANY SPECIFIC PROPERTY OR FUND IS A SPECIFIC DEVISE TO THE EXTENT OF THE VALUE OF THE PROPERTY ON WHICH IT IS CHARGED, AND UPON THE FAILURE OR INSUFFICIENCY OF THE PROPERTY ON WHICH IT IS CHARGED, A GENERAL DEVISE TO THE EXTENT OF THE FAILURE OR INSUFFICIENCY. ABATEMENT WITHIN EACH CLASSIFICATION IS IN PROPORTION TO THE AMOUNTS OF PROPERTY EACH OF THE BENEFICIARIES WOULD HAVE RECEIVED IF FULL DISTRIBUTION OF THE PROPERTY HAD BEEN MADE IN ACCORDANCE WITH THE TERMS OF THE WILL.

B. IF THE WILL EXPRESSES AN ORDER OF ABATEMENT, OR IF THE TESTAMENTARY PLAN OR THE EXPRESS OR IMPLIED PURPOSE OF THE DEVISE WOULD BE DEFEATED BY THE ORDER OF ABATEMENT STATED IN SUBSECTION A, THE SHARES OF THE DISTRIBUTEES ABATE AS MAY BE FOUND NECESSARY TO GIVE EFFECT TO THE INTENTION OF THE TESTATOR.

C. IF AN ESTATE OF A DECEDENT CONSISTS PARTLY OF SEPARATE PROPERTY AND PARTLY OF COMMUNITY PROPERTY:

1. COMMUNITY DEBTS SHALL BE CHARGED AGAINST COMMUNITY PROPERTY.

2. SEPARATE DEBTS SHALL BE CHARGED AGAINST SEPARATE PROPERTY AND AGAINST THE BALANCE OF DECEDENT'S HALF OF COMMUNITY PROPERTY.

3. EXPENSES OF ADMINISTRATION SHALL BE CHARGED AGAINST SEPARATE PROPERTY AND DECEDENT'S HALF OF COMMUNITY PROPERTY IN PROPORTION TO THE RELATIVE VALUE THEREOF, BUT ANY SPECIAL EXPENSES ATTRIBUTABLE TO MANAGEMENT OF COMMUNITY PROPERTY MAY BE CHARGED AGAINST THE ENTIRE COMMUNITY PROPERTY.

D. IF THE SUBJECT OF A PREFERRED DEVISE IS SOLD OR USED INCIDENT TO ADMINISTRATION, ABATEMENT SHALL BE ACHIEVED BY APPROPRIATE ADJUSTMENTS IN, OR CONTRIBUTION FROM, OTHER INTERESTS IN THE REMAINING ASSETS.

14-3903. **Right of retainer**

THE AMOUNT OF A NONCONTINGENT INDEBTEDNESS OF A SUCCESSOR TO THE ESTATE IF DUE, OR ITS PRESENT VALUE IF NOT DUE, SHALL BE OFFSET AGAINST THE SUCCESSOR'S INTEREST, BUT THE SUCCESSOR HAS THE BENEFIT OF ANY DEFENSE WHICH WOULD BE AVAILABLE TO HIM IN A DIRECT PROCEEDING FOR RECOVERY OF THE DEBT.

14-3904. **Interest on general pecuniary devise**

UNLESS A CONTRARY INTENTION IS INDICATED BY THE WILL, GENERAL PECUNIARY DEVISES BEAR INTEREST AT THE LEGAL RATE BEGINNING ONE YEAR AFTER THE FIRST APPOINTMENT OF A PERSONAL REPRESENTATIVE UNTIL PAYMENT.

14-3905. **Penalty clause for contest**

A PROVISION IN A WILL PURPORTING TO PENALIZE ANY INTERESTED PERSON FOR CONTESTING THE WILL OR INSTITUTING OTHER PROCEEDINGS RELATING TO THE ESTATE IS UNENFORCEABLE IF PROBABLE CAUSE EXISTS FOR CONTESTING THE WILL OR INSTITUTING OTHER PROCEEDINGS.

14-3906. **Distribution in kind; valuation; method**

A. UNLESS A CONTRARY INTENTION IS INDICATED BY THE WILL, THE DISTRIBUTABLE ASSETS OF A DECEDENT'S ESTATE SHALL BE DISTRIBUTED IN KIND TO THE EXTENT POSSIBLE THROUGH APPLICATION OF THE FOLLOWING PROVISIONS:

1. A SPECIFIC DEVISEE IS ENTITLED TO DISTRIBUTION OF THE THING DEVISED TO HIM, AND A SPOUSE OR CHILD WHO HAS SELECTED PARTICULAR ASSETS OF AN ESTATE AS PROVIDED IN SECTION 14-2402 SHALL RECEIVE THE ITEMS SELECTED.

2. ANY ALLOWANCE IN LIEU OF HOMESTEAD OR FAMILY ALLOWANCE OR DEVISE PAYABLE IN MONEY MAY BE SATISFIED BY VALUE IN KIND IF:

(a) THE PERSON ENTITLED TO THE PAYMENT HAS NOT DEMANDED PAYMENT IN CASH.

(b) THE PROPERTY DISTRIBUTED IN KIND IS VALUED AT FAIR MARKET VALUE AS OF THE DATE OF ITS DISTRIBUTION.

(c) NO RESIDUARY DEVISEE HAS REQUESTED THAT THE ASSET IN QUESTION REMAIN A PART OF THE RESIDUE OF THE ESTATE.

3. FOR THE PURPOSE OF VALUATION UNDER PARAGRAPH 2 OF THIS SECTION SECURITIES REGULARLY TRADED ON RECOGNIZED EXCHANGES, IF DISTRIBUTED IN KIND, ARE VALUED AT THE PRICE FOR THE LAST SALE OF LIKE SECURITIES TRADED ON THE BUSINESS DAY PRIOR TO DISTRIBUTION, OR IF THERE WAS NO SALE ON THAT DAY, AT THE MEDIAN BETWEEN AMOUNTS BID AND OFFERED AT THE CLOSE OF THAT DAY. ASSETS CONSISTING OF SUMS OWED THE DECEDENT OR THE ESTATE BY SOLVENT DEBTORS AS TO WHICH THERE IS NO KNOWN DISPUTE OR DEFENSE ARE VALUED AT THE SUM DUE WITH ACCRUED INTEREST OR DISCOUNTED TO THE DATE OF

DISTRIBUTION. FOR ASSETS WHICH DO NOT HAVE READILY ASCERTAINABLE VALUES, A VALUATION AS OF A DATE NOT MORE THAN THIRTY DAYS PRIOR TO THE DATE OF DISTRIBUTION, IF OTHERWISE REASONABLE, CONTROLS. FOR PURPOSES OF FACILITATING DISTRIBUTION, THE PERSONAL REPRESENTATIVE MAY ASCERTAIN THE VALUE OF THE ASSETS AS OF THE TIME OF THE PROPOSED DISTRIBUTION IN ANY REASONABLE WAY, INCLUDING THE EMPLOYMENT OF QUALIFIED APPRAISERS, EVEN IF THE ASSETS MAY HAVE BEEN PREVIOUSLY APPRAISED.

4. THE RESIDUARY ESTATE SHALL BE DISTRIBUTED IN KIND IF THERE IS NO OBJECTION TO THE PROPOSED DISTRIBUTION AND IT IS PRACTICABLE TO DISTRIBUTE UNDIVIDED INTERESTS. IN OTHER CASES, RESIDUARY PROPERTY MAY BE CONVERTED INTO CASH FOR DISTRIBUTION.

B. AFTER THE PROBABLE CHARGES AGAINST THE ESTATE ARE KNOWN, THE PERSONAL REPRESENTATIVE MAY MAIL OR DELIVER A PROPOSAL FOR DISTRIBUTION TO ALL PERSONS WHO HAVE A RIGHT TO OBJECT TO THE PROPOSED DISTRIBUTION. THE RIGHT OF ANY DISTRIBUTEE TO OBJECT TO THE PROPOSED DISTRIBUTION ON THE BASIS OF THE KIND OR VALUE OF ASSET HE IS TO RECEIVE, IF NOT WAIVED EARLIER IN WRITING, TERMINATES IF HE FAILS TO OBJECT IN WRITING RECEIVED BY THE PERSONAL REPRESENTATIVE WITHIN THIRTY DAYS AFTER MAILING OR DELIVERY OF THE PROPOSAL.

14-3907. **Distribution in kind; evidence**

IF DISTRIBUTION IN KIND IS MADE, THE PERSONAL REPRESENTATIVE SHALL EXECUTE AN INSTRUMENT OR DEED OF DISTRIBUTION ASSIGNING, TRANSFERRING OR RELEASING THE ASSETS TO THE DISTRIBUTEE AS EVIDENCE OF THE DISTRIBUTEE'S TITLE TO THE PROPERTY.

14-3908. **Distribution; right or title of distributee**

PROOF THAT A DISTRIBUTEE HAS RECEIVED AN INSTRUMENT OR DEED OF DISTRIBUTION OF ASSETS IN KIND, OR PAYMENT IN DISTRIBUTION FROM A PERSONAL REPRESENTATIVE, IS CONCLUSIVE EVIDENCE THAT THE DISTRIBUTEE HAS SUCCEEDED TO THE INTEREST OF THE ESTATE IN THE DISTRIBUTED ASSETS, AS AGAINST ALL PERSONS INTERESTED IN THE ESTATE, EXCEPT

THAT THE PERSONAL REPRESENTATIVE MAY RECOVER UNDER SECTION 14-3909 THE ASSETS OR THEIR VALUE IF THE DISTRIBUTION WAS IMPROPER.

14-3909. **Improper distribution; liability of distributee**

UNLESS THE DISTRIBUTION OR PAYMENT NO LONGER CAN BE QUESTIONED BECAUSE OF ADJUDICATION, ESTOPPEL OR LIMITATION, A DISTRIBUTEE OF PROPERTY OR MONEY IMPROPERLY DISTRIBUTED OR PAID, OR A CLAIMANT WHO WAS IMPROPERLY PAID, IS LIABLE TO RETURN THE PROPERTY IMPROPERLY RECEIVED AND ITS INCOME SINCE DISTRIBUTION IF HE HAS THE PROPERTY. IF SUCH A DISTRIBUTEE DOES NOT HAVE THE PROPERTY, HE IS LIABLE TO RETURN THE VALUE AS OF THE DATE OF DISPOSITION OF THE PROPERTY IMPROPERLY RECEIVED AND ITS INCOME AND GAIN RECEIVED BY HIM.

14-3910. **Purchasers from distributees protected**

IF PROPERTY DISTRIBUTED IN KIND OR A SECURITY INTEREST THEREIN IS ACQUIRED FOR VALUE BY A PURCHASER FROM OR LENDER TO A DISTRIBUTEE WHO HAS RECEIVED AN INSTRUMENT OR DEED OF DISTRIBUTION FROM THE PERSONAL REPRESENTATIVE, THE PURCHASER OR LENDER TAKES TITLE FREE OF RIGHTS OF ANY PERSON INTERESTED IN THE ESTATE AND INCURS NO PERSONAL LIABILITY TO THE ESTATE, WHETHER OR NOT THE DISTRIBUTION WAS PROPER AND WHETHER OR NOT THE AUTHORITY OF THE PERSONAL REPRESENTATIVE WAS TERMINATED PRIOR TO EXECUTION OF THE INSTRUMENT OR DEED. THIS SECTION PROTECTS A PURCHASER OR LENDER FROM A DISTRIBUTEE WHO AS PERSONAL REPRESENTATIVE HAS EXECUTED A DEED OF DISTRIBUTION TO HIMSELF, AS WELL AS FROM ANY OTHER DISTRIBUTEE. TO BE PROTECTED UNDER THIS PROVISION, A PURCHASER OR LENDER NEED NOT INQUIRE WHETHER A PERSONAL REPRESENTATIVE ACTED PROPERLY IN MAKING THE DISTRIBUTION IN KIND, EVEN IF THE PERSONAL REPRESENTATIVE AND THE DISTRIBUTEE ARE THE SAME PERSON, OR WHETHER THE AUTHORITY OF THE PERSONAL REPRESENTATIVE HAD TERMINATED PRIOR TO THE DISTRIBUTION.

14-3911. **Partition for purpose of distribution**

WHEN TWO OR MORE HEIRS OR DEVISEES ARE ENTITLED TO DISTRIBUTION OF UNDIVIDED INTERESTS IN ANY REAL OR

PERSONAL PROPERTY OF THE ESTATE, THE PERSONAL REPRESENTATIVE OR ONE OR MORE OF THE HEIRS OR DEVISEES MAY PETITION THE COURT PRIOR TO THE FORMAL OR INFORMAL CLOSING OF THE ESTATE, TO MAKE PARTITION. AFTER NOTICE TO THE INTERESTED HEIRS OR DEVISEES, THE COURT SHALL PARTITION THE PROPERTY IN THE SAME MANNER AS PROVIDED BY THE LAW FOR CIVIL ACTIONS OF PARTITION. THE COURT MAY DIRECT THE PERSONAL REPRESENTATIVE TO SELL ANY PROPERTY WHICH CANNOT BE PARTITIONED WITHOUT PREJUDICE TO THE OWNERS AND WHICH CANNOT CONVENIENTLY BE ALLOTTED TO ANY ONE PARTY.

14-3912. **Private agreements among successors to decedent binding on personal representative**

SUBJECT TO THE RIGHTS OF CREDITORS AND TAXING AUTHORITIES, COMPETENT SUCCESSORS MAY AGREE AMONG THEMSELVES TO ALTER THE INTERESTS, SHARES, OR AMOUNTS TO WHICH THEY ARE ENTITLED UNDER THE WILL OF THE DECEDENT OR UNDER THE LAWS OF INTESTACY, IN ANY WAY THAT THEY PROVIDE IN A WRITTEN CONTRACT EXECUTED BY ALL WHO ARE AFFECTED BY ITS PROVISIONS. THE PERSONAL REPRESENTATIVE SHALL ABIDE BY THE TERMS OF THE AGREEMENT SUBJECT TO HIS OBLIGATION TO ADMINISTER THE ESTATE FOR THE BENEFIT OF CREDITORS, TO PAY ALL TAXES AND EXPENSES OF ADMINISTRATION, AND TO CARRY OUT THE RESPONSIBILITIES OF HIS OFFICE FOR THE BENEFIT OF ANY SUCCESSORS OF THE DECEDENT WHO ARE NOT PARTIES. PERSONAL REPRESENTATIVES OF DECEDENTS' ESTATES ARE NOT REQUIRED TO SEE TO THE PERFORMANCE OF TRUSTS IF THE TRUSTEE THEREOF IS ANOTHER PERSON WHO IS WILLING TO ACCEPT THE TRUST. ACCORDINGLY, TRUSTEES OF A TESTAMENTARY TRUST ARE SUCCESSORS FOR THE PURPOSES OF THIS SECTION. THIS SECTION DOES NOT RELIEVE TRUSTEES OF ANY DUTIES OWED TO BENEFICIARIES OF TRUSTS.

14-3913. **Distributions to trustee**

A. BEFORE DISTRIBUTING TO A TRUSTEE, THE PERSONAL REPRESENTATIVE MAY REQUIRE THAT THE TRUSTEE INFORM THE BENEFICIARIES AS PROVIDED IN SECTION 14-7303, AND IF THE STATE IN WHICH IT IS TO BE ADMINISTERED PROVIDES FOR REGISTRATION, THAT THE TRUST BE REGISTERED.

B. IF THE TRUST INSTRUMENT DOES NOT EXCUSE THE TRUSTEE FROM GIVING BOND, THE PERSONAL REPRESENTATIVE MAY PETITION THE APPROPRIATE COURT TO REQUIRE THAT THE TRUSTEE POST BOND IF HE APPREHENDS THAT DISTRIBUTION MIGHT JEOPARDIZE THE INTERESTS OF PERSONS WHO ARE NOT ABLE TO PROTECT THEMSELVES, AND HE MAY WITHHOLD DISTRIBUTION UNTIL THE COURT HAS ACTED.

C. NO INFERENCE OF NEGLIGENCE ON THE PART OF THE PERSONAL REPRESENTATIVE SHALL BE DRAWN FROM HIS FAILURE TO EXERCISE THE AUTHORITY CONFERRED BY SUBSECTIONS A AND B OF THIS SECTION.

14-3914. **Disposition of unclaimed assets**

A. IF AN HEIR, DEVISEE OR CLAIMANT CANNOT BE FOUND, THE PERSONAL REPRESENTATIVE SHALL DISTRIBUTE THE SHARE OF THE MISSING PERSON TO HIS CONSERVATOR, IF ANY, OTHERWISE IN CASH TO THE ESTATE TAX COMMISSIONER FOR DEPOSIT INTO THE TREASURY OF THE STATE TO BE CREDITED TO THE PERMANENT SCHOOL FUND.

B. IF A PERSON LATER APPEARS AND CLAIMS AS THE MISSING PERSON, HE SHALL PROCEED IN THE SAME MANNER AS AN HEIR, DEVISEE OR LEGATEE CLAIMING ESCHEATED PROPERTY UNDER SECTION 12-886 AND JUDGMENT AND PAYMENT SHALL BE MADE IN THE SAME MANNER AS FOR ESCHEATED PROPERTY UNDER SECTION 12-887.

14-3915. **Distribution to person under disability**

A PERSONAL REPRESENTATIVE MAY DISCHARGE HIS OBLIGATION TO DISTRIBUTE TO ANY PERSON UNDER LEGAL DISABILITY BY DISTRIBUTING TO HIS CONSERVATOR, OR ANY OTHER PERSON AUTHORIZED BY THIS TITLE OR OTHERWISE TO GIVE A VALID RECEIPT AND DISCHARGE FOR THE DISTRIBUTION.

14-3916. (Blank)

ARTICLE 10. CLOSING ESTATES

14-3931. **Formal proceedings terminating administration; testate or intestate; order of general protection**

A. A PERSONAL REPRESENTATIVE OR ANY INTERESTED PERSON MAY PETITION FOR AN ORDER OF COMPLETE SETTLEMENT OF THE ESTATE. THE PERSONAL REPRESENTATIVE MAY PETITION AT ANY TIME, AND ANY OTHER INTERESTED PERSON MAY PETITION AFTER ONE YEAR FROM THE APPOINTMENT OF THE ORIGINAL PERSONAL REPRESENTATIVE EXCEPT THAT NO PETITION UNDER THIS SECTION MAY BE ENTERTAINED UNTIL THE TIME FOR PRESENTING CLAIMS WHICH AROSE PRIOR TO THE DEATH OF THE DECEDENT HAS EXPIRED. THE PETITION MAY REQUEST THE COURT TO DETERMINE TESTACY, IF NOT PREVIOUSLY DETERMINED, TO CONSIDER THE FINAL ACCOUNT OR COMPEL OR APPROVE AN ACCOUNTING AND DISTRIBUTION, TO CONSTRUE ANY WILL OR DETERMINE HEIRS AND ADJUDICATE THE FINAL SETTLEMENT AND DISTRIBUTION OF THE ESTATE. NOTICE MUST BE GIVEN TO ALL INTERESTED PERSONS, AND A COPY OF THE FINAL ACCOUNT MUST ALSO BE SENT TO THE DISTRIBUTEES WHOSE INTERESTS ARE AFFECTED THEREBY. AFTER HEARING THE COURT MAY ENTER AN ORDER OR ORDERS, ON APPROPRIATE CONDITIONS, DETERMINING THE PERSONS ENTITLED TO DISTRIBUTION OF THE ESTATE, AND, AS CIRCUMSTANCES REQUIRE, APPROVING SETTLEMENT AND DIRECTING, APPROVING OR DECREEING DISTRIBUTION OF THE ESTATE AND DISCHARGING THE PERSONAL REPRESENTATIVE FROM FURTHER CLAIM OR DEMAND OF ANY INTERESTED PERSON.

B. IF ONE OR MORE HEIRS OR DEVISEES WERE OMITTED AS PARTIES IN, OR WERE NOT GIVEN NOTICE OF, A PREVIOUS FORMAL TESTACY PROCEEDING, THE COURT, ON PROPER PETITION FOR AN ORDER OF COMPLETE SETTLEMENT OF THE ESTATE UNDER THIS SECTION, AND AFTER NOTICE TO THE OMITTED OR UNNOTIFIED PERSONS AND OTHER INTERESTED PARTIES DETERMINED TO BE INTERESTED ON THE ASSUMPTION THAT THE PREVIOUS ORDER CONCERNING TESTACY IS CONCLUSIVE AS TO THOSE GIVEN NOTICE OF THE EARLIER PROCEEDING, MAY DETERMINE TESTACY AS IT AFFECTS THE OMITTED PERSONS AND CONFIRM OR ALTER THE PREVIOUS ORDER OF TESTACY AS IT AFFECTS ALL INTERESTED PERSONS AS APPROPRIATE IN THE LIGHT OF THE NEW PROOFS. IN THE ABSENCE OF OBJECTION BY AN OMITTED OR UNNOTIFIED PERSON, EVIDENCE RECEIVED IN THE ORIGINAL TESTACY PROCEEDING SHALL CONSTITUTE PRIMA FACIE PROOF OF DUE EXECUTION OF ANY WILL PREVIOUSLY ADMITTED TO PROBATE, OR OF THE FACT THAT THE DECEDENT LEFT NO VALID WILL IF THE PRIOR PROCEEDINGS DETERMINED THIS FACT.

14-3932. **Formal proceedings terminating testate administration; order construing will without adjudicating testacy**

A PERSONAL REPRESENTATIVE ADMINISTERING AN ESTATE UNDER AN INFORMALLY PROBATED WILL OR ANY DEVISEE UNDER AN INFORMALLY PROBATED WILL MAY PETITION FOR AN ORDER OF SETTLEMENT OF THE ESTATE WHICH WILL NOT ADJUDICATE THE TESTACY STATUS OF THE DECEDENT. THE PERSONAL REPRESENTATIVE MAY PETITION AT ANY TIME, AND A DEVISEE MAY PETITION AFTER ONE YEAR FROM THE APPOINTMENT OF THE ORIGINAL PERSONAL REPRESENTATIVE, EXCEPT THAT NO PETITION UNDER THIS SECTION MAY BE ENTERTAINED UNTIL THE TIME FOR PRESENTING CLAIMS WHICH AROSE PRIOR TO THE DEATH OF THE DECEDENT HAS EXPIRED. THE PETITION MAY REQUEST THE COURT TO CONSIDER THE FINAL ACCOUNT OR COMPEL OR APPROVE AN ACCOUNTING AND DISTRIBUTION, TO CONSTRUE THE WILL AND ADJUDICATE FINAL SETTLEMENT AND DISTRIBUTION OF THE ESTATE. AFTER NOTICE TO ALL DEVISEES AND THE PERSONAL REPRESENTATIVE AND HEARING, THE COURT MAY ENTER AN ORDER OR ORDERS, ON APPROPRIATE CONDITIONS, DETERMINING THE PERSONS ENTITLED TO DISTRIBUTION OF THE ESTATE UNDER THE WILL, AND, AS CIRCUMSTANCES REQUIRE, APPROVING SETTLEMENT AND DIRECTING, APPROVING OR DECREEING DISTRIBUTION OF THE ESTATE AND DISCHARGING THE PERSONAL REPRESENTATIVE FROM FURTHER CLAIM OR DEMAND OF ANY DEVISEE WHO IS A PARTY TO THE PROCEEDING AND THOSE HE REPRESENTS. IF IT APPEARS THAT A PART OF THE ESTATE IS INTESTATE, THE PROCEEDINGS SHALL BE DISMISSED OR AMENDMENTS MADE TO MEET THE PROVISIONS OF SECTION 14-3931.

14-3933. **Closing estates; by sworn statement of personal representative**

A. UNLESS PROHIBITED BY ORDER OF THE COURT AND EXCEPT FOR ESTATES BEING ADMINISTERED IN SUPERVISED ADMINISTRATION PROCEEDINGS, A PERSONAL REPRESENTATIVE MAY CLOSE AN ESTATE BY FILING WITH THE COURT NO EARLIER THAN FOUR MONTHS AFTER THE DATE OF ORIGINAL APPOINTMENT OF A GENERAL PERSONAL REPRESENTATIVE FOR THE ESTATE, A VERIFIED STATEMENT STATING THAT HE, OR A PRIOR PERSONAL REPRESENTATIVE WHOM HE HAS SUCCEEDED, HAS:

1. PUBLISHED NOTICE TO CREDITORS AS PROVIDED BY SECTION 14-3801 AND THAT THE FIRST PUBLICATION OCCURRED MORE THAN FOUR MONTHS PRIOR TO THE DATE OF THE STATEMENT.

2. FULLY ADMINISTERED THE ESTATE OF THE DECEDENT BY MAKING PAYMENT, SETTLEMENT OR OTHER DISPOSITION OF ALL CLAIMS WHICH WERE PRESENTED, EXPENSES OF ADMINISTRATION AND ESTATE, INHERITANCE AND OTHER DEATH TAXES, EXCEPT AS SPECIFIED IN THE STATEMENT, AND THAT THE ASSETS OF THE ESTATE HAVE BEEN DISTRIBUTED TO THE PERSONS ENTITLED. IF ANY CLAIMS REMAIN UNDISCHARGED, THE STATEMENT SHALL STATE WHETHER THE PERSONAL REPRESENTATIVE HAS DISTRIBUTED THE ESTATE SUBJECT TO POSSIBLE LIABILITY WITH THE AGREEMENT OF THE DISTRIBUTEES OR IT SHALL STATE IN DETAIL OTHER ARRANGEMENTS WHICH HAVE BEEN MADE TO ACCOMMODATE OUTSTANDING LIABILITIES.

3. SENT A COPY THEREOF TO ALL DISTRIBUTEES OF THE ESTATE AND TO ALL CREDITORS OR OTHER CLAIMANTS OF WHOM HE IS AWARE WHOSE CLAIMS ARE NEITHER PAID NOR BARRED AND HAS FURNISHED A FULL ACCOUNT IN WRITING OF HIS ADMINISTRATION TO THE DISTRIBUTEES WHOSE INTERESTS ARE AFFECTED THEREBY, INCLUDING GUARDIANS AD LITEM APPOINTED PURSUANT TO SECTION 14-1403, PARAGRAPH 4, CONSERVATORS AND GUARDIANS.

B. IF NO PROCEEDINGS INVOLVING THE PERSONAL REPRESENTATIVE ARE PENDING IN THE COURT ONE YEAR AFTER THE CLOSING STATEMENT IS FILED, THE APPOINTMENT OF THE PERSONAL REPRESENTATIVE TERMINATES.

14-3934. **Liability of distributees to claimants**

AFTER ASSETS OF AN ESTATE HAVE BEEN DISTRIBUTED AND SUBJECT TO SECTION 14-3936, AN UNDISCHARGED CLAIM NOT BARRED MAY BE PROSECUTED IN A PROCEEDING AGAINST ONE OR MORE DISTRIBUTEES. NO DISTRIBUTEE SHALL BE LIABLE TO CLAIMANTS FOR AMOUNTS IN EXCESS OF THE VALUE OF HIS DISTRIBUTION AS OF THE TIME OF DISTRIBUTION. AS BETWEEN DISTRIBUTEES, EACH SHALL BEAR THE COST OF SATISFACTION OF UNBARRED CLAIMS AS IF THE CLAIM HAD BEEN SATISFIED IN THE COURSE OF ADMINISTRATION. ANY DISTRIBUTEE WHO

SHALL HAVE FAILED TO NOTIFY OTHER DISTRIBUTEES OF THE DEMAND MADE UPON HIM BY THE CLAIMANT IN SUFFICIENT TIME TO PERMIT THEM TO JOIN IN ANY PROCEEDING IN WHICH THE CLAIM WAS ASSERTED AGAINST HIM LOSES HIS RIGHT OF CONTRIBUTION AGAINST OTHER DISTRIBUTEES.

14-3935. **Limitations on proceedings against personal representative**

UNLESS PREVIOUSLY BARRED BY ADJUDICATION AND EXCEPT AS PROVIDED IN THE CLOSING STATEMENT, THE RIGHTS OF SUCCESSORS AND OF CREDITORS WHOSE CLAIMS AGAINST THE PERSONAL REPRESENTATIVE FOR BREACH OF FIDUCIARY DUTY HAVE NOT OTHERWISE BEEN BARRED ARE BARRED UNLESS A PROCEEDING TO ASSERT THE SAME IS COMMENCED WITHIN SIX MONTHS AFTER THE FILING OF THE CLOSING STATEMENT. THE RIGHTS THUS BARRED DO NOT INCLUDE RIGHTS TO RECOVER FROM A PERSONAL REPRESENTATIVE FOR FRAUD, MISREPRESENTATION OR INADEQUATE DISCLOSURE RELATED TO THE SETTLEMENT OF THE DECEDENT'S ESTATE.

14-3936. **Limitations on actions and proceedings against distributees**

UNLESS PREVIOUSLY ADJUDICATED IN A FORMAL TESTACY PROCEEDING OR IN A PROCEEDING SETTLING THE ACCOUNTS OF A PERSONAL REPRESENTATIVE OR OTHERWISE BARRED, THE CLAIM OF ANY CLAIMANT TO RECOVER FROM A DISTRIBUTEE WHO IS LIABLE TO PAY THE CLAIM, AND THE RIGHT OF ANY HEIR OR DEVISEE OR OF A SUCCESSOR PERSONAL REPRESENTATIVE ACTING IN THEIR BEHALF, TO RECOVER PROPERTY IMPROPERLY DISTRIBUTED OR THE VALUE THEREOF FROM ANY DISTRIBUTEE IS FOREVER BARRED AT THE LATER OF:

1. THREE YEARS AFTER THE DECEDENT'S DEATH.

2. ONE YEAR AFTER THE TIME OF DISTRIBUTION THEREOF.

THIS SECTION DOES NOT BAR AN ACTION TO RECOVER PROPERTY OR VALUE RECEIVED AS THE RESULT OF FRAUD.

14-3937. **Certificate discharging liens securing fiduciary performance**

AFTER HIS APPOINTMENT HAS TERMINATED, THE PERSONAL REPRESENTATIVE, HIS SURETIES OR ANY SUCCESSOR OF EITHER, UPON THE FILING OF A VERIFIED APPLICATION

SHOWING, SO FAR AS IS KNOWN BY THE APPLICANT, THAT NO ACTION CONCERNING THE ESTATE IS PENDING IN ANY COURT, IS ENTITLED TO RECEIVE A CERTIFICATE FROM THE REGISTRAR THAT THE PERSONAL REPRESENTATIVE APPEARS TO HAVE FULLY ADMINISTERED THE ESTATE IN QUESTION. THE CERTIFICATE EVIDENCES DISCHARGE OF ANY LIEN ON ANY PROPERTY GIVEN TO SECURE THE OBLIGATION OF THE PERSONAL REPRESENTATIVE IN LIEU OF BOND OR ANY SURETY, BUT DOES NOT PRECLUDE ACTION AGAINST THE PERSONAL REPRESENTATIVE OR THE SURETY.

14-3938. **Subsequent administration**

IF OTHER PROPERTY OF THE ESTATE IS DISCOVERED AFTER AN ESTATE HAS BEEN SETTLED AND THE PERSONAL REPRESENTATIVE DISCHARGED OR AFTER ONE YEAR AFTER A CLOSING STATEMENT HAS BEEN FILED, THE COURT UPON PETITION OF ANY INTERESTED PERSON AND UPON NOTICE AS IT DIRECTS MAY APPOINT THE SAME OR A SUCCESSOR PERSONAL REPRESENTATIVE TO ADMINISTER THE SUBSEQUENTLY DISCOVERED ESTATE. IF A NEW APPOINTMENT IS MADE, UNLESS THE COURT ORDERS OTHERWISE, THE PROVISIONS OF THIS TITLE APPLY AS APPROPRIATE, BUT NO CLAIM PREVIOUSLY BARRED MAY BE ASSERTED IN THE SUBSEQUENT ADMINISTRATION.

ARTICLE 11. COMPROMISE OF CONTROVERSIES

14-3951. **Effect of approval of agreements involving trusts, inalienable interests, or interests of third persons**

A COMPROMISE OF ANY CONTROVERSY AS TO ADMISSION TO PROBATE OF ANY INSTRUMENT OFFERED FOR FORMAL PROBATE AS THE WILL OF A DECEDENT, THE CONSTRUCTION, VALIDITY OR EFFECT OF ANY PROBATED WILL, THE RIGHTS OR INTERESTS IN THE ESTATE OF THE DECEDENT, OF ANY SUCCESSOR, OR THE ADMINISTRATION OF THE ESTATE, IF APPROVED IN A FORMAL PROCEEDING IN THE COURT FOR THAT PURPOSE, IS BINDING ON ALL THE PARTIES THERETO INCLUDING THOSE UNBORN, UNASCERTAINED OR WHO COULD NOT BE LOCATED. AN APPROVED COMPROMISE IS BINDING EVEN THOUGH IT MAY AFFECT A TRUST OR AN INALIENABLE INTEREST. A COMPROMISE DOES NOT IMPAIR THE RIGHTS OF CREDITORS OR OF TAXING AUTHORITIES WHO ARE NOT PARTIES TO IT.

14-3952. **Procedure for securing court approval of compromise**

THE PROCEDURE FOR SECURING COURT APPROVAL OF A COMPROMISE IS AS FOLLOWS:

1. THE TERMS OF THE COMPROMISE SHALL BE SET FORTH IN AN AGREEMENT IN WRITING WHICH SHALL BE EXECUTED BY ALL COMPETENT PERSONS AND PARENTS ACTING FOR ANY MINOR CHILD HAVING BENEFICIAL INTERESTS OR HAVING CLAIMS WHICH WILL OR MAY BE AFFECTED BY THE COMPROMISE. EXECUTION IS NOT REQUIRED BY ANY PERSON WHOSE IDENTITY CANNOT BE ASCERTAINED OR WHOSE WHEREABOUTS IS UNKNOWN AND CANNOT REASONABLY BE ASCERTAINED.

2. ANY INTERESTED PERSON, INCLUDING THE PERSONAL REPRESENTATIVE OR A TRUSTEE, THEN MAY SUBMIT THE AGREEMENT TO THE COURT FOR ITS APPROVAL AND FOR EXECUTION BY THE PERSONAL REPRESENTATIVE, THE TRUSTEE OF EVERY AFFECTED TESTAMENTARY TRUST AND OTHER FIDUCIARIES AND REPRESENTATIVES.

3. AFTER NOTICE TO ALL INTERESTED PERSONS OR THEIR REPRESENTATIVES, INCLUDING THE PERSONAL REPRESENTATIVE OF THE ESTATE AND ALL AFFECTED TRUSTEES OF TRUSTS, THE COURT, IF IT FINDS THAT THE CONTEST OR CONTROVERSY IS IN GOOD FAITH AND THAT THE EFFECT OF THE AGREEMENT UPON THE INTERESTS OF PERSONS REPRESENTED BY FIDUCIARIES OR OTHER REPRESENTATIVES IS JUST AND REASONABLE, SHALL MAKE AN ORDER APPROVING THE AGREEMENT AND DIRECTING ALL FIDUCIARIES UNDER ITS SUPERVISION TO EXECUTE THE AGREEMENT. MINOR CHILDREN REPRESENTED ONLY BY THEIR PARENTS MAY BE BOUND ONLY IF THEIR PARENTS JOIN WITH OTHER COMPETENT PERSONS IN EXECUTION OF THE COMPROMISE. UPON THE MAKING OF THE ORDER AND THE EXECUTION OF THE AGREEMENT, ALL FURTHER DISPOSITION OF THE ESTATE IS IN ACCORDANCE WITH THE TERMS OF THE AGREEMENT.

ARTICLE 12. COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT AND SUMMARY ADMINISTRATION PROCEDURE

14-3971. **Collection of personal property by affidavit**

A. THIRTY DAYS AFTER THE DEATH OF A DECEDENT, ANY PERSON INDEBTED TO THE DECEDENT OR HAVING POSSESSION

OF TANGIBLE PERSONAL PROPERTY OR AN INSTRUMENT EVIDENCING A DEBT, OBLIGATION, STOCK OR CHOSE IN ACTION BELONGING TO THE DECEDENT SHALL MAKE PAYMENT OF THE INDEBTEDNESS OR DELIVER THE TANGIBLE PERSONAL PROPERTY OR AN INSTRUMENT EVIDENCING A DEBT, OBLIGATION, STOCK OR CHOSE IN ACTION TO A PERSON CLAIMING TO BE THE SUCCESSOR OF THE DECEDENT UPON BEING PRESENTED AN AFFIDAVIT MADE BY OR ON BEHALF OF THE SUCCESSOR STATING THAT:

1. THE VALUE OF THE ENTIRE ESTATE, WHEREVER LOCATED, LESS LIENS AND ENCUMBRANCES, DOES NOT EXCEED FIVE THOUSAND DOLLARS.

2. THIRTY DAYS HAVE ELAPSED SINCE THE DEATH OF THE DECEDENT.

3. NO APPLICATION OR PETITION FOR THE APPOINTMENT OF A PERSONAL REPRESENTATIVE IS PENDING OR HAS BEEN GRANTED IN ANY JURISDICTION.

4. THE CLAIMING SUCCESSOR IS ENTITLED TO PAYMENT OR DELIVERY OF THE PROPERTY.

B. A TRANSFER AGENT OF ANY SECURITY SHALL CHANGE THE REGISTERED OWNERSHIP ON THE BOOKS OF A CORPORATION FROM THE DECEDENT TO THE SUCCESSOR OR SUCCESSORS UPON THE PRESENTATION OF AN AFFIDAVIT AS PROVIDED IN SUBSECTION A.

14-3972. **Effect of affidavit**

THE PERSON PAYING, DELIVERING, TRANSFERRING OR ISSUING PERSONAL PROPERTY OR THE EVIDENCE THEREOF PURSUANT TO AFFIDAVIT IS DISCHARGED AND RELEASED TO THE SAME EXTENT AS IF HE DEALT WITH A PPERSONAL REPRESENTATIVE OF THE DECEDENT. HE IS NOT REQUIRED TO SEE TO THE APPLICATION OF THE PERSONAL PROPERTY OR EVIDENCE THEREOF OR TO INQUIRE INTO THE TRUTH OF ANY STATEMENT IN THE AFFIDAVIT. IF ANY PERSON TO WHOM AN AFFIDAVIT IS DELIVERED REFUSES TO PAY, DELIVER, TRANSFER OR ISSUE ANY PERSONAL PROPERTY OR EVIDENCE THEREOF, IT MAY BE RECOVERED OR ITS PAYMENT, DELIVERY, TRANSFER OR ISSUANCE COMPELLED UPON PROOF OF THEIR RIGHT IN A

PROCEEDING BROUGHT FOR THE PURPOSE BY OR ON BEHALF OF THE PERSONS ENTITLED THERETO. ANY PERSON TO WHOM PAYMENT, DELIVERY, TRANSFER OR ISSUANCE IS MADE IS ANSWERABLE AND ACCOUNTABLE THEREFOR TO ANY PERSONAL REPRESENTATIVE OF THE ESTATE OR TO ANY OTHER PERSON HAVING A SUPERIOR RIGHT.

14-3973. **Small estates; summary administrative procedure**

IF IT APPEARS FROM THE INVENTORY AND APPRAISAL THAT THE VALUE OF THE ENTIRE ESTATE, LESS LIENS AND ENCUMBRANCES, DOES NOT EXCEED ALLOWANCE IN LIEU OF HOMESTEAD, EXEMPT PROPERTY, FAMILY ALLOWANCE, COSTS AND EXPENSES OF ADMINISTRATION, REASONABLE FUNERAL EXPENSES, AND REASONABLE AND NECESSARY MEDICAL AND HOSPITAL EXPENSES OF THE LAST ILLNESS OF THE DECEDENT, THE PERSONAL REPRESENTATIVE, WITHOUT GIVING NOTICE TO CREDITORS, MAY IMMEDIATELY DISBURSE AND DISTRIBUTE THE ESTATE TO THE PERSONS ENTITLED THERETO AND FILE A CLOSING STATEMENT AS PROVIDED IN SECTION 14-3974.

14-3974. **Small estates; closing by sworn statement of personal representative**

A. UNLESS PROHIBITED BY ORDER OF THE COURT AND EXCEPT FOR ESTATES BEING ADMINISTERED BY SUPERVISED PERSONAL REPRESENTATIVES, A PERSONAL REPRESENTATIVE MAY CLOSE AN ESTATE ADMINISTERED UNDER THE SUMMARY PROCEDURES OF SECTION 14-3973 BY FILING WITH THE COURT, AT ANY TIME AFTER DISBURSEMENT AND DISTRIBUTION OF THE ESTATE, A VERIFIED STATEMENT STATING THAT:

1. TO THE BEST KNOWLEDGE OF THE PERSONAL REPRESENTATIVE, THE VALUE OF THE ENTIRE ESTATE, LESS LIENS AND ENCUMBRANCES, DID NOT EXCEED ALLOWANCE IN LIEU OF HOMESTEAD, EXEMPT PROPERTY, FAMILY ALLOWANCE, COSTS AND EXPENSES OF ADMINISTRATION, REASONABLE FUNERAL EXPENSES AND REASONABLE, NECESSARY MEDICAL AND HOSPITAL EXPENSES OF THE LAST ILLNESS OF THE DECEDENT.

2. THE PERSONAL REPRESENTATIVE HAS FULLY ADMINISTERED THE ESTATE BY DISBURSING AND DISTRIBUTING IT TO THE PERSONS ENTITLED THERETO.

3. THE PERSONAL REPRESENTATIVE HAS SENT A COPY OF THE CLOSING STATEMENT TO ALL DISTRIBUTEES OF THE ESTATE AND TO ALL CREDITORS OR OTHER CLAIMANTS OF WHOM HE IS AWARE WHOSE CLAIMS ARE NEITHER PAID NOR BARRED AND HAS FURNISHED A FULL ACCOUNT IN WRITING OF HIS ADMINSTRATION TO THE DISTRIBUTEES WHOSE INTERESTS ARE AFFECTED.

B. IF NO ACTIONS OR PROCEEDINGS INVOLVING THE PERSONAL REPRESENTATIVE ARE PENDING IN THE COURT ONE YEAR AFTER THE CLOSING STATEMENT IS FILED, THE APPOINTMENT OF THE PERSONAL REPRESENTATIVE TERMINATES.

C. A CLOSING STATEMENT FILED UNDER THIS SECTION HAS THE SAME EFFECT AS ONE FILED UNDER SECTION 14-3933.

CHAPTER 4
FOREIGN PERSONAL REPRESENTATIVES; ANCILLARY ADMINISTRATION
ARTICLE 1. DEFINITIONS

14-4101. **Definitions**

IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "LOCAL ADMINISTRATION" MEANS ADMINISTRATION BY A PERSONAL REPRESENTATIVE APPOINTED IN THIS STATE PURSUANT TO APPOINTMENT PROCEEDINGS DESCRIBED IN CHAPTER 3.

2. "LOCAL PERSONAL REPRESENTATIVE" INCLUDES ANY PERSONAL REPRESENTATIVE APPOINTED IN THIS STATE PURSUANT TO APPOINTMENT PROCEEDINGS DESCRIBED IN CHAPTER 3 AND EXCLUDES FOREIGN PERSONAL REPRESENTATIVES WHO ACQUIRE THE POWER OF A LOCAL PERSONAL REPRESENTATIVE PURSUANT TO SECTION 14-4205.

3. "RESIDENT CREDITOR" MEANS A PERSON DOMICILED IN, OR DOING BUSINESS IN THIS STATE, WHO IS, OR COULD BE, A CLAIMANT AGAINST AN ESTATE OF A NONRESIDENT DECEDENT.

ARTICLE 2. POWERS OF FOREIGN PERSONAL REPRESENTATIVES

14-4201. **Payment of debt and delivery of property to domiciliary foreign personal representative without local administration**

AT ANY TIME AFTER THE EXPIRATION OF SIXTY DAYS FROM THE DEATH OF A NONRESIDENT DECEDENT, ANY PERSON INDEBTED TO THE ESTATE OF THE NONRESIDENT DECEDENT OR HAVING POSSESSION OR CONTROL OF PERSONAL PROPERTY, OR OF AN INSTRUMENT EVIDENCING A DEBT, OBLIGATION, STOCK OR CHOSE IN ACTION BELONGING TO THE ESTATE OF THE NONRESIDENT DECEDENT MAY PAY THE DEBT, DELIVER THE PERSONAL PROPERTY, OR THE INSTRUMENT EVIDENCING THE DEBT, OBLIGATION, STOCK OR CHOSE IN ACTION, TO THE DOMICILIARY FOREIGN PERSONAL REPRESENTATIVE OF THE NONRESIDENT DECEDENT UPON BEING PRESENTED WITH PROOF OF HIS APPOINTMENT AND AN AFFIDAVIT MADE BY OR ON BEHALF OF THE REPRESENTATIVE STATING:

1. THE DATE OF THE DEATH OF THE NONRESIDENT DECEDENT.

2. THAT NO LOCAL ADMINISTRATION, OR APPLICATION OR PETITION THEREFOR, IS PENDING IN THIS STATE.

3. THAT THE DOMICILIARY FOREIGN PERSONAL REPRESENTATIVE IS ENTITLED TO PAYMENT OR DELIVERY.

THE PROVISIONS OF THIS SECTION ARE IN ADDITION TO, AND ARE NOT EXCLUSIVE OF, ANY OTHER PROVISION OF LAW PERMITTING PAYMENT OF AN OBLIGATION OR DELIVERY OF PROPERTY TO A DOMICILIARY FOREIGN PERSONAL REPRESENTATIVE.

14-4202. **Payment or delivery discharges**

PAYMENT OR DELIVERY MADE IN GOOD FAITH ON THE BASIS OF THE PROOF OF AUTHORITY AND AFFIDAVIT RELEASES THE DEBTOR OR PERSON HAVING POSSESSION OF THE PERSONAL PROPERTY TO THE SAME EXTENT AS IF PAYMENT OR DELIVERY HAD BEEN MADE TO A LOCAL PERSONAL REPRESENTATIVE.

14-4203. **Resident creditor notice**

PAYMENT OR DELIVERY UNDER SECTION 14-4201 MAY NOT BE MADE IF A RESIDENT CREDITOR OF THE NONRESIDENT DECEDENT HAS NOTIFIED THE DEBTOR OF THE NONRESIDENT

DECEDENT OR THE PERSON HAVING POSSESSION OF THE PERSONAL PROPERTY BELONGING TO THE NONRESIDENT DECEDENT THAT THE DEBT SHOULD NOT BE PAID NOR THE PROPERTY DELIVERED TO THE DOMICILIARY FOREIGN PERSONAL REPRESENTATIVE.

14-4204. **Proof of authority-bond**

IF NO LOCAL ADMINISTRATION OR APPLICATION OR PETITION THEREFOR IS PENDING IN THIS STATE, A DOMICILIARY FOREIGN PERSONAL REPRESENTATIVE MAY FILE WITH A COURT IN THIS STATE IN A COUNTY IN WHICH PROPERTY BELONGING TO THE DECEDENT IS LOCATED, AUTHENTICATED COPIES OF HIS APPOINTMENT AND ANY OFFICIAL BOND REQUIRED BY CHAPTER 3, WHICH BOND SHALL BE IN AN AMOUNT EQUAL TO THE VALUE OF ALL PROPERTY OF THE DECEDENT IN THIS STATE.

14-4205. **Powers**

A DOMICILIARY FOREIGN PERSONAL REPRESENTATIVE WHO HAS COMPLIED WITH SECTION 14-4204 MAY EXERCISE AS TO ASSETS IN THIS STATE ALL POWERS OF A LOCAL PERSONAL REPRESENTATIVE AND MAY MAINTAIN ACTIONS AND PROCEEDINGS IN THIS STATE SUBJECT TO ANY CONDITIONS IMPOSED UPON NONRESIDENT PARTIES GENERALLY.

14-4206. **Power of representatives in transition**

THE POWER OF A DOMICILIARY FOREIGN PERSONAL REPRESENTATIVE UNDER SECTION 14-4201 OR SECTION 14-4205 SHALL BE EXERCISED ONLY IF THERE IS NO ADMINISTRATION OR APPLICATION THEREFOR PENDING IN THIS STATE. AN APPLICATION OR PETITION FOR LOCAL ADMINISTRATION OF THE ESTATE TERMINATES THE POWER OF THE FOREIGN PERSONAL REPRESENTATIVE TO ACT UNDER SECTION 14-4205, BUT THE LOCAL COURT MAY ALLOW THE FOREIGN PERSONAL REPRESENTATIVE TO EXERCISE LIMITED POWERS TO PRESERVE THE ESTATE. NO PERSON WHO, BEFORE RECEIVING ACTUAL NOTICE OF A PENDING LOCAL ADMINISTRATION, HAS CHANGED HIS POSITION IN RELIANCE UPON THE POWERS OF A FOREIGN PERSONAL REPRESENTATIVE SHALL BE PREJUDICED BY REASON OF THE APPLICATION OR PETITION FOR, OR GRANT OF, LOCAL ADMINISTRATION. THE LOCAL PERSONAL REPRESENTATIVE IS SUBJECT TO

ALL DUTIES AND OBLIGATIONS WHICH HAVE ACCRUED BY VIRTUE OF THE EXERCISE OF THE POWERS BY THE FOREIGN PERSONAL REPRESENTATIVE AND MAY BE SUBSTITUTED FOR HIM IN ANY ACTION OR PROCEEDINGS IN THIS STATE.

14-4207. **Ancillary and other local administrations; provisions governing**

IN RESPECT TO A NONRESIDENT DECEDENT, THE PROVISIONS OF CHAPTER 3 OF THIS TITLE GOVERN BOTH:

1. PROCEEDINGS, IF ANY, IN A COURT OF THIS STATE FOR PROBATE OF THE WILL, APPOINTMENT, REMOVAL, SUPERVISION AND DISCHARGE OF THE LOCAL PERSONAL REPRESENTATIVE, AND ANY OTHER ORDER CONCERNING THE ESTATE.

2. THE STATUS, POWERS, DUTIES AND LIABILITIES OF ANY LOCAL PERSONAL REPRESENTATIVE AND THE RIGHTS OF CLAIMANTS, PURCHASERS, DISTRIBUTEES AND OTHERS IN REGARD TO A LOCAL ADMINISTRATION.

ARTICLE 3. JURISDICTION OVER FOREIGN REPRESENTATIVES

14-4301. **Jurisdiction by act of foreign personal representative**

A FOREIGN PERSONAL REPRESENTATIVE SUBMITS HIMSELF TO THE JURISDICTION OF THE COURTS OF THIS STATE, IN ANY PROCEEDING RELATING TO THE ESTATE, BY ANY OF THE FOLLOWING:

1. FILING AUTHENTICATED COPIES OF HIS APPOINTMENT AS PROVIDED IN SECTION 14-4204.

2. RECEIVING PAYMENT OF MONEY OR TAKING DELIVERY OF PERSONAL PROPERTY UNDER SECTION 14-4201.

3. DOING ANY ACT AS A PERSONAL REPRESENTATIVE IN THIS STATE WHICH WOULD HAVE GIVEN THE STATE JURISDICTION OVER HIM AS AN INDIVIDUAL.

JURISDICTION UNDER PARAGRAPH 2 OF THIS SUBSECTION IS LIMITED TO THE MONEY OR VALUE OF PERSONAL PROPERTY COLLECTED.

14-4302. **Jurisdiction by act of decedent**

IN ADDITION TO JURISDICTION CONFERRED BY SECTION 14-4301, A FOREIGN PERSONAL REPRESENTATIVE IS SUBJECT TO THE JURISDICTION OF THE COURTS OF THIS STATE TO THE SAME EXTENT THAT HIS DECEDENT WAS SUBJECT TO JURISDICTION IMMEDIATELY PRIOR TO DEATH.

14-4303. **Service on foreign personal representative**

A. SERVICE OF PROCESS MAY BE MADE UPON THE FOREIGN PERSONAL REPRESENTATIVE BY REGISTERED OR CERTIFIED MAIL, ADDRESSED TO HIS LAST REASONABLY ASCERTAINABLE ADDRESS, REQUESTING A RETURN RECEIPT SIGNED BY ADDRESSEE ONLY. NOTICE BY ORDINARY FIRST CLASS MAIL IS SUFFICIENT IF REGISTERED OR CERTIFIED MAIL SERVICE TO THE ADDRESSEE IS UNAVAILABLE. SERVICE MAY BE MADE UPON A FOREIGN PERSONAL REPRESENTATIVE IN THE MANNER IN WHICH SERVICE COULD HAVE BEEN MADE UNDER OTHER LAWS OF THIS STATE ON EITHER THE FOREIGN PERSONAL REPRESENTATIVE OR HIS DECEDENT IMMEDIATELY PRIOR TO DEATH.

B. IF SERVICE IS MADE UPON A FOREIGN PERSONAL REPRESENTATIVE AS PROVIDED IN SUBSECTION A, HE SHALL BE ALLOWED AT LEAST THIRTY DAYS WITHIN WHICH TO APPEAR OR RESPOND.

ARTICLE 4. JUDGMENTS AND PERSONAL REPRESENTATIVE

14-4401. **Effect of adjudication for or against personal representative**

AN ADJUDICATION RENDERED IN ANY JURISDICTION IN FAVOR OF OR AGAINST ANY PERSONAL REPRESENTATIVE OF THE ESTATE IS AS BINDING ON THE LOCAL PERSONAL REPRESENTATIVE AS IF HE WERE A PARTY TO THE ADJUDICATION.

CHAPTER 5
PROTECTION OF PERSONS UNDER DISABILITY AND THEIR PROPERTY
ARTICLE 1. GENERAL PROVISIONS

14-5101. **Definitions and use of terms**

IN THIS TITLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "INCAPACITATED PERSON" MEANS ANY PERSON WHO IS IMPAIRED BY REASON OF MENTAL ILLNESS, MENTAL DEFICIENCY, PHYSICAL ILLNESS OR DISABILITY, ADVANCED AGE, CHRONIC USE OF DRUGS, CHRONIC INTOXICATION OR OTHER CAUSE, EXCEPT MINORITY, TO THE EXTENT THAT HE LACKS SUFFICIENT UNDERSTANDING OR CAPACITY TO MAKE OR COMMUNICATE RESPONSIBLE DECISIONS CONCERNING HIS PERSON.

2. "PROTECTED PERSON" IS A MINOR OR OTHER PERSON FOR WHOM A CONSERVATOR HAS BEEN APPOINTED OR OTHER PROTECTIVE ORDER HAS BEEN MADE.

3. "PROTECTIVE PROCEEDING" IS A PROCEEDING UNDER THE PROVISIONS OF SECTION 14-5401 TO DETERMINE THAT A PERSON CANNOT EFFECTIVELY MANAGE OR APPLY HIS ESTATE TO NECESSARY ENDS, EITHER BECAUSE HE LACKS THE ABILITY OR IS OTHERWISE INCONVENIENCED, OR BECAUSE HE IS A MINOR, AND TO SECURE ADMINISTRATION OF HIS ESTATE BY A CONSERVATOR OR OTHER APPROPRIATE RELIEF.

4. "WARD" IS A PERSON FOR WHOM A GUARDIAN HAS BEEN APPOINTED. A "MINOR WARD" IS A MINOR FOR WHOM A GUARDIAN HAS BEEN APPOINTED SOLELY BECAUSE OF MINORITY.

14-5102. **Jurisdiction of subject matter; consolidation of proceedings**

A. THE COURT HAS JURISDICTION OVER PROTECTIVE PROCEEDINGS AND GUARDIANSHIP PROCEEDINGS.

B. WHEN BOTH GUARDIANSHIP AND PROTECTIVE PROCEEDINGS AS TO THE SAME PERSON ARE COMMENCED OR PENDING IN THE SAME COURT, THE PROCEEDINGS MAY BE CONSOLIDATED.

14-5103. **Facility of payment or delivery**

ANY PERSON UNDER A DUTY TO PAY OR DELIVER MONEY OR PERSONAL PROPERTY TO A MINOR MAY PERFORM THIS DUTY, IN AMOUNTS NOT EXCEEDING FIVE THOUSAND DOLLARS PER ANNUM, BY PAYING OR DELIVERING THE MONEY OR PROPERTY TO ANY OF THE FOLLOWING:

1. THE MINOR, IF HE IS MARRIED.

2. ANY PERSON HAVING THE CARE AND CUSTODY OF THE MINOR AND WITH WHOM THE MINOR RESIDES.

3. THE GUARDIAN OF THE MINOR.

4. A FINANCIAL INSTITUTION INCIDENT TO A DEPOSIT IN A FEDERALLY INSURED SAVINGS ACCOUNT IN THE SOLE NAME OF THE MINOR AND GIVING NOTICE OF THE DEPOSIT TO THE MINOR.

THIS SECTION DOES NOT APPLY IF THE PERSON MAKING PAYMENT OR DELIVERY HAS ACTUAL KNOWLEDGE THAT A CONSERVATOR HAS BEEN APPOINTED OR PROCEEDINGS FOR APPOINTMENT OF A CONSERVATOR OF THE ESTATE OF THE MINOR ARE PENDING. THE PERSONS, OTHER THAN THE MINOR OR ANY FINANCIAL INSTITUTION UNDER PARAGRAPH 4, RECEIVING MONEY OR PROPERTY FOR A MINOR ARE OBLIGATED TO APPLY THE MONEY TO THE SUPPORT AND EDUCATION OF THE MINOR, BUT MAY NOT PAY THEMSELVES EXCEPT BY WAY OF REIMBURSEMENT FOR OUT-OF-POCKET EXPENSES FOR GOODS AND SERVICES NECESSARY FOR THE MINOR'S SUPPORT. ANY EXCESS SUMS SHALL BE PRESERVED FOR FUTURE SUPPORT OF THE MINOR AND ANY BALANCE NOT SO USED AND ANY PROPERTY RECEIVED FOR THE MINOR MUST BE TURNED OVER TO THE MINOR WHEN HE ATTAINS MAJORITY. PERSONS WHO PAY OR DELIVER IN ACCORDANCE WITH PROVISIONS OF THIS SECTION ARE NOT RESPONSIBLE FOR THE PROPER APPLICATION THEREOF.

14-5104. **Delegation of powers by parent or guardian**

A PARENT OR A GUARDIAN OF A MINOR OR INCAPACITATED PERSON, BY A PROPERLY EXECUTED POWER OF ATTORNEY, MAY DELEGATE TO ANOTHER PERSON, FOR A PERIOD NOT EXCEEDING SIX MONTHS, ANY POWERS HE MAY HAVE REGARDING CARE, CUSTODY OR PROPERTY OF THE MINOR CHILD OR WARD, EXCEPT POWER TO CONSENT TO MARRIAGE OR ADOPTION OF THE MINOR.

14-5105. **Bond of guardian**

GUARDIANS COMING INTO THE POSSESSION OR CONTROL OF FUNDS OR OTHER PROPERTY OF PERSONS UNDER DISABILITY

MAY BE REQUIRED BY THE COURT TO FURNISH A BOND IN AN AMOUNT AND UNDER THE CONDITIONS SET FORTH FOR CONSERVATORS IN SECTION 14-5411 and 14-5412.

ARTICLE 2. GUARDIANS OF MINORS

14-5201. **Status of guardian of minor; general**

A PERSON BECOMES A GUARDIAN OF A MINOR BY ACCEPTANCE OF A TESTAMENTARY APPOINTMENT OR UPON APPOINTMENT BY THE COURT. THE GUARDIANSHIP STATUS CONTINUES UNTIL TERMINATED, WITHOUT REGARD TO THE LOCATION FROM TIME TO TIME OF THE GUARDIAN AND MINOR WARD.

14-5202. **Testamentary appointment of guardian of minor**

THE PARENT OF A MINOR MAY APPOINT BY WILL A GUARDIAN OF AN UNMARRIED MINOR. SUBJECT TO THE RIGHT OF THE MINOR UNDER SECTION 14-5203, A TESTAMENTARY APPOINTMENT BECOMES EFFECTIVE UPON FILING THE GUARDIAN'S ACCEPTANCE IN THE COURT IN WHICH THE WILL IS PROBATED, IF BEFORE ACCEPTANCE, BOTH PARENTS ARE DEAD OR THE SURVIVING PARENT IS ADJUDGED INCAPACITATED. IF BOTH PARENTS ARE DEAD, AN EFFECTIVE APPOINTMENT BY THE PARENT WHO DIED LATER HAS PRIORITY. THIS STATE RECOGNIZES A TESTAMENTARY APPOINTMENT EFFECTED BY FILING THE GUARDIAN'S ACCEPTANCE UNDER A WILL PROBATED IN ANOTHER STATE WHICH IS THE TESTATOR'S DOMICILE. UPON ACCEPTANCE OF APPOINTMENT, WRITTEN NOTICE OF ACCEPTANCE MUST BE GIVEN BY THE GUARDIAN TO THE MINOR AND ALSO TO EITHER THE PERSON HAVING HIS CARE OR HIS NEAREST ADULT RELATION.

14-5203. **Objection by minor of fourteen or older to testamentary appointment**

A MINOR OF FOURTEEN OR MORE YEARS MAY PREVENT AN APPOINTMENT OF HIS TESTAMENTARY GUARDIAN FROM BECOMING EFFECTIVE, OR MAY CAUSE A PREVIOUSLY ACCEPTED APPOINTMENT TO TERMINATE, BY FILING WITH THE COURT IN WHICH THE WILL IS PROBATED A WRITTEN OBJECTION TO THE APPOINTMENT BEFORE IT IS ACCEPTED OR WITHIN THIRTY DAYS AFTER NOTICE OF ITS ACCEPTANCE. AN OBJECTION MAY BE WITHDRAWN. AN OBJECTION DOES NOT PRECLUDE APPOINT-

MENT BY THE COURT IN A PROPER PROCEEDING OF THE TESTAMENTARY NOMINEE OR ANY OTHER SUITABLE PERSON.

14-5204. **Court appointment of guardian of minor; conditions for appointment**

THE COURT MAY APPOINT A GUARDIAN FOR AN UNMARRIED MINOR IF ALL PARENTAL RIGHTS OF CUSTODY HAVE BEEN TERMINATED OR SUSPENDED BY CIRCUMSTANCES OR PRIOR COURT ORDER. A GUARDIAN APPOINTED BY WILL AS PROVIDED IN SECTION 14-5202 WHOSE APPOINTMENT HAS NOT BEEN PREVENTED OR NULLIFIED UNDER SECTION 14-5203 HAS PRIORITY OVER ANY GUARDIAN WHO MAY BE APPOINTED BY THE COURT BUT THE COURT MAY PROCEED WITH AN APPOINTMENT UPON A FINDING THAT THE TESTAMENTARY GUARDIAN HAS FAILED TO ACCEPT THE TESTAMENTARY APPOINTMENT WITHIN THIRTY DAYS AFTER NOTICE OF THE GUARDIANSHIP PROCEEDING.

14-5205. **Court appointment of guardian of minor; venue**

THE VENUE FOR GUARDIANSHIP PROCEEDINGS FOR A MINOR IS IN THE PLACE WHERE THE MINOR RESIDES OR IS PRESENT.

14-5206. **Court appointment of guardian of minor; qualifications; priority of minor's nominee**

THE COURT SHALL APPOINT AS GUARDIAN ANY PERSON WHOSE APPOINTMENT WOULD BE IN THE BEST INTERESTS OF THE MINOR. THE COURT MAY APPOINT A PERSON NOMINATED BY THE MINOR, IF THE MINOR IS FOURTEEN YEARS OF AGE OR OLDER, UNLESS THE COURT FINDS THE APPOINTMENT CONTRARY TO THE BEST INTERESTS OF THE MINOR.

14-5207. **Court appointment of guardian of minor; procedure**

A. NOTICE OF THE TIME AND PLACE OF HEARING OF A PETITION FOR THE APPOINTMENT OF A GUARDIAN OF A MINOR IS TO BE GIVEN BY THE PETITIONER IN THE MANNER PRESCRIBED BY SECTION 14-1401 TO THE FOLLOWING:

1. THE MINOR, IF HE IS FOURTEEN OR MORE YEARS OF AGE.

2. THE PERSON WHO HAS HAD THE PRINCIPAL CARE AND

CUSTODY OF THE MINOR DURING THE SIXTY DAYS PRECEDING THE DATE OF THE PETITION.

3. ANY LIVING PARENT OF THE MINOR.

B. UPON HEARING, IF THE COURT FINDS THAT A QUALIFIED PERSON SEEKS APPOINTMENT, VENUE IS PROPER, THE REQUIRED NOTICES HAVE BEEN GIVEN, THE REQUIREMENTS OF SECTION 14-5204 HAVE BEEN MET AND THE WELFARE AND BEST INTERESTS OF THE MINOR WILL BE SERVED BY THE REQUESTED APPOINTMENT, IT SHALL MAKE THE APPOINTMENT. IN OTHER CASES THE COURT MAY DISMISS THE PROCEEDINGS OR MAKE ANY OTHER DISPOSITION OF THE MATTER THAT WILL BEST SERVE THE INTERESTS OF THE MINOR.

C. IF NECESSARY, THE COURT MAY APPOINT A TEMPORARY GUARDIAN, WITH THE STATUS OF AN ORDINARY GUARDIAN OF A MINOR, BUT THE AUTHORITY OF A TEMPORARY GUARDIAN SHALL NOT LAST LONGER THAN SIX MONTHS.

D. IF, AT ANY TIME IN THE PROCEEDING, THE COURT DETERMINES THAT THE INTERESTS OF THE MINOR ARE OR MAY BE INADEQUATELY REPRESENTED, IT MAY APPOINT AN ATTORNEY TO REPRESENT THE MINOR, GIVING CONSIDERATION TO THE PREFERENCE OF THE MINOR IF THE MINOR IS FOURTEEN YEARS OF AGE OR OLDER.

14-5208. **Consent to service by acceptance of appointment; notice**

BY ACCEPTING A TESTAMENTARY OR COURT APPOINTMENT AS GUARDIAN, A GUARDIAN SUBMITS PERSONALLY TO THE JURISDICTION OF THE COURT IN ANY PROCEEDING RELATING TO THE GUARDIANSHIP THAT MAY BE INSTITUTED BY ANY INTERESTED PERSON. NOTICE OF ANY PROCEEDING SHALL BE DELIVERED TO THE GUARDIAN, OR MAILED TO HIM BY ORDINARY MAIL AT HIS ADDRESS AS LISTED IN THE COURT RECORDS AND TO HIS ADDRESS AS THEN KNOWN TO THE PETITIONER. LETTERS OF GUARDIANSHIP MUST INDICATE WHETHER THE GUARDIAN WAS APPOINTED BY WILL OR BY COURT ORDER.

14-5209. **Powers and duties of guardian of minor**

A GUARDIAN OF A MINOR HAS THE POWERS AND RESPONSIBILITIES OF A PARENT WHO HAS NOT BEEN DEPRIVED OF CUSTODY

OF HIS UNEMANCIPATED MINOR CHILD, EXCEPT THAT A GUARDIAN IS NOT LEGALLY OBLIGATED TO PROVIDE FROM HIS OWN FUNDS FOR THE WARD AND IS NOT LIABLE TO THIRD PERSONS FOR ACTS OF THE WARD SOLELY BY REASON OF THE GUARDIANSHIP. IN PARTICULAR, AND WITHOUT QUALIFYING THE FOREGOING, A GUARDIAN HAS THE FOLLOWING POWERS AND DUTIES:

1. HE MUST TAKE REASONABLE CARE OF HIS WARD'S PERSONAL EFFECTS AND COMMENCE PROTECTIVE PROCEEDINGS IF NECESSARY TO PROTECT OTHER PROPERTY OF THE WARD.

2. HE MAY RECEIVE MONEY PAYABLE FOR THE SUPPORT OF THE WARD TO THE WARD'S PARENT, GUARDIAN OR CUSTODIAN UNDER THE TERMS OF ANY STATUTORY BENEFIT OR INSURANCE SYSTEM, OR ANY PRIVATE CONTRACT, DEVISE, TRUST, CONSERVATORSHIP OR CUSTODIANSHIP. HE ALSO MAY RECEIVE MONEY OR PROPERTY OF THE WARD PAID OR DELIVERED BY VIRTUE OF SECTION 14-5103. ANY SUMS SO RECEIVED SHALL BE APPLIED TO THE WARD'S CURRENT NEEDS FOR SUPPORT, CARE AND EDUCATION. HE MUST EXERCISE DUE CARE TO CONSERVE ANY EXCESS FOR THE WARD'S FUTURE NEEDS UNLESS A CONSERVATOR HAS BEEN APPOINTED FOR THE ESTATE OF THE WARD, IN WHICH CASE EXCESS SHALL BE PAID OVER AT LEAST ANNUALLY TO THE CONSERVATOR. SUMS SO RECEIVED BY THE GUARDIAN ARE NOT TO BE USED FOR COMPENSATION FOR HIS SERVICES EXCEPT AS APPROVED BY ORDER OF COURT OR AS DETERMINED BY A DULY APPOINTED CONSERVATOR OTHER THAN THE GUARDIAN. A GUARDIAN MAY INSTITUTE PROCEEDINGS TO COMPEL THE PERFORMANCE BY ANY PERSON OF A DUTY TO SUPPORT THE WARD OR TO PAY SUMS FOR THE WELFARE OF THE WARD.

3. THE GUARDIAN IS EMPOWERED TO FACILITATE THE WARD'S EDUCATION, SOCIAL OR OTHER ACTIVITIES AND TO AUTHORIZE MEDICAL OR OTHER PROFESSIONAL CARE, TREATMENT OR ADVICE. A GUARDIAN IS NOT LIABLE BY REASON OF THIS CONSENT FOR INJURY TO THE WARD RESULTING FROM THE NEGLIGENCE OR ACTS OF THIRD PERSONS UNLESS IT WOULD HAVE BEEN ILLEGAL FOR A PARENT TO HAVE CONSENTED. A GUARDIAN MAY CONSENT TO THE MARRIAGE OR ADOPTION OF HIS WARD.

4. A GUARDIAN MUST REPORT THE CONDITION OF HIS WARD AND OF THE WARD'S ESTATE WHICH HAS BEEN SUBJECT TO HIS

POSSESSION OR CONTROL, AS ORDERED BY COURT ON PETITION OF ANY PERSON INTERESTED IN THE MINOR'S WELFARE OR AS REQUIRED BY COURT RULE.

14-5210. **Termination of appointment of guardian; general**

A GUARDIAN'S AUTHORITY AND RESPONSIBILITY TERMINATES UPON THE DEATH, RESIGNATION OR REMOVAL OF THE GUARDIAN OR UPON THE MINOR'S DEATH, ADOPTION, MARRIAGE OR ATTAINMENT OF MAJORITY, BUT TERMINATION DOES NOT AFFECT HIS LIABILITY FOR PRIOR ACTS, NOR HIS OBLIGATION TO ACCOUNT FOR FUNDS AND ASSETS OF HIS WARD. RESIGNATION OF A GUARDIAN DOES NOT TERMINATE THE GUARDIANSHIP UNTIL IT HAS BEEN APPROVED BY THE COURT. A TESTAMENTARY APPOINTMENT UNDER AN INFORMALLY PROBATED WILL TERMINATES IF THE WILL IS LATER DENIED PROBATE IN A FORMAL PROCEEDING.

14-5211. **Proceedings subsequent to appointment; venue**

A. THE COURT WHERE THE WARD RESIDES HAS CONCURRENT JURISDICTION WITH THE COURT WHICH APPOINTED THE GUARDIAN, OR IN WHICH ACCEPTANCE OF A TESTAMENTARY APPOINTMENT WAS FILED, OVER RESIGNATION, REMOVAL, ACCOUNTING AND OTHER PROCEEDINGS RELATING TO THE GUARDIANSHIP.

B. IF THE COURT LOCATED WHERE THE WARD RESIDES IS NOT THE COURT IN WHICH ACCEPTANCE OF APPOINTMENT IS FILED, THE COURT IN WHICH PROCEEDINGS SUBSEQUENT TO APPOINTMENT ARE COMMENCED SHALL IN ALL APPROPRIATE CASES NOTIFY THE OTHER COURT, IN THIS OR ANOTHER STATE, AND AFTER CONSULTATION WITH THAT COURT DETERMINE WHETHER TO RETAIN JURISDICTION OR TRANSFER THE PROCEEDINGS TO THE OTHER COURT, WHICHEVER IS IN THE BEST INTERESTS OF THE WARD. A COPY OF ANY ORDER ACCEPTING A RESIGNATION OR REMOVING A GUARDIAN SHALL BE SENT TO THE COURT IN WHICH ACCEPTANCE OF APPOINTMENT IS FILED.

14-5212. **Resignation or removal proceedings**

A. ANY PERSON INTERESTED IN THE WELFARE OF A WARD OR THE WARD, IF FOURTEEN OR MORE YEARS OF AGE, MAY PETITION FOR REMOVAL OF A GUARDIAN ON THE GROUND

THAT REMOVAL WOULD BE IN THE BEST INTERESTS OF THE WARD. A GUARDIAN MAY PETITION FOR PERMISSION TO RESIGN. A PETITION FOR REMOVAL OR FOR PERMISSION TO RESIGN MAY, BUT NEED NOT, INCLUDE A REQUEST FOR APPOINTMENT OF A SUCCESSOR GUARDIAN.

B. AFTER NOTICE AND HEARING ON A PETITION FOR REMOVAL OR FOR PERMISSION TO RESIGN, THE COURT MAY TERMINATE THE GUARDIANSHIP AND MAKE ANY FURTHER ORDER THAT MAY BE APPROPRIATE.

C. IF, AT ANY TIME IN THE PROCEEDING, THE COURT DETERMINES THAT THE INTERESTS OF THE WARD ARE, OR MAY BE, INADEQUATELY REPRESENTED, IT MAY APPOINT AN ATTORNEY TO REPRESENT THE MINOR, GIVING CONSIDERATION TO THE PREFERENCE OF THE MINOR IF THE MINOR IS FOURTEEN OR MORE YEARS OF AGE.

ARTICLE 3. GUARDIANS OF INCAPACITATED PERSONS

14-5301. **Testamentary appointment of guardian for incapacitated person**

A. THE PARENT OF AN INCAPACITATED PERSON MAY BY WILL APPOINT A GUARDIAN OF THE INCAPACITATED PERSON. A TESTAMENTARY APPOINTMENT BY A PARENT BECOMES EFFECTIVE WHEN, AFTER HAVING GIVEN SEVEN DAYS PRIOR WRITTEN NOTICE OF INTENTION TO DO SO TO THE INCAPACITATED PERSON AND ALSO TO THE PERSON HAVING HIS CARE OR HIS NEAREST ADULT RELATIVE, THE GUARDIAN FILES ACCEPTANCE OF APPOINTMENT IN THE COURT IN WHICH THE WILL IS INFORMALLY OR FORMALLY PROBATED, IF PRIOR THERETO BOTH PARENTS ARE DEAD OR THE SURVIVING PARENT IS ADJUDGED INCAPACITATED. IF BOTH PARENTS ARE DEAD, AN EFFECTIVE APPOINTMENT BY THE PARENT WHO DIED LATER HAS PRIORITY UNLESS IT IS TERMINATED BY THE DENIAL OF PROBATE IN FORMAL PROCEEDINGS.

B. THE SPOUSE OF A MARRIED INCAPACITATED PERSON MAY BY WILL APPOINT A GUARDIAN OF THE INCAPACITATED PERSON. THE APPOINTMENT BECOMES EFFECTIVE WHEN, AFTER HAVING GIVEN SEVEN DAYS PRIOR WRITTEN NOTICE OF INTENTION TO DO SO TO THE INCAPACITATED PERSON AND ALSO TO THE PERSON HAVING HIS CARE OR HIS NEAREST ADULT RELATIVE, THE GUARDIAN FILES ACCEPTANCE OF APPOINT-

MENT IN THE COURT IN WHICH THE WILL IS INFORMALLY OR FORMALLY PROBATED. AN EFFECTIVE APPOINTMENT BY A SPOUSE HAS PRIORITY OVER AN APPOINTMENT BY A PARENT UNLESS APPOINTMENT BY THE SPOUSE IS TERMINATED BY THE DENIAL OF PROBATE IN FORMAL PROCEEDINGS.

C. THIS STATE SHALL RECOGNIZE A TESTAMENTARY APPOINTMENT EFFECTED BY FILING ACCEPTANCE UNDER A WILL PROBATED AT THE TESTATOR'S DOMICILE IN ANOTHER STATE.

D. ON THE FILING WITH THE COURT IN WHICH THE WILL WAS PROBATED OF WRITTEN OBJECTION TO THE APPOINTMENT BY THE PERSON FOR WHOM A TESTAMENTARY APPOINTMENT OF GUARDIAN HAS BEEN MADE, THE APPOINTMENT IS TERMINATED. AN OBJECTION DOES NOT PREVENT APPOINTMENT BY THE COURT IN A PROPER PROCEEDING OF THE TESTAMENTARY NOMINEE OR ANY OTHER SUITABLE PERSON UPON AN ADJUDICATION OF INCAPACITY IN PROCEEDINGS UNDER THE SUCCEEDING SECTIONS OF THIS ARTICLE.

14-5302. **Venue**

THE VENUE FOR GUARDIANSHIP PROCEEDINGS FOR AN INCAPACITATED PERSON IS IN THE COUNTY WHERE THE INCAPACITATED PERSON RESIDES OR IS PRESENT. IF THE INCAPACITATED PERSON IS ADMITTED TO AN INSTITUTION PURSUANT TO ORDER OF A COURT OF COMPETENT JURISDICTION, VENUE IS ALSO IN THE COUNTY IN WHICH THAT COURT SITS.

14-5303. **Procedure for court appointment of a guardian of an incapacitated person**

A. THE INCAPACITATED PERSON OR ANY PERSON INTERESTED IN HIS WELFARE MAY PETITION FOR A FINDING OF INCAPACITY AND APPOINTMENT OF A GUARDIAN.

B. UPON THE FILING OF A PETITION, THE COURT SHALL SET A DATE FOR HEARING ON THE ISSUES OF INCAPACITY AND UNLESS THE ALLEGEDLY INCAPACITATED PERSON HAS COUNSEL OF HIS OWN CHOICE, IT SHALL APPOINT AN APPROPRIATE OFFICIAL OR ATTORNEY TO REPRESENT HIM IN THE PROCEEDING, WHO SHALL HAVE THE POWERS AND DUTIES OF A GUARDIAN AD LITEM. THE PERSON ALLEGED TO BE INCAPACITATED SHALL BE BOTH EXAMINED BY A PHYSICIAN APPOINTED BY THE

COURT, WHO SHALL SUBMIT HIS REPORT IN WRITING TO THE COURT AND INTERVIEWED BY A VISITOR SENT BY THE COURT. THE VISITOR ALSO SHALL INTERVIEW THE PERSON SEEKING APPOINTMENT AS GUARDIAN, VISIT THE PRESENT PLACE OF ABODE OF THE PERSON ALLEGED TO BE INCAPACITATED AND THE PLACE WHERE IT IS PROPOSED THAT HE WILL BE DETAINED OR RESIDE IF THE REQUESTED APPOINTMENT IS MADE, AND SUBMIT A REPORT IN WRITING TO THE COURT. THE PERSON ALLEGED TO BE INCAPACITATED IS ENTITLED TO BE PRESENT AT THE HEARING IN PERSON, AND TO SEE OR HEAR ALL EVIDENCE BEARING UPON HIS CONDITION. HE IS ENTITLED TO BE REPRESENTED BY COUNSEL, TO PRESENT EVIDENCE, TO CROSS-EXAMINE WITNESSES, INCLUDING THE COURT-APPOINTED PHYSICIAN AND THE VISITOR, AND TO TRIAL BY JURY. THE ISSUE MAY BE DETERMINED AT A CLOSED HEARING WITHOUT A JURY IF THE PERSON ALLEGED TO BE INCAPACITATED OR HIS COUNSEL SO REQUESTS.

14-5304. **Findings; order of appointment**

THE COURT MAY APPOINT A GUARDIAN AS REQUESTED IF IT IS SATISFIED THAT THE PERSON FOR WHOM A GUARDIAN IS SOUGHT IS INCAPACITATED AND THAT THE APPOINTMENT IS NECESSARY OR DESIRABLE AS A MEANS OF PROVIDING CONTINUING CARE AND SUPERVISION OF THE PERSON OF THE INCAPACITATED PERSON. ALTERNATIVELY, THE COURT MAY DISMISS THE PROCEEDING OR ENTER ANY OTHER APPROPRIATE ORDER. THE GUARDIAN SHALL FILE ACCEPTANCE OF APPOINTMENT IN THE APPOINTING COURT.

14-5305. **Acceptance of appointment; consent to jurisdiction**

BY ACCEPTING APPOINTMENT, A GUARDIAN SUBMITS PERSONALLY TO THE JURISDICTION OF THE COURT IN ANY PROCEEDING RELATING TO THE GUARDIANSHIP THAT MAY BE INSTITUTED BY ANY INTERESTED PERSON. NOTICE OF ANY PROCEEDING SHALL BE DELIVERED TO THE GUARDIAN OR MAILED TO HIM BY ORDINARY MAIL AT HIS ADDRESS AS LISTED IN THE COURT RECORDS AND TO HIS ADDRESS AS THEN KNOWN TO THE PETITIONER.

14-5306. **Termination of guardianship for incapacitated person**

THE AUTHORITY AND RESPONSIBILITY OF A GUARDIAN FOR AN INCAPACITATED PERSON TERMINATES UPON THE DEATH OF

THE GUARDIAN OR WARD, A DETERMINATION OF INCAPACITY OF THE GUARDIAN, OR UPON REMOVAL OR RESIGNATION AS PROVIDED IN SECTION 14-5307. TESTAMENTARY APPOINTMENT UNDER AN INFORMALLY PROBATED WILL TERMINATES IF THE WILL IS LATER DENIED PROBATE IN A FORMAL PROCEEDING. TERMINATION DOES NOT AFFECT HIS LIABILITY FOR PRIOR ACTS NOR HIS OBLIGATION TO ACCOUNT FOR FUNDS AND ASSETS OF HIS WARD.

14-5307. **Removal or resignation of guardian; termination of incapacity**

A. ON PETITION OF THE WARD OR ANY PERSON INTERESTED IN HIS WELFARE, THE COURT MAY REMOVE A GUARDIAN AND APPOINT A SUCCESSOR IF IN THE BEST INTERESTS OF THE WARD. ON PETITION OF THE GUARDIAN, THE COURT MAY ACCEPT A RESIGNATION AND MAKE ANY OTHER ORDER WHICH MAY BE APPROPRIATE.

B. AN ORDER ADJUDICATING INCAPACITY MAY SPECIFY A MINIMUM PERIOD, NOT EXCEEDING ONE YEAR, DURING WHICH NO PETITION FOR AN ADJUDICATION THAT THE WARD IS NO LONGER INCAPACITATED MAY BE FILED WITHOUT SPECIAL LEAVE. SUBJECT TO THIS RESTRICTION, THE WARD OR ANY PERSON INTERESTED IN HIS WELFARE MAY PETITION FOR AN ORDER THAT THE WARD IS NO LONGER INCAPACITATED, AND FOR REMOVAL OR RESIGNATION OF THE GUARDIAN. A REQUEST FOR THIS ORDER MAY BE MADE BY INFORMAL LETTER TO THE COURT OR JUDGE AND ANY PERSON WHO KNOWINGLY INTERFERES WITH TRANSMISSION OF THIS KIND OF REQUEST TO THE COURT OR JUDGE MAY BE ADJUDGED GUILTY OF CONTEMPT OF COURT.

C. BEFORE REMOVING A GUARDIAN, ACCEPTING THE RESIGNATION OF A GUARDIAN, OR ORDERING THAT A WARD'S INCAPACITY HAS TERMINATED, THE COURT, FOLLOWING THE SAME PROCEDURES TO SAFEGUARD THE RIGHTS OF THE WARD AS APPLY TO A PETITION FOR APPOINTMENT OF A GUARDIAN, MAY SEND A VISITOR TO THE RESIDENCE OF THE PRESENT GUARDIAN AND TO THE PLACE WHERE THE WARD RESIDES OR IS DETAINED, TO OBSERVE CONDITIONS AND REPORT IN WRITING TO THE COURT.

14-5308. **Visitor in guardianship proceeding**

A VISITOR IS, WITH RESPECT TO GUARDIANSHIP PROCEEDINGS, A PERSON WHO IS TRAINED IN LAW, NURSING OR SOCIAL WORK AND IS AN OFFICER, EMPLOYEE OR SPECIAL APPOINTEE OF THE COURT WITH NO PERSONAL INTEREST IN THE PROCEEDINGS.

14-5309. **Notices in guardianship proceedings**

A. IN A PROCEEDING FOR THE APPOINTMENT OR REMOVAL OF A GUARDIAN OF AN INCAPACITATED PERSON OTHER THAN THE APPOINTMENT OF A TEMPORARY GUARDIAN OR TEMPORARY SUSPENSION OF A GUARDIAN, NOTICE OF HEARING SHALL BE GIVEN TO EACH OF THE FOLLOWING:

1. THE WARD OR THE PERSON ALLEGED TO BE INCAPACITATED AND HIS SPOUSE, PARENTS AND ADULT CHILDREN.

2. ANY PERSON WHO IS SERVING AS HIS GUARDIAN OR CONSERVATOR OR WHO HAS HIS CARE AND CUSTODY.

3. IN CASE NO OTHER PERSON IS NOTIFIED UNDER PARAGRAPH 1 OF THIS SUBSECTION, AT LEAST ONE OF HIS CLOSEST ADULT RELATIVES, IF ANY CAN BE FOUND.

B. NOTICE SHALL BE SERVED PERSONALLY ON THE ALLEGED INCAPACITATED PERSON, AND HIS SPOUSE AND PARENTS IF THEY CAN BE FOUND WITHIN THE STATE. NOTICE TO THE SPOUSE AND PARENTS, IF THEY CANNOT BE FOUND WITHIN THE STATE, AND TO ALL OTHER PERSONS EXCEPT THE ALLEGED INCAPACITATED PERSON SHALL BE GIVEN AS PROVIDED IN SECTION 14-1401. WAIVER OF NOTICE BY THE PERSON ALLEGED TO BE INCAPACITATED IS NOT EFFECTIVE UNLESS HE ATTENDS THE HEARING OR HIS WAIVER OF NOTICE IS CONFIRMED IN AN INTERVIEW WITH THE VISITOR. REPRESENTATION OF THE ALLEGED INCAPACITATED PERSON BY A GUARDIAN AD LITEM IS NOT NECESSARY.

14-5310. **Temporary guardians**

IF AN INCAPACITATED PERSON HAS NO GUARDIAN AND AN EMERGENCY EXISTS, THE COURT MAY EXERCISE THE POWER OF A GUARDIAN PENDING NOTICE AND HEARING. IF AN APPOINTED GUARDIAN IS NOT EFFECTIVELY PERFORMING HIS DUTIES AND THE COURT FURTHER FINDS THAT THE WELFARE OF THE INCAPACITATED PERSON REQUIRES IMMEDIATE ACTION, IT

MAY, WITH OR WITHOUT NOTICE, APPOINT A TEMPORARY GUARDIAN FOR THE INCAPACITATED PERSON FOR A SPECIFIED PERIOD NOT TO EXCEED SIX MONTHS. A TEMPORARY GUARDIAN IS ENTITLED TO THE CARE AND CUSTODY OF THE WARD AND THE AUTHORITY OF ANY PERMANENT GUARDIAN PREVIOUSLY APPOINTED BY THE COURT IS SUSPENDED SO LONG AS A TEMPORARY GUARDIAN HAS AUTHORITY. A TEMPORARY GUARDIAN MAY BE REMOVED AT ANY TIME. A TEMPORARY GUARDIAN SHALL MAKE ANY REPORT THE COURT REQUIRES. IN OTHER RESPECTS THE PROVISIONS OF THIS TITLE CONCERNING GUARDIANS APPLY TO TEMPORARY GUARDIANS.

14-5311. **Who may be guardian; priorities**

A. ANY COMPETENT PERSON MAY BE APPOINTED GUARDIAN OF AN INCAPACITATED PERSON.

B. PERSONS WHO ARE NOT DISQUALIFIED HAVE PRIORITY FOR APPOINTMENT AS GUARDIAN IN THE FOLLOWING ORDER:

1. THE SPOUSE OF THE INCAPACITATED PERSON.

2. AN ADULT CHILD OF THE INCAPACITATED PERSON.

3. A PARENT OF THE INCAPACITATED PERSON, INCLUDING A PERSON NOMINATED BY WILL OR OTHER WRITING SIGNED BY A DECEASED PARENT.

4. ANY RELATIVE OF THE INCAPACITATED PERSON WITH WHOM HE HAS RESIDED FOR MORE THAN SIX MONTHS PRIOR TO THE FILING OF THE PETITION.

5. THE NOMINEE OF A PERSON WHO IS CARING FOR THE INCAPACITATED PERSON OR PAYING BENEFITS TO HIM.

14-5312. **General powers and duties of guardian**

A. A GUARDIAN OF AN INCAPACITATED PERSON HAS THE SAME POWERS, RIGHTS AND DUTIES RESPECTING HIS WARD THAT A PARENT HAS RESPECTING HIS UNEMANCIPATED MINOR CHILD EXCEPT THAT A GUARDIAN IS NOT LIABLE TO THIRD PERSONS FOR ACTS OF THE WARD SOLELY BY REASON OF THE GUARDIANSHIP. IN PARTICULAR, AND WITHOUT QUALIFYING THE FOREGOING, A GUARDIAN HAS THE FOLLOWING POWERS AND DUTIES, EXCEPT AS MODIFIED BY ORDER OF THE COURT:

1. TO THE EXTENT THAT IT IS CONSISTENT WITH THE TERMS OF ANY ORDER BY A COURT OF COMPETENT JURISDICTION RELATING TO DETENTION OR COMMITMENT OF THE WARD, HE IS ENTITLED TO CUSTODY OF THE PERSON OF HIS WARD AND MAY ESTABLISH THE WARD'S PLACE OF ABODE WITHIN OR WITHOUT THIS STATE.

2. IF ENTITLED TO CUSTODY OF HIS WARD HE SHALL MAKE PROVISION FOR THE CARE, COMFORT AND MAINTENANCE OF HIS WARD AND, WHENEVER APPROPRIATE, ARRANGE FOR HIS TRAINING AND EDUCATION. WITHOUT REGARD TO CUSTODIAL RIGHTS OF THE WARD'S PERSON, HE SHALL TAKE REASONABLE CARE OF HIS WARD'S CLOTHING, FURNITURE, VEHICLES AND OTHER PERSONAL EFFECTS AND COMMENCE PROTECTIVE PROCEEDINGS IF OTHER PROPERTY OF HIS WARD IS IN NEED OF PROTECTION.

3. A GUARDIAN MAY GIVE ANY CONSENTS OR APPROVALS THAT MAY BE NECESSARY TO ENABLE THE WARD TO RECEIVE MEDICAL OR OTHER PROFESSIONAL CARE, COUNSEL, TREATMENT OR SERVICE.

4. IF NO CONSERVATOR FOR THE ESTATE OF THE WARD HAS BEEN APPOINTED, HE MAY:

(a) INSTITUTE PROCEEDINGS TO COMPEL ANY PERSON UNDER A DUTY TO SUPPORT THE WARD OR TO PAY SUMS FOR THE WELFARE OF THE WARD TO PERFORM HIS DUTY.

(b) RECEIVE MONEY AND TANGIBLE PROPERTY DELIVERABLE TO THE WARD AND APPLY THE MONEY AND PROPERTY FOR SUPPORT, CARE AND EDUCATION OF THE WARD, BUT HE MAY NOT USE FUNDS FROM HIS WARD'S ESTATE FOR ROOM AND BOARD WHICH HE, HIS SPOUSE, PARENT OR CHILD HAVE FURNISHED THE WARD UNLESS A CHARGE FOR THE SERVICE IS APPROVED BY ORDER OF THE COURT MADE UPON NOTICE TO AT LEAST ONE OF THE NEXT OF KIN OF THE WARD, IF NOTICE IS POSSIBLE. HE MUST EXERCISE CARE TO CONSERVE ANY EXCESS FOR THE WARD'S NEEDS.

5. A GUARDIAN IS REQUIRED TO REPORT THE CONDITION OF HIS WARD AND OF THE ESTATE WHICH HAS BEEN SUBJECT TO HIS POSSESSION OR CONTROL, AS REQUIRED BY THE COURT OR COURT RULE.

6. IF A CONSERVATOR HAS BEEN APPOINTED, ALL OF THE WARD'S ESTATE RECEIVED BY THE GUARDIAN IN EXCESS OF THOSE FUNDS EXPENDED TO MEET CURRENT EXPENSES FOR SUPPORT, CARE AND EDUCATION OF THE WARD MUST BE PAID TO THE CONSERVATOR FOR MANAGEMENT AS PROVIDED IN THIS CHAPTER AND THE GUARDIAN MUST ACCOUNT TO THE CONSERVATOR FOR FUNDS EXPENDED.

B. ANY GUARDIAN OF ONE FOR WHOM A CONSERVATOR ALSO HAS BEEN APPOINTED SHALL CONTROL THE CUSTODY AND CARE OF THE WARD, AND IS ENTITLED TO RECEIVE REASONABLE SUMS FOR HIS SERVICES AND FOR ROOM AND BOARD FURNISHED TO THE WARD AS AGREED UPON BETWEEN HIM AND THE CONSERVATOR IF THE AMOUNTS AGREED UPON ARE REASONABLE UNDER THE CIRCUMSTANCES. THE GUARDIAN MAY REQUEST THE CONSERVATOR TO EXPEND THE WARD'S ESTATE BY PAYMENT TO THIRD PERSONS OR INSTITUTIONS FOR THE WARD'S CARE AND MAINTENANCE.

14-5313. **Proceedings subsequent to appointment; venue**

A. THE COURT WHERE THE WARD RESIDES HAS CONCURRENT JURISDICTION WITH THE COURT IN WHICH ACCEPTANCE OF APPOINTMENT IS FILED, OVER RESIGNATION, REMOVAL, ACCOUNTING AND OTHER PROCEEDINGS RELATING TO THE GUARDIANSHIP.

B. IF THE COURT LOCATED WHERE THE WARD RESIDES IS NOT THE COURT IN WHICH ACCEPTANCE OF APPOINTMENT IS FILED, THE COURT IN WHICH PROCEEDINGS SUBSEQUENT TO APPOINTMENT ARE COMMENCED SHALL IN ALL APPROPRIATE CASES NOTIFY THE OTHER COURT, IN THIS OR ANOTHER STATE, AND AFTER CONSULTATION WITH THAT COURT DETERMINE WHETHER TO RETAIN JURISDICTION OR TRANSFER THE PROCEEDINGS TO THE OTHER COURT, WHICHEVER MAY BE IN THE BEST INTERESTS OF THE WARD. A COPY OF ANY ORDER ACCEPTING A RESIGNATION OR REMOVING A GUARDIAN SHALL BE SENT TO THE COURT IN WHICH ACCEPTANCE OF APPOINTMENT IS FILED.

ARTICLE 4. PROTECTION OF PROPERTY OF PERSONS UNDER DISABILITY AND MINORS

14-5401. **Protective proceedings**

UPON PETITION AND AFTER NOTICE AND HEARING IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE, THE COURT MAY APPOINT A CONSERVATOR OR MAKE OTHER PROTECTIVE ORDER FOR CAUSE AS FOLLOWS:

1. APPOINTMENT OF A CONSERVATOR OR OTHER PROTECTIVE ORDER MAY BE MADE IN RELATION TO THE ESTATE AND AFFAIRS OF A MINOR IF THE COURT DETERMINES THAT A MINOR OWNS MONEY OR PROPERTY THAT REQUIRES MANAGEMENT OR PROTECTION WHICH CANNOT OTHERWISE BE PROVIDED, HAS OR MAY HAVE BUSINESS AFFAIRS WHICH MAY BE JEOPARDIZED OR PREVENTED BY HIS MINORITY, OR THAT FUNDS ARE NEEDED FOR HIS SUPPORT AND EDUCATION AND THAT PROTECTION IS NECESSARY OR DESIRABLE TO OBTAIN OR PROVIDE FUNDS.

2. APPOINTMENT OF A CONSERVATOR OR OTHER PROTECTIVE ORDER MAY BE MADE IN RELATION TO THE ESTATE AND AFFAIRS OF A PERSON IF THE COURT DETERMINES THAT BOTH:

(a) THE PERSON IS UNABLE TO MANAGE HIS PROPERTY AND AFFAIRS EFFECTIVELY FOR REASONS SUCH AS MENTAL ILLNESS, MENTAL DEFICIENCY, PHYSICAL ILLNESS OR DISABILITY, ADVANCED AGE, CHRONIC USE OF DRUGS, CHRONIC INTOXICATION, CONFINEMENT, DETENTION BY A FOREIGN POWER OR DISAPPEARANCE.

(b) THE PERSON HAS PROPERTY WHICH WILL BE WASTED OR DISSIPATED UNLESS PROPER MANAGEMENT IS PROVIDED, OR THAT FUNDS ARE NEEDED FOR THE SUPPORT, CARE AND WELFARE OF THE PERSON OR THOSE ENTITLED TO BE SUPPORTED BY HIM AND THAT PROTECTION IS NECESSARY OR DESIRABLE TO OBTAIN OR PROVIDE FUNDS.

14-5402. **Protective proceedings; jurisdiction of affairs of protected persons**

AFTER THE SERVICE OF NOTICE IN A PROCEEDING SEEKING THE APPOINTMENT OF A CONSERVATOR OR OTHER PROTECTIVE ORDER AND UNTIL TERMINATION OF THE PROCEEDING, THE COURT IN WHICH THE PETITION IS FILED HAS:

1. EXCLUSIVE JURISDICTION TO DETERMINE THE NEED FOR A CONSERVATOR OR OTHER PROTECTIVE ORDER UNTIL THE PROCEEDINGS ARE TERMINATED.

2. EXCLUSIVE JURISDICTION TO DETERMINE HOW THE ESTATE OF THE PROTECTED PERSON WHICH IS SUBJECT TO THE LAWS OF THIS STATE SHALL BE MANAGED, EXPENDED OR DISTRIBUTED TO OR FOR THE USE OF THE PROTECTED PERSON OR ANY OF HIS DEPENDENTS.

3. CONCURRENT JURISDICTION TO DETERMINE THE VALIDITY OF CLAIMS AGAINST THE PERSON OR ESTATE OF THE PROTECTED PERSON AND HIS TITLE TO ANY PROPERTY OR CLAIM.

14-5403. **Venue**

VENUE FOR PROCEEDINGS UNDER THIS ARTICLE IS:

1. IN THE COUNTY IN THIS STATE WHERE THE PERSON TO BE PROTECTED RESIDES WHETHER OR NOT A GUARDIAN HAS BEEN APPOINTED IN ANOTHER PLACE.

2. IF THE PERSON TO BE PROTECTED DOES NOT RESIDE IN THIS STATE, IN ANY COUNTY WHERE HE HAS PROPERTY.

14-5404. **Original petition for appointment or protective order**

A. THE PERSON TO BE PROTECTED, ANY PERSON WHO IS INTERESTED IN HIS ESTATE, AFFAIRS OR WELFARE INCLUDING HIS PARENT, GUARDIAN OR CUSTODIAN, OR ANY PERSON WHO WOULD BE ADVERSELY AFFECTED BY LACK OF EFFECTIVE MANAGEMENT OF HIS PROPERTY AND AFFAIRS MAY PETITION FOR THE APPOINTMENT OF A CONSERVATOR OR FOR OTHER APPROPRIATE PROTECTIVE ORDER.

B. THE PETITION SHALL SET FORTH, TO THE EXTENT KNOWN:

1. THE INTEREST OF THE PETITIONER.

2. THE NAME, AGE, RESIDENCE AND ADDRESS OF THE PERSON TO BE PROTECTED.

3. THE NAME AND ADDRESS OF THE GUARDIAN, IF ANY, OF THE PERSON TO BE PROTECTED.

4. THE NAME AND ADDRESS OF THE NEAREST RELATIVE KNOWN TO THE PETITIONER.

5. A GENERAL STATEMENT OF THE PROPERTY OF THE PERSON TO BE PROTECTED WITH AN ESTIMATE OF THE VALUE THEREOF, INCLUDING ANY COMPENSATION, INSURANCE, PENSION OR ALLOWANCE TO WHICH HE IS ENTITLED.

6. THE REASON WHY APPOINTMENT OF A CONSERVATOR OR OTHER PROTECTIVE ORDER IS NECESSARY.

IF THE APPOINTMENT OF A CONSERVATOR IS REQUESTED, THE PETITION ALSO SHALL SET FORTH THE NAME AND ADDRESS OF THE PERSON WHOSE APPOINTMENT IS SOUGHT AND THE BASIS OF HIS PRIORITY FOR APPOINTMENT.

14-5405. **Notice**

A. ON A PETITION FOR APPOINTMENT OF A CONSERVATOR OR OTHER PROTECTIVE ORDER, THE PERSON TO BE PROTECTED AND HIS SPOUSE OR, IF NONE, HIS PARENTS, MUST BE SERVED PERSONALLY WITH NOTICE OF THE PROCEEDING AT LEAST FOURTEEN DAYS BEFORE THE DATE OF HEARING IF THEY CAN BE FOUND WITHIN THE STATE, OR, IF THEY CANNOT BE FOUND WITHIN THE STATE, THEY MUST BE GIVEN NOTICE IN ACCORDANCE WITH SECTION 14-1401. WAIVER BY THE PERSON TO BE PROTECTED IS NOT EFFECTIVE UNLESS HE ATTENDS THE HEARING OR, UNLESS MINORITY IS THE REASON FOR THE PROCEEDING, WAIVER IS CONFIRMED IN AN INTERVIEW WITH THE VISITOR.

B. NOTICE OF A PETITION FOR APPOINTMENT OF A CONSERVATOR OR OTHER INITIAL PROTECTIVE ORDER, AND OF ANY SUBSEQUENT HEARING, MUST BE GIVEN TO ANY PERSON WHO HAS FILED A REQUEST FOR NOTICE UNDER SECTION 14-5406 AND TO INTERESTED PERSONS AND OTHER PERSONS AS THE COURT MAY DIRECT. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION A OF THIS SECTION, NOTICE SHALL BE GIVEN IN ACCORDANCE WITH SECTION 14-1401.

14-5406. **Protective proceedings; request for notice; interested person**

ANY INTERESTED PERSON WHO DESIRES TO BE NOTIFIED BEFORE ANY ORDER IS MADE IN A PROTECTIVE PROCEEDING MAY FILE WITH THE CLERK A REQUEST FOR NOTICE SUBSEQUENT TO PAYMENT OF ANY FEE REQUIRED BY STATUTE OR COURT RULE. THE CLERK SHALL MAIL A COPY OF THE DEMAND

TO THE CONSERVATOR IF ONE HAS BEEN APPOINTED. A REQUEST IS NOT EFFECTIVE UNLESS IT CONTAINS A STATEMENT SHOWING THE INTEREST OF THE PERSON MAKING IT AND HIS ADDRESS, OR THAT OF HIS ATTORNEY, AND IS EFFECTIVE ONLY AS TO MATTERS OCCURRING AFTER THE FILING. ANY GOVERNMENTAL AGENCY PAYING OR PLANNING TO PAY BENEFITS TO THE PERSON TO BE PROTECTED IS AN INTERESTED PERSON IN PROTECTIVE PROCEEDINGS.

14-5407 **Procedure concerning hearing and order on original petition**

A. UPON RECEIPT OF A PETITION FOR APPOINTMENT OF A CONSERVATOR OR OTHER PROTECTIVE ORDER BECAUSE OF MINORITY, THE COURT SHALL SET A DATE FOR HEARING ON THE MATTERS ALLEGED IN THE PETITION. IF, AT ANY TIME IN THE PROCEEDING, THE COURT DETERMINES THAT THE INTERESTS OF THE MINOR ARE OR MAY BE INADEQUATELY REPRESENTED, IT MAY APPOINT AN ATTORNEY TO REPRESENT THE MINOR, GIVING CONSIDERATION TO THE CHOICE OF THE MINOR IF FOURTEEN YEARS OF AGE OR OLDER. A LAWYER APPOINTED BY THE COURT TO REPRESENT A MINOR HAS THE POWERS AND DUTIES OF A GUARDIAN AD LITEM.

B. UPON RECEIPT OF A PETITION FOR APPOINTMENT OF A CONSERVATOR OR OTHER PROTECTIVE ORDER FOR REASONS OTHER THAN MINORITY, THE COURT SHALL SET A DATE FOR HEARING. AFTER HEARING, UPON FINDING THAT A BASIS FOR THE APPOINTMENT OF A CONSERVATOR OR OTHER PROTECTIVE ORDER HAS BEEN ESTABLISHED, THE COURT SHALL MAKE AN APPOINTMENT OR OTHER APPROPRIATE PROTECTIVE ORDER. UNLESS THE PERSON TO BE PROTECTED HAS COUNSEL OF HIS OWN CHOICE, THE COURT MUST APPOINT A LAWYER TO REPRESENT HIM WHO THEN HAS THE POWERS AND DUTIES OF A GUARDIAN AD LITEM. IF THE ALLEGED DISABILITY IS MENTAL ILLNESS, MENTAL DEFICIENCY, PHYSICAL ILLNESS OR DISABILITY, ADVANCED AGE, CHRONIC USE OF DRUGS, OR CHRONIC INTOXICATION, THE COURT MAY DIRECT THAT THE PERSON TO BE PROTECTED BE EXAMINED BY A PHYSICIAN DESIGNATED BY THE COURT, PREFERABLY A PHYSICIAN WHO IS NOT CONNECTED WITH ANY INSTITUTION IN WHICH THE PERSON IS A PATIENT OR IS DETAINED. THE COURT MAY SEND A VISITOR TO INTERVIEW THE PERSON TO BE PROTECTED. THE VISITOR MAY BE A GUARDIAN AD LITEM OR AN OFFICER OR EMPLOYEE OF THE COURT.

C. IN ANY CASE WHERE THE VETERANS ADMINISTRATION IS OR MAY BE AN INTERESTED PARTY, A CERTIFICATE OF AN AUTHORIZED OFFICIAL OF THE VETERANS ADMINISTRATION THAT THE PERSON TO BE PROTECTED HAS BEEN FOUND INCAPABLE OF HANDLING THE BENEFITS PAYABLE, ON EXAMINATION IN ACCORDANCE WITH THE LAWS AND REGULATIONS GOVERNING THE VETERANS ADMINISTRATION, SHALL BE PRIMA FACIE EVIDENCE OF THE NECESSITY FOR APPOINTMENT OF A CONSERVATOR.

14-5408. **Permissible court orders**

THE COURT HAS THE FOLLOWING POWERS WHICH MAY BE EXERCISED DIRECTLY OR THROUGH A CONSERVATOR IN RESPECT TO THE ESTATE AND AFFAIRS OF PROTECTED PERSONS:

1. WHILE A PETITION FOR APPOINTMENT OF A CONSERVATOR OR OTHER PROTECTIVE ORDER IS PENDING AND AFTER PRELIMINARY HEARING AND WITHOUT NOTICE TO OTHERS, THE COURT HAS POWER TO PRESERVE AND APPLY THE PROPERTY OF THE PERSON TO BE PROTECTED AS MAY BE REQUIRED FOR HIS BENEFIT OR THE BENEFIT OF HIS DEPENDENTS.

2. AFTER HEARING AND UPON DETERMINING THAT A BASIS FOR AN APPOINTMENT OR OTHER PROTECTIVE ORDER EXISTS WITH RESPECT TO A MINOR WITHOUT OTHER DISABILITY, THE COURT HAS ALL THOSE POWERS OVER THE ESTATE AND AFFAIRS OF THE MINOR WHICH ARE OR MIGHT BE NECESSARY FOR THE BEST INTERESTS OF THE MINOR, HIS FAMILY AND MEMBERS OF HIS HOUSEHOLD.

3. AFTER HEARING AND UPON DETERMINING THAT A BASIS FOR AN APPOINTMENT OR OTHER PROTECTIVE ORDER EXISTS WITH RESPECT TO A PERSON FOR REASONS OTHER THAN MINORITY, THE COURT HAS, FOR THE BENEFIT OF THE PERSON AND MEMBERS OF HIS HOUSEHOLD, ALL THE POWERS OVER HIS ESTATE AND AFFAIRS WHICH HE COULD EXERCISE IF PRESENT AND NOT UNDER DISABILITY, EXCEPT THE POWER TO MAKE A WILL OR TO MAKE GIFTS OTHER THAN THOSE AUTHORIZED BY THIS SECTION.

4. THE COURT HAS POWER TO MAKE GIFTS TO SUCH DONEES AND IN SUCH AMOUNTS AS WOULD CONTINUE A PROGRAM OF GIVING ESTABLISHED BY THE PROTECTED PERSON PRIOR TO

DISABILITY, IF, AFTER NOTICE AND HEARING, THE COURT IS SATISFIED THAT THE MAKING OF GIFTS IS IN THE BEST INTERESTS OF THE PROTECTED PERSON AND THAT HE EITHER IS INCAPABLE OF CONSENTING OR HAS CONSENTED TO THE PROPOSED GIFTS.

5. AN ORDER MADE PURSUANT TO THIS SECTION DETERMINING THAT A BASIS FOR APPOINTMENT OF A CONSERVATOR OR OTHER PROTECTIVE ORDER EXISTS, HAS NO EFFECT ON THE CAPACITY OF THE PROTECTED PERSON.

14-5409. **Protective arrangements and single transactions authorized**

A. IF IT IS ESTABLISHED IN A PROPER PROCEEDING THAT A BASIS EXISTS AS DESCRIBED IN SECTION 14-5401 FOR AFFECTING THE PROPERTY AND AFFAIRS OF A PERSON THE COURT, WITHOUT APPOINTING A CONSERVATOR, MAY AUTHORIZE, DIRECT OR RATIFY ANY TRANSACTION NECESSARY OR DESIRABLE TO ACHIEVE ANY SECURITY, SERVICE OR CARE ARRANGEMENT MEETING THE FORESEEABLE NEEDS OF THE PROTECTED PERSON. PROTECTIVE ARRANGEMENTS INCLUDE, BUT ARE NOT LIMITED TO, PAYMENT, DELIVERY, DEPOSIT OR RETENTION OF FUNDS OR PROPERTY, SALE, MORTGAGE, LEASE OR OTHER TRANSFER OF PROPERTY, ENTRY INTO AN ANNUITY CONTRACT, A CONTRACT FOR LIFE CARE, A DEPOSIT CONTRACT, A CONTRACT FOR TRAINING AND EDUCATION, OR ADDITION TO OR ESTABLISHMENT OF A SUITABLE TRUST.

B. WHEN IT HAS BEEN ESTABLISHED IN A PROPER PROCEEDING THAT A BASIS EXISTS AS DESCRIBED IN SECTION 14-5401 FOR AFFECTING THE PROPERTY AND AFFAIRS OF A PERSON THE COURT, WITHOUT APPOINTING A CONSERVATOR, MAY AUTHORIZE, DIRECT OR RATIFY ANY CONTRACT, TRUST OR OTHER TRANSACTION RELATING TO THE PROTECTED PERSON'S FINANCIAL AFFAIRS OR INVOLVING HIS ESTATE IF THE COURT DETERMINES THAT THE TRANSACTION IS IN THE BEST INTERESTS OF THE PROTECTED PERSON.

C. BEFORE APPROVING A PROTECTIVE ARRANGEMENT OR OTHER TRANSACTION UNDER THIS SECTION, THE COURT SHALL CONSIDER THE INTERESTS OF CREDITORS AND DEPENDENTS OF THE PROTECTED PERSON AND, IN VIEW OF HIS DISABILITY, WHETHER THE PROTECTED PERSON NEEDS THE CONTINUING PROTECTION OF A CONSERVATOR. THE COURT MAY APPOINT A

SPECIAL CONSERVATOR TO ASSIST IN THE ACCOMPLISHMENT OF ANY PROTECTIVE ARRANGEMENT OR OTHER TRANSACTION AUTHORIZED UNDER THIS SECTION WHO SHALL HAVE THE AUTHORITY CONFERRED BY THE ORDER AND SERVE UNTIL DISCHARGED BY ORDER AFTER REPORT TO THE COURT OF ALL MATTERS DONE PURSUANT TO THE ORDER OF APPOINTMENT.

14-5410. **Who may be appointed conservator; priorities**

A. THE COURT MAY APPOINT AN INDIVIDUAL OR A CORPORATION, WITH GENERAL POWER TO SERVE AS TRUSTEE, AS CONSERVATOR OF THE ESTATE OF A PROTECTED PERSON. THE FOLLOWING ARE ENTITLED TO CONSIDERATION FOR APPOINTMENT IN THE ORDER LISTED:

1. A CONSERVATOR, GUARDIAN OF PROPERTY OR OTHER LIKE FIDUCIARY APPOINTED OR RECOGNIZED BY THE APPROPRIATE COURT OF ANY OTHER JURISDICTION IN WHICH THE PROTECTED PERSON RESIDES.

2. AN INDIVIDUAL OR CORPORATION NOMINATED BY THE PROTECTED PERSON IF HE IS FOURTEEN OR MORE YEARS OF AGE AND HAS, IN THE OPINION OF THE COURT, SUFFICIENT MENTAL CAPACITY TO MAKE AN INTELLIGENT CHOICE.

3. THE SPOUSE OF THE PROTECTED PERSON.

4. AN ADULT CHILD OF THE PROTECTED PERSON.

5. A PARENT OF THE PROTECTED PERSON, OR A PERSON NOMINATED BY THE WILL OF A DECEASED PARENT.

6. ANY RELATIVE OF THE PROTECTED PERSON WITH WHOM HE HAS RESIDED FOR MORE THAN SIX MONTHS PRIOR TO THE FILING OF THE PETITION.

7. THE NOMINEE OF A PERSON WHO IS CARING FOR THE PROTECTED PERSON OR PAYING BENEFITS TO HIM.

B. A PERSON IN PRIORITIES 1, 3, 4, 5 OR 6 MAY NOMINATE IN WRITING A PERSON TO SERVE IN HIS STEAD. WITH RESPECT TO PERSONS HAVING EQUAL PRIORITY, THE COURT IS TO SELECT THE ONE WHO IS BEST QUALIFIED OF THOSE WILLING TO SERVE. THE COURT, FOR GOOD CAUSE, MAY PASS OVER A PERSON HAVING PRIORITY AND APPOINT A PERSON HAVING LESS PRIORITY OR NO PRIORITY.

14-5411. **Bond**

A. THE COURT SHALL REQUIRE A CONSERVATOR TO FURNISH A BOND CONDITIONED UPON FAITHFUL DISCHARGE OF ALL DUTIES OF THE TRUST ACCORDING TO LAW, WITH SURETIES AS IT SHALL SPECIFY. UNLESS OTHERWISE DIRECTED, THE BOND SHALL BE IN THE AMOUNT OF THE AGGREGATE CAPITAL VALUE OF THE PROPERTY OF THE ESTATE IN HIS CONTROL PLUS ONE YEAR'S ESTIMATED INCOME MINUS THE VALUE OF SECURITIES DEPOSITED UNDER ARRANGEMENTS REQUIRING AN ORDER OF THE COURT FOR THEIR REMOVAL AND THE VALUE OF ANY LAND WHICH THE FIDUCIARY, BY EXPRESS LIMITATION OF POWER, LACKS POWER TO SELL OR CONVEY WITHOUT COURT AUTHORIZATION. THE COURT IN LIEU OF SURETIES ON A BOND, MAY ACCEPT OTHER SECURITY FOR THE PERFORMANCE OF THE BOND, INCLUDING A PLEDGE OF SECURITIES OR A MORTGAGE OF LAND.

B. IF THE VETERANS ADMINISTRATION IS PAYING OR PLANNING TO PAY BENEFITS TO A PERSON TO BE PROTECTED, THE COURT SHALL, UPON THE REQUEST OF THE VETERANS ADMINISTRATION, REQUIRE A BOND, PREFERABLY A CORPORATE SURETY BOND, CONDITIONED UPON FAITHFUL DISCHARGE OF ALL DUTIES OF THE TRUST ACCORDING TO LAW, WITH SURETIES IT SHALL SPECIFY.

14-5412. **Terms and requirements of bonds**

A. THE FOLLOWING REQUIREMENTS AND PROVISIONS APPLY TO ANY BOND REQUIRED UNDER SECTION 14-5411:

1. UNLESS OTHERWISE PROVIDED BY THE TERMS OF THE APPROVED BOND, SURETIES ARE JOINTLY AND SEVERALLY LIABLE WITH THE CONSERVATOR AND WITH EACH OTHER.

2. BY EXECUTING AN APPROVED BOND OF A CONSERVATOR, THE SURETY CONSENTS TO THE JURISDICTION OF THE COURT WHICH ISSUED LETTERS TO THE PRIMARY OBLIGOR IN ANY PROCEEDING PERTAINING TO THE FIDUCIARY DUTIES OF THE CONSERVATOR AND NAMING THE SURETY AS A PARTY DEFENDANT. NOTICE OF ANY PROCEEDING SHALL BE DELIVERED TO THE SURETY OR MAILED TO HIM BY REGISTERED OR CERTIFIED MAIL AT HIS ADDRESS AS LISTED WITH THE COURT WHERE THE BOND IS FILED AND TO HIS ADDRESS AS THEN KNOWN TO THE PETITIONER.

3. ON PETITION OF A SUCCESSOR CONSERVATOR OR ANY INTERESTED PERSON, A PROCEEDING MAY BE INITIATED AGAINST A SURETY FOR BREACH OF THE OBLIGATION OF THE BOND OF THE CONSERVATOR.

4. THE BOND OF THE CONSERVATOR IS NOT VOID AFTER THE FIRST RECOVERY BUT MAY BE PROCEEDED AGAINST FROM TIME TO TIME UNTIL THE WHOLE PENALTY IS EXHAUSTED.

B. NO PROCEEDING MAY BE COMMENCED AGAINST THE SURETY ON ANY MATTER AS TO WHICH AN ACTION OR PROCEEDING AGAINST THE PRIMARY OBLIGOR IS BARRED BY ADJUDICATION OR LIMITATION.

14-5413. **Acceptance of appointment; consent to jurisdiction**

BY ACCEPTING APPOINTMENT, A CONSERVATOR SUBMITS PERSONALLY TO THE JURISDICTION OF THE COURT IN ANY PROCEEDING RELATING TO THE ESTATE THAT MAY BE INSTITUTED BY ANY INTERESTED PERSON. NOTICE OF ANY PROCEEDING SHALL BE DELIVERED TO THE CONSERVATOR, OR MAILED TO HIM BY REGISTERED OR CERTIFIED MAIL AT HIS ADDRESS AS LISTED IN THE PETITION FOR APPOINTMENT OR AS THEREAFTER REPORTED TO THE COURT AND TO HIS ADDRESS AS THEN KNOWN TO THE PETITIONER.

14-5414. **Compensation and expenses**

IF NOT OTHERWISE COMPENSATED FOR SERVICES RENDERED, ANY VISITOR, LAWYER, PHYSICIAN, CONSERVATOR OR SPECIAL CONSERVATOR APPOINTED IN A PROTECTIVE PROCEEDING IS ENTITLED TO REASONABLE COMPENSATION FROM THE ESTATE.

14-5415. **Death, resignation or removal of conservator**

THE COURT MAY REMOVE A CONSERVATOR FOR GOOD CAUSE, UPON NOTICE AND HEARING, OR ACCEPT THE RESIGNATION OF A CONSERVATOR. AFTER HIS DEATH, RESIGNATION OR REMOVAL THE COURT MAY APPOINT ANOTHER CONSERVATOR. A CONSERVATOR SO APPOINTED SUCCEEDS TO THE TITLE AND POWERS OF HIS PREDECESSOR.

14-5416. **Petitions for orders subsequent to appointment**

A. ANY PERSON INTERESTED IN THE WELFARE OF A PERSON FOR WHOM A CONSERVATOR HAS BEEN APPOINTED MAY FILE A PETITION IN THE APPOINTING COURT FOR AN ORDER:

1. REQUIRING BOND OR SECURITY OR ADDITIONAL BOND OR SECURITY, OR REDUCING BOND.

2. REQUIRING AN ACCOUNTING FOR THE ADMINISTRATION OF THE TRUST.

3. DIRECTING DISTRIBUTION.

4. REMOVING THE CONSERVATOR AND APPOINTING A TEMPORARY OR SUCCESSOR CONSERVATOR.

5. GRANTING OTHER APPROPRIATE RELIEF, INCLUDING REQUIRING COMPLIANCE WITH THE PROCEEDING SET FORTH FOR PERSONAL REPRESENTATIVES UNDER SECTIONS 14-3506 AND 14-3507.

B. A CONSERVATOR MAY PETITION THE APPOINTING COURT FOR INSTRUCTIONS CONCERNING HIS FIDUCIARY RESPONSIBILITY.

C. UPON NOTICE TO THE PERSON FOR WHOM A CONSERVATOR HAS BEEN APPOINTED AND TO SUCH OTHER PERSONS AS THE COURT MAY DESIGNATE AND UPON HEARING, THE COURT MAY GIVE APPROPRIATE INSTRUCTIONS OR MAKE ANY APPROPRIATE ORDER.

D. WHEN A SURETY OF A CONSERVATOR DESIRES TO BE RELEASED FROM RESPONSIBILITY FOR FUTURE ACTS, HE MAY APPLY TO THE COURT FOR A RELEASE. THE COURT SHALL PROCEED IN THE SAME MANNER AS IN A PROCEEDINGS UNDER SECTION 14-3604, SUBSECTION B; NOTICE SHALL BE GIVEN TO THE CONSERVATOR AS PROVIDED IN SECTION 14-5413.

14-5417. **General duty of conservator**

IN THE EXERCISE OF HIS POWERS, A CONSERVATOR IS TO ACT AS A FIDUCIARY AND SHALL OBSERVE THE STANDARD OF CARE APPLICABLE TO TRUSTEES AS DESCRIBED BY SECTION 14-7302.

14-5418. **Inventory and records**

WITHIN NINETY DAYS AFTER HIS APPOINTMENT, EVERY CONSERVATOR SHALL PREPARE AND FILE WITH THE APPOINTING COURT A COMPLETE INVENTORY OF THE ESTATE OF THE PROTECTED PERSON TOGETHER WITH HIS OATH OR AFFIRMATION THAT IT IS COMPLETE AND ACCURATE SO FAR AS HE IS INFORMED. THE CONSERVATOR SHALL PROVIDE A COPY THEREOF TO THE PROTECTED PERSON IF HE CAN BE LOCATED, HAS ATTAINED THE AGE OF FOURTEEN YEARS, AND HAS SUFFICIENT MENTAL CAPACITY TO UNDERSTAND THESE MATTERS, AND TO ANY PARENT OR GUARDIAN WITH WHOM THE PROTECTED PERSON RESIDES. THE CONSERVATOR SHALL KEEP SUITABLE RECORDS OF HIS ADMINISTRATION AND EXHIBIT THE SAME ON REQUEST OF ANY INTERESTED PERSON.

14-5419. **Accounts**

A. EVERY CONSERVATOR MUST ACCOUNT TO THE COURT FOR HIS ADMINISTRATION OF THE TRUST NOT LESS THAN ANNUALLY ON THE ANNIVERSARY DATE OF HIS QUALIFICATION AS CONSERVATOR AND ALSO ON RESIGNATION OR REMOVAL, AND ON TERMINATION OF THE PROTECTED PERSON'S MINORITY OR DISABILITY; PROVIDED, HOWEVER, THAT FOR GOOD CAUSE SHOWN UPON THE APPLICATION OF AN INTERESTED PERSON, THE COURT MAY RELIEVE THE CONSERVATOR OF FILING ANNUAL OR OTHER ACCOUNTS BY AN ORDER ENTERED IN THE MINUTES. SUBJECT TO APPEAL OR VACATION WITHIN THE TIME PERMITTED, AN ORDER, MADE UPON NOTICE AND HEARING, ALLOWING AN INTERMEDIATE ACCOUNT OF A CONSERVATOR, ADJUDICATES AS TO HIS LIABILITIES CONCERNING THE MATTERS CONSIDERED IN CONNECTION THEREWITH. AN ORDER, MADE UPON NOTICE AND HEARING, ALLOWING A FINAL ACCOUNT ADJUDICATES AS TO ALL PREVIOUSLY UNSETTLED LIABILITIES OF THE CONSERVATOR TO THE PROTECTED PERSON OR HIS SUCCESSORS RELATING TO THE CONSERVATORSHIP. IN CONNECTION WITH ANY ACCOUNT, THE COURT MAY REQUIRE A CONSERVATOR TO SUBMIT TO A PHYSICAL CHECK OF THE ESTATE IN HIS CONTROL, TO BE MADE IN ANY MANNER THE COURT MAY SPECIFY.

B. IN ANY CASE IN WHICH THE ESTATE CONSISTS, IN WHOLE OR IN PART, OF BENEFITS PAID BY THE VETERANS ADMINISTRATION TO THE CONSERVATOR OR HIS PREDECESSOR FOR THE BENEFIT OF THE PROTECTED PERSON, THE VETERANS ADMINISTRATION OFFICE WHICH HAS JURISDICTION OVER THE

AREA IS ENTITLED TO A COPY OF ANY ACCOUNT FILED UNDER CHAPTER 5, ARTICLE 4 OF THIS TITLE. EACH YEAR IN WHICH AN ACCOUNT IS NOT FILED WITH THE COURT, THE CONSERVATOR SHALL, IF REQUESTED, SUBMIT AN ACCOUNT TO THE APPROPRIATE VETERANS ADMINISTRATION OFFICE. IF SUCH AN ACCOUNT IS NOT SUBMITTED AS REQUESTED, OR IF IT IS FOUND UNSATISFACTORY BY THE VETERANS ADMINISTRATION, THE COURT SHALL, UPON RECEIPT OF NOTICE THEREOF, REQUIRE THE CONSERVATOR FORTHWITH TO FILE AN ACCOUNT WITH THE COURT.

14-5420. **Conservators; title by appointment**

THE APPOINTMENT OF A CONSERVATOR VESTS IN HIM TITLE AS TRUSTEE TO ALL PROPERTY OF THE PROTECTED PERSON, PRESENTLY HELD OR THEREAFTER ACQUIRED, INCLUDING TITLE TO ANY PROPERTY PREVIOUSLY HELD FOR THE PROTECTED PERSON BY CUSTODIANS OR ATTORNEYS IN FACT. THE APPOINTMENT OF A CONSERVATOR IS NOT A TRANSFER OR ALIENATION WITHIN THE MEANING OF GENERAL PROVISIONS OF ANY FEDERAL OR STATE STATUTE OR REGULATION, INSURANCE POLICY, PENSION PLAN, CONTRACT, WILL OR TRUST INSTRUMENT, IMPOSING RESTRICTIONS UPON OR PENALTIES FOR TRANSFER OR ALIENATION BY THE PROTECTED PERSON OF HIS RIGHTS OR INTEREST, BUT THIS SECTION DOES NOT RESTRICT THE ABILITY OF PERSONS TO MAKE SPECIFIC PROVISION BY CONTRACT OR DISPOSITIVE INSTRUMENT RELATING TO A CONSERVATOR.

14-5421. **Recording of conservator's letters**

LETTERS OF CONSERVATORSHIP ARE EVIDENCE OF TRANSFER OF ALL ASSETS OF A PROTECTED PERSON TO THE CONSERVATOR. AN ORDER TERMINATING A CONSERVATORSHIP IS EVIDENCE OF TRANSFER OF ALL ASSETS OF THE ESTATE FROM THE CONSERVATOR TO THE PROTECTED PERSON, OR HIS SUCCESSORS. SUBJECT TO THE REQUIREMENTS OF GENERAL STATUTES GOVERNING THE FILING OR RECORDATION OF DOCUMENTS OF TITLE TO LAND OR OTHER PROPERTY, LETTERS OF CONSERVATORSHIP AND ORDERS TERMINATING CONSERVATORSHIPS MAY BE FILED OR RECORDED TO GIVE RECORD NOTICE OF TITLE AS BETWEEN THE CONSERVATOR AND THE PROTECTED PERSON.

14-5422. **Sale, encumbrance or transaction involving conflict of interest; voidable; exceptions**

ANY SALE OR ENCUMBRANCE TO A CONSERVATOR, HIS SPOUSE, AGENT OR ATTORNEY, OR ANY CORPORATION OR TRUST IN WHICH HE HAS A SUBSTANTIAL BENEFICIAL INTEREST, OR ANY TRANSACTION WHICH IS AFFECTED BY A SUBSTANTIAL CONFLICT OF INTEREST IS VOIDABLE UNLESS THE TRANSACTION IS APPROVED BY THE COURT AFTER NOTICE TO INTERESTED PERSONS AND OTHERS AS DIRECTED BY THE COURT.

14-5423. **Persons dealing with conservators; protection**

A PERSON WHO IN GOOD FAITH EITHER ASSISTS OR DEALS WITH ANOTHER PERSON ACTING AS A CONSERVATOR, ON THE BASIS OF A COPY OF LETTERS CERTIFIED BY OR UNDER THE DIRECTION OF THE COURT OR AN OFFICER THEREOF WITHIN SIXTY DAYS OF THE TRANSACTION, IS PROTECTED AS IF THE CONSERVATOR PROPERLY EXERCISED HIS POWER AND EVEN THOUGH THE AUTHORITY OF THAT PERSON AS CONSERVATOR HAS BEEN TERMINATED. THE FACT THAT A PERSON KNOWINGLY DEALS WITH ONE WHO PURPORTS TO ACT AS A CONSERVATOR DOES NOT ALONE REQUIRE THE PERSON TO INQUIRE INTO THE EXISTENCE OF A POWER, THE PROPRIETY OF ITS EXERCISE, OR THE CURRENT AUTHORITY OF THE PURPORTED PERSONAL REPRESENTATIVE, EXCEPT THAT RESTRICTIONS ON POWERS OF CONSERVATORS WHICH ARE ENDORSED ON LETTERS AS PROVIDED IN SECTION 14-5426 ARE EFFECTIVE AS TO THIRD PERSONS. A PERSON IS NOT BOUND TO SEE TO THE PROPER APPLICATION OF ESTATE ASSETS PAID OR DELIVERED TO A CONSERVATOR. THE PROTECTION HERE EXPRESSED EXTENDS TO INSTANCES IN WHICH SOME PROCEDURAL IRREGULARITY OR JURISDICTIONAL DEFECT OCCURRED IN PROCEEDINGS LEADING TO THE ISSUANCE OF LETTERS. THE PROTECTION HERE EXPRESSED IS NOT BY SUBSTITUTION FOR THAT PROVIDED BY COMPARABLE PROVISIONS OF THE LAWS RELATING TO COMMERCIAL TRANSACTIONS AND LAWS SIMPLIFYING TRANSFERS OF SECURITIES BY FIDUCIARIES. IF PROPERTY IS WRONGFULLY TRANSFERRED BY A PERSON ACTING AS A CONSERVATOR TO A PERSON WHO IS NOT IN GOOD FAITH, ANY PERSON WHO SUBSEQUENTLY PURCHASES THE PROPERTY IN GOOD FAITH IS PROTECTED AS IF THE ORIGINAL TRANSFEREE DEALT IN GOOD FAITH.

14-5424. **Powers of conservator in administration**

A. A CONSERVATOR HAS ALL THE POWERS CONFERRED HEREIN AND ANY ADDITIONAL POWERS CONFERRED BY LAW ON TRUSTEES IN THIS STATE. IN ADDITION, A CONSERVATOR OF THE ESTATE OF AN UNMARRIED MINOR, AS TO WHOM NO ONE HAS PARENTAL RIGHTS, HAS THE DUTIES AND POWERS OF A GUARDIAN OF A MINOR DESCRIBED IN SECTION 14-5209 UNTIL THE MINOR ATTAINS THE AGE OF MAJORITY OR MARRIES, BUT THE PARENTAL RIGHTS SO CONFERRED ON A CONSERVATOR DO NOT PRECLUDE APPOINTMENT OF A GUARDIAN AS PROVIDED BY ARTICLE 2.

B. A CONSERVATOR HAS POWER WITHOUT COURT AUTHORIZATION OR CONFIRMATION, TO INVEST AND REINVEST FUNDS OF THE ESTATE AS WOULD A TRUSTEE.

C. A CONSERVATOR, ACTING REASONABLY IN EFFORTS TO ACCOMPLISH THE PURPOSE FOR WHICH HE WAS APPOINTED, MAY ACT WITHOUT COURT AUTHORIZATION OR CONFIRMATION, TO:

1. COLLECT, HOLD AND RETAIN ASSETS OF THE ESTATE INCLUDING LAND IN ANOTHER STATE, UNTIL, IN HIS JUDGMENT, DISPOSITION OF THE ASSETS SHOULD BE MADE; AND ASSETS MAY BE RETAINED EVEN THOUGH THEY INCLUDE AN ASSET IN WHICH HE IS PERSONALLY INTERESTED.

2. RECEIVE ADDITIONS TO THE ESTATE.

3. CONTINUE OR PARTICIPATE IN THE OPERATION OF ANY BUSINESS OR OTHER ENTERPRISE.

4. ACQUIRE AN UNDIVIDED INTEREST IN AN ESTATE ASSET IN WHICH THE CONSERVATOR, IN ANY FIDUCIARY CAPACITY, HOLDS AN UNDIVIDED INTEREST.

5. INVEST AND REINVEST ESTATE ASSETS IN ACCORDANCE WITH SUBSECTION B OF THIS SECTION.

6. DEPOSIT ESTATE FUNDS IN A BANK INCLUDING A BANK OPERATED BY THE CONSERVATOR.

7. ACQUIRE OR DISPOSE OF AN ESTATE ASSET INCLUDING LAND IN ANOTHER STATE FOR CASH OR ON CREDIT, AT PUBLIC

OR PRIVATE SALE; AND MANAGE, DEVELOP, IMPROVE, EXCHANGE, PARTITION, CHANGE THE CHARACTER OF OR ABANDON AN ESTATE ASSET.

8. MAKE ORDINARY OR EXTRAORDINARY REPAIRS OR ALTERATIONS IN BUILDINGS OR OTHER STRUCTURES, DEMOLISH ANY IMPROVEMENTS AND RAZE EXISTING OR ERECT NEW PARTY WALLS OR BUILDINGS.

9. SUBDIVIDE, DEVELOP, OR DEDICATE LAND TO PUBLIC USE, MAKE OR OBTAIN THE VACATION OF PLATS AND ADJUST BOUNDARIES, ADJUST DIFFERENCES IN VALUATION ON EXCHANGE, PARTITION BY GIVING OR RECEIVING CONSIDERATIONS AND DEDICATE EASEMENTS TO PUBLIC USE WITHOUT CONSIDERATION.

10. ENTER FOR ANY PURPOSE INTO A LEASE AS LESSOR OR LESSEE WITH OR WITHOUT OPTION TO PURCHASE OR RENEW FOR A TERM WITHIN OR EXTENDING BEYOND THE TERM OF THE CONSERVATORSHIP.

11. ENTER INTO A LEASE OR ARRANGEMENT FOR EXPLORATION AND REMOVAL OF MINERALS OR OTHER NATURAL RESOURCES OR ENTER INTO A POOLING OR UNITIZATION AGREEMENT.

12. GRANT AN OPTION INVOLVING DISPOSITION OF AN ESTATE ASSET, OR TAKE AN OPTION FOR THE ACQUISITION OF ANY ASSET.

13. VOTE A SECURITY, IN PERSON OR BY GENERAL OR LIMITED PROXY.

14. PAY CALLS, ASSESSMENTS AND ANY OTHER SUMS CHARGEABLE OR ACCRUING AGAINST OR ON ACCOUNT OF SECURITIES.

15. SELL OR EXERCISE STOCK SUBSCRIPTION OR CONVERSION RIGHTS; CONSENT, DIRECTLY OR THROUGH A COMMITTEE OR OTHER AGENT, TO THE REORGANIZATION, CONSOLIDATION, MERGER, DISSOLUTION OR LIQUIDATION OF A CORPORATION OR OTHER BUSINESS ENTERPRISE.

16. HOLD A SECURITY IN THE NAME OF A NOMINEE OR IN OTHER FORM WITHOUT DISCLOSURE OF THE CONSERVATORSHIP SO THAT TITLE TO THE SECURITY MAY PASS BY DELIVERY,

BUT THE CONSERVATOR IS LIABLE FOR ANY ACT OF THE NOMINEE IN CONNECTION WITH THE STOCK SO HELD.

17. INSURE THE ASSETS OF THE ESTATE AGAINST DAMAGE OR LOSS, AND THE CONSERVATOR AGAINST LIABILITY WITH RESPECT TO THIRD PERSONS.

18. BORROW MONEY TO BE REPAID FROM ESTATE ASSETS OR OTHERWISE; ADVANCE MONEY FOR THE PROTECTION OF THE ESTATE OR THE PROTECTED PERSON, AND FOR ALL EXPENSES, LOSSES, AND LIABILITY SUSTAINED IN THE ADMINISTRATION OF THE ESTATE OR BECAUSE OF THE HOLDING OR OWNERSHIP OF ANY ESTATE ASSETS, AND THE CONSERVATOR HAS A LIEN ON THE ESTATE AS AGAINST THE PROTECTED PERSON FOR ADVANCES SO MADE.

19. PAY OR CONTEST ANY CLAIM; SETTLE A CLAIM BY OR AGAINST THE ESTATE OR THE PROTECTED PERSON BY COMPROMISE, ARBITRATION, OR OTHERWISE; AND RELEASE, IN WHOLE OR IN PART, ANY CLAIM BELONGING TO THE ESTATE TO THE EXTENT THAT THE CLAIM IS UNCOLLECTIBLE.

20. PAY TAXES, ASSESSMENTS, COMPENSATION OF THE CONSERVATOR AND OTHER EXPENSES INCURRED IN THE COLLECTION, CARE, ADMINISTRATION AND PROTECTION OF THE ESTATE.

21. ALLOCATE ITEMS OF INCOME OR EXPENSE TO EITHER ESTATE INCOME OR PRINCIPAL, AS PROVIDED BY LAW, INCLUDING CREATION OF RESERVES OUT OF INCOME FOR DEPRECIATION, OBSOLESCENCE OR AMORTIZATION, OR FOR DEPLETION IN MINERAL OR TIMBER PROPERTIES.

22. PAY ANY SUM DISTRIBUTABLE TO A PROTECTED PERSON OR HHIS DEPENDENT, WITHOUT LIABILITY TO THE CONSERVATOR, BY PAYING THE SUM TO THE DISTRIBUTEE OR BY PAYING THE SUM FOR THE USE OF THE DISTRIBUTEE EITHER TO HIS GUARDIAN OR IF NONE, TO A RELATIVE OR OTHER PERSON WITH CUSTODY OF HIS PERSON.

23. EMPLOY PERSONS INCLUDING ATTORNEYS, AUDITORS, INVESTMENT ADVISORS OR AGENTS, EVEN THOUGH THEY ARE ASSOCIATED WITH THE CONSERVATOR, TO ADVISE OR ASSIST HIM IN THE PERFORMANCE OF HIS ADMINISTRATIVE DUTIES;

ACT UPON THEIR RECOMMENDATION WITHOUT INDEPENDENT INVESTIGATION; AND INSTEAD OF ACTING PERSONALLY, EMPLOY ONE OR MORE AGENTS TO PERFORM ANY ACT OF ADMINISTRATION, WHETHER OR NOT DISCRETIONARY.

24. PROSECUTE OR DEFEND ACTIONS, CLAIMS OR PROCEEDINGS IN ANY JURISDICTION FOR THE PROTECTION OF ESTATE ASSETS AND OF THE CONSERVATOR IN THE PERFORMANCE OF HIS DUTIES.

25. EXECUTE AND DELIVER ALL INSTRUMENTS WHICH WILL ACCOMPLISH OR FACILITATE THE EXERCISE OF THE POWERS VESTED IN THE CONSERVATOR.

14-5425. **Distributive duties and powers of conservator**

A. A CONSERVATOR MAY EXPEND OR DISTRIBUTE INCOME OR PRINCIPAL OF THE ESTATE WITHOUT COURT AUTHORIZATION OR CONFIRMATION FOR THE SUPPORT, EDUCATION, CARE OR BENEFIT OF THE PROTECTED PERSON AND HIS DEPENDENTS IN ACCORDANCE WITH THE FOLLOWING PRINCIPLES:

1. THE CONSERVATOR IS TO CONSIDER RECOMMENDATIONS RELATING TO THE APPROPRIATE STANDARD OF SUPPORT, EDUCATION AND BENEFIT FOR THE PROTECTED PERSON MADE BY A PARENT OR GUARDIAN, IF ANY. HE MAY NOT BE SURCHARGED FOR SUMS PAID TO PERSONS OR ORGANIZATIONS ACTUALLY FURNISHING SUPPORT, EDUCATION OR CARE TO THE PROTECTED PERSON PURSUANT TO THE RECOMMENDATIONS OF A PARENT OR GUARDIAN OF THE PROTECTED PERSON UNLESS HE KNOWS THAT THE PARENT OR GUARDIAN IS DERIVING PERSONAL FINANCIAL BENEFIT THEREFROM, INCLUDING RELIEF FROM ANY PERSONAL DUTY OF SUPPORT, OR UNLESS THE RECOMMENDATIONS ARE CLEARLY NOT IN THE BEST INTERESTS OF THE PROTECTED PERSON.

2. THE CONSERVATOR IS TO EXPEND OR DISTRIBUTE SUMS REASONABLY NECESSARY FOR THE SUPPORT, EDUCATION, CARE OR BENEFIT OF THE PROTECTED PERSON WITH DUE REGARD TO:

(a) THE SIZE OF THE ESTATE, THE PROBABLE DURATION OF THE CONSERVATORSHIP AND THE LIKELIHOOD THAT THE PROTECTED PERSON, AT SOME FUTURE TIME, MAY BE FULLY ABLE

TO MANAGE HIS AFFAIRS AND THE ESTATE WHICH HAS BEEN CONSERVED FOR HIM;

(b) THE ACCUSTOMED STANDARD OF LIVING OF THE PROTECTED PERSON AND MEMBERS OF HIS HOUSEHOLD;

(c) OTHER FUNDS OR SOURCES USED FOR THE SUPPORT OF THE PROTECTED PERSON.

3. THE CONSERVATOR MAY EXPEND FUNDS OF THE ESTATE FOR THE SUPPORT OF PERSONS LEGALLY DEPENDENT ON THE PROTECTED PERSON AND OTHERS WHO ARE MEMBERS OF THE PROTECTED PERSON'S HOUSEHOLD, WHO ARE UNABLE TO SUPPORT THEMSELVES, AND WHO ARE IN NEED OF SUPPORT. IF BENEFITS ARE BEING PAID BY THE VETERANS ADMINISTRATION TO THE CONSERVATOR, SUCH INCOME MAY BE EXPENDED ONLY FOR THE SUPPORT OF THE PROTECTED PERSON, HIS SPOUSE AND MINOR CHILDREN, EXCEPT UPON PETITION TO AND PRIOR ORDER OF THE COURT AFTER HEARING.

4. FUNDS EXPENDED UNDER THIS SUBSECTION MAY BE PAID BY THE CONSERVATOR TO ANY PERSON, INCLUDING THE PROTECTED PERSON, TO REIMBURSE FOR EXPENDITURES WHICH THE CONSERVATOR MIGHT HAVE MADE, OR IN ADVANCE FOR SERVICES TO BE RENDERED TO THE PROTECTED PERSON WHEN IT IS REASONABLE TO EXPECT THAT THEY WILL BE PERFORMED AND WHERE ADVANCE PAYMENTS ARE CUSTOMARY OR REASONABLY NECESSARY UNDER THE CIRCUMSTANCES.

B. WHEN A MINOR WHO HAS NOT BEEN ADJUDGED DISABLED UNDER SECTION 14-5401, PARAGRAPH 2, ATTAINS HIS MAJORITY, HIS CONSERVATOR, AFTER MEETING ALL PRIOR CLAIMS AND EXPENSES OF ADMINISTRATION, SHALL PAY OVER AND DISTRIBUTE ALL FUNDS AND PROPERTIES TO THE FORMER PROTECTED PERSON AS SOON AS POSSIBLE.

C. WHEN THE CONSERVATOR IS SATISFIED THAT A PROTECTED PERSON'S DISABILITY, OTHER THAN MINORITY, HAS CEASED, THE CONSERVATOR, AFTER MEETING ALL PRIOR CLAIMS AND EXPENSES OF ADMINISTRATION, SHALL PAY OVER AND DISTRIBUTE ALL FUNDS AND PROPERTIES TO THE FORMER PROTECTED PERSON AS SOON AS POSSIBLE.

D. IF A PROTECTED PERSON DIES, THE CONSERVATOR SHALL DELIVER TO THE COURT FOR SAFEKEEPING ANY WILL OF THE DECEASED PROTECTED PERSON WHICH MAY HAVE COME INTO HIS POSSESSION, INFORM THE EXECUTOR OR A BENEFICIARY NAMED THEREIN THAT HE HAS DONE SO, AND RETAIN THE ESTATE FOR DELIVERY TO A DULY APPOINTED PERSONAL REPRESENTATIVE OF THE DECEDENT OR OTHER PERSONS ENTITLED THERETO. IF AFTER FORTY DAYS FROM THE DEATH OF THE PROTECTED PERSON NO OTHER PERSON HAS BEEN APPOINTED PERSONAL REPRESENTATIVE AND NO APPLICATION OR PETITION FOR APPOINTMENT IS BEFORE THE COURT, THE CONSERVATOR MAY APPLY TO EXERCISE THE POWERS AND DUTIES OF A PERSONAL REPRESENTATIVE SO THAT HE MAY PROCEED TO ADMINISTER AND DISTRIBUTE THE DECEDENT'S ESTATE WITHOUT ADDITIONAL OR FURTHER APPOINTMENT. UPON APPLICATION FOR AN ORDER GRANTING THE POWERS OF A PERSONAL REPRESENTATIVE TO A CONSERVATOR, AFTER NOTICE TO ANY PERSON DEMANDING NOTICE UNDER SECTION 14-3204 AND TO ANY PERSON NOMINATED EXECUTOR IN ANY WILL OF WHICH THE APPLICANT IS AWARE, THE COURT MAY ORDER THE CONFERRAL OF THE POWER UPON DETERMINING THAT THERE IS NO OBJECTION, AND ENDORSE THE LETTERS OF THE CONSERVATOR TO NOTE THAT THE FORMERLY PROTECTED PERSON IS DECEASED AND THAT THE CONSERVATOR HAS ACQUIRED ALL OF THE POWERS AND DUTIES OF A PERSONAL REPRESENTATIVE. THE MAKING AND ENTRY OF AN ORDER UNDER THIS SECTION SHALL HAVE THE EFFECT OF AN ORDER OF APPOINTMENT OF A PERSONAL REPRESENTATIVE AS PROVIDED IN SECTION 14-3308 AND ARTICLES 6 THROUGH 10 OF CHAPTER 3 EXCEPT THAT ESTATE IN THE NAME OF THE CONSERVATOR, AFTER ADMINISTRATION, MAY BE DISTRIBUTED TO THE DECEDENT'S SUCCESSORS WITHOUT PRIOR RE-TRANSFER TO THE CONSERVATOR AS PERSONAL REPRESENTATIVE.

14-5426. **Enlargement or limitation of powers of conservator**

A. SUBJECT TO THE RESTRICTIONS IN SECTION 14-5408, PARAGRAPH 4, THE COURT MAY CONFER ON A CONSERVATOR AT THE TIME OF APPOINTMENT OR LATER, IN ADDITION TO THE POWERS CONFERRED ON HIM BY SECTIONS 14-5424 AND 14-5425, ANY POWER WHICH THE COURT ITSELF COULD EXERCISE UNDER SECTION 14-5408, PARAGRAPHS 2 AND 3. THE COURT MAY, AT THE TIME OF APPOINTMENT OR LATER, LIMIT THE

POWERS OF A CONSERVATOR OTHERWISE CONFERRED BY SECTIONS 14-5424 AND 14-5425, OR PREVIOUSLY CONFERRED BY THE COURT, AND MAY AT ANY TIME RELIEVE HIM OF ANY LIMITATION. IF THE COURT LIMITS ANY POWER CONFERRED ON THE CONSERVATOR BY SECTION 14-5424 OR 14-5425, THE LIMITATION SHALL BE ENDORSED UPON HIS LETTERS OF APPOINTMENT.

B. UPON APPOINTMENT OF A CONSERVATOR FOR A PROTECTED SPOUSE, THE COURT MAY DETERMINE WHETHER THE SPOUSE'S SHARE OF COMMUNITY PROPERTY SHALL BE MANAGED BY THE CONSERVATOR OR BY THE OTHER SPOUSE. IF THE COURT DETERMINES THAT THE COMMUNITY PROPERTY SHALL BE MANAGED BY THE OTHER SPOUSE, AND IF THE PROTECTED SPOUSE IS THE HUSBAND, THE WIFE MAY BECOME THE MANAGER OF THE COMMUNITY PROPERTY DURING THE CONSERVATORSHIP AND MAY DISPOSE OF COMMUNITY PERSONAL PROPERTY IN THE INTERESTS OF THE COMMUNITY.

14-5427. **Preservation of estate plan**

IN INVESTING THE ESTATE, AND IN SELECTING ASSETS OF THE ESTATE FOR DISTRIBUTION UNDER SECTION 14-5425, SUBSECTION A, IN UTILIZING POWERS OF REVOCATION OR WITHDRAWAL AVAILABLE FOR THE SUPPORT OF THE PROTECTED PERSON, AND EXERCISABLE BY THE CONSERVATOR OR THE COURT, THE CONSERVATOR AND THE COURT SHOULD TAKE INTO ACCOUNT ANY KNOWN ESTATE PLAN OF THE PROTECTED PERSON, INCLUDING HIS WILL, ANY REVOCABLE TRUST OF WHICH HE IS SETTLOR, AND ANY CONTRACT, TRANSFER OR JOINT OWNERSHIP ARRANGEMENT WITH PROVISIONS FOR PAYMENT OR TRANSFER OF BENEFITS OR INTERESTS AT HIS DEATH TO ANOTHER OR OTHERS WHICH HE MAY HAVE ORIGINATED. THE CONSERVATOR MAY EXAMINE THE WILL OF THE PROTECTED PERSON.

14-5428. **Claims against protected person; enforcement**

A. A CONSERVATOR MUST PAY FROM THE ESTATE ALL JUST CLAIMS AGAINST THE ESTATE AND AGAINST THE PROTECTED PERSON ARISING BEFORE OR AFTER THE CONSERVATORSHIP UPON THEIR PRESENTATION AND ALLOWANCE. A CLAIM MAY BE PRESENTED BY EITHER OF THE FOLLOWING METHODS:

1. THE CLAIMANT MAY DELIVER OR MAIL TO THE CONSERVATOR A WRITTEN STATEMENT OF THE CLAIM INDICATING ITS BASIS, THE NAME AND ADDRESS OF THE CLAIMANT AND THE AMOUNT CLAIMED.

2. THE CLAIMANT MAY FILE A WRITTEN STATEMENT OF THE CLAIM, IN THE FORM PRESCRIBED BY RULE, WITH THE CLERK OF THE COURT AND DELIVER OR MAIL A COPY OF THE STATEMENT TO THE CONSERVATOR.

A CLAIM IS DEEMED PRESENTED ON THE FIRST TO OCCUR OF RECEIPT OF THE WRITTEN STATEMENT OF CLAIM BY THE CONSERVATOR, OR THE FILING OF THE CLAIM WITH THE COURT. A PRESENTED CLAIM IS ALLOWED IF IT IS NOT DISALLOWED BY WRITTEN STATEMENT MAILED BY THE CONSERVATOR TO THE CLAIMANT WITHIN SIXTY DAYS AFTER ITS PRESENTATION. THE PRESENTATION OF A CLAIM TOLLS ANY STATUTE OF LIMITATION RELATING TO THE CLAIM UNTIL THIRTY DAYS AFTER ITS DISALLOWANCE.

B. A CLAIMANT WHOSE CLAIM HAS NOT BEEN PAID MAY PETITION THE COURT FOR DETERMINATION OF HIS CLAIM AT ANY TIME BEFORE IT IS BARRED BY THE APPLICABLE STATUTE OF LIMITATION AND, UPON DUE PROOF, PROCURE AN ORDER FOR ITS ALLOWANCE AND PAYMENT FROM THE ESTATE. IF A PROCEEDING IS PENDING AGAINST A PROTECTED PERSON AT THE TIME OF APPOINTMENT OF A CONSERVATOR OR IS INITIATED AGAINST THE PROTECTED PERSON THEREAFTER, THE MOVING PARTY MUST GIVE NOTICE OF THE PROCEEDING TO THE CONSERVATOR IF THE OUTCOME IS TO CONSTITUTE A CLAIM AGAINST THE ESTATE.

C. IF IT APPEARS THAT THE ESTATE IN CONSERVATORSHIP IS LIKELY TO BE EXHAUSTED BEFORE ALL EXISTING CLAIMS ARE PAID, PREFERENCE IS TO BE GIVEN TO PRIOR CLAIMS FOR THE CARE, MAINTENANCE AND EDUCATION OF THE PROTECTED PERSON OR HIS DEPENDENTS AND EXISTING CLAIMS FOR EXPENSES OF ADMINISTRATION.

14-5429. **Individual liability of conservator**

A. UNLESS OTHERWISE PROVIDED IN THE CONTRACT, A CONSERVATOR IS NOT INDIVIDUALLY LIABLE ON A CONTRACT PROPERLY ENTERED INTO IN HIS FIDUCIARY CAPACITY IN THE

COURSE OF ADMINISTRATION OF THE ESTATE UNLESS HE FAILS TO REVEAL HIS REPRESENTATIVE CAPACITY AND IDENTIFY THE ESTATE IN THE CONTRACT.

B. THE CONSERVATOR IS INDIVIDUALLY LIABLE FOR OBLIGATIONS ARISING FROM OWNERSHIP OR CONTROL OF PROPERTY OF THE ESTATE OR FOR TORTS COMMITTED IN THE COURSE OF ADMINISTRATION OF THE ESTATE ONLY IF HE IS PERSONALLY AT FAULT.

C. CLAIMS BASED ON CONTRACTS ENTERED INTO BY A CONSERVATOR IN HIS FIDUCIARY CAPACITY, ON OBLIGATIONS ARISING FROM OWNERSHIP OR CONTROL OF THE ESTATE, OR ON TORTS COMMITTED IN THE COURSE OF ADMINISTRATION OF THE ESTATE MAY BE ASSERTED AGAINST THE ESTATE BY PROCEEDING AGAINST THE CONSERVATOR IN HIS FIDUCIARY CAPACITY, WHETHER OR NOT THE CONSERVATOR IS INDIVIDUALLY LIABLE THEREFOR.

D. ANY QUESTION OF LIABILITY BETWEEN THE ESTATE AND THE CONSERVATOR INDIVIDUALLY MAY BE DETERMINED IN A PROCEEDING FOR ACCOUNTING, SURCHARGE OR INDEMNIFICATION, OR OTHER APPROPRIATE PROCEEDING OR ACTION.

14-5430. **Termination of proceeding**

THE PROTECTED PERSON, HIS PERSONAL REPRESENTATIVE, THE CONSERVATOR OR ANY OTHER INTERESTED PERSON MAY PETITION THE COURT TO TERMINATE THE CONSERVATORSHIP. A PROTECTED PERSON SEEKING TERMINATION IS ENTITLED TO THE SAME RIGHTS AND PROCEDURES AS IN AN ORIGINAL PROCEEDING FOR A PROTECTIVE ORDER. THE COURT, UPON DETERMINING AFTER NOTICE AND HEARING THAT THE MINORITY OR DISABILITY OF THE PROTECTED PERSON HAS CEASED, MAY TERMINATE THE CONSERVATORSHIP. UPON TERMINATION, TITLE TO ASSETS OF THE ESTATE PASSES TO THE FORMER PROTECTED PERSON OR TO HIS SUCCESSORS SUBJECT TO PROVISION IN THE ORDER FOR EXPENSES OF ADMINISTRATION OR TO CONVEYANCES FROM THE CONSERVATOR TO THE FORMER PROTECTED PERSON OR HIS SUCCESSORS, TO EVIDENCE THE TRANSFER.

14-5431. **Payment of debt and delivery of property to foreign conservator without local proceedings**

ANY PERSON INDEBTED TO A PROTECTED PERSON, OR HAVING POSSESSION OF PROPERTY OR OF AN INSTRUMENT EVIDENCING A DEBT, STOCK OR CHOSE IN ACTION BELONGING TO A PROTECTED PERSON MAY PAY OR DELIVER TO A CONSERVATOR, GUARDIAN OF THE ESTATE OR OTHER LIKE FIDUCIARY APPOINTED BY A COURT OF THE STATE OF RESIDENCE OF THE PROTECTED PERSON, UPON BEING PRESENTED WITH PROOF OF HIS APPOINTMENT AND AN AFFIDAVIT MADE BY HIM OR ON HIS BEHALF STATING BOTH:

1. THAT NO PROTECTIVE PROCEEDING RELATING TO THE PROTECTED PERSON IS PENDING IN THIS STATE.

2. THAT THE FOREIGN CONSERVATOR IS ENTITLED TO PAYMENT OR TO RECEIVE DELIVERY.

IF THE PERSON TO WHOM THE AFFIDAVIT IS PRESENTED IS NOT AWARE OF ANY PROTECTIVE PROCEEDING PENDING IN THIS STATE, PAYMENT OR DELIVERY IN RESPONSE TO THE DEMAND AND AFFIDAVIT DISCHARGES THE DEBTOR OR POSSESSOR.

14-5432. **Domiciliary foreign conservator; powers of local conservator**

IF NO LOCAL CONSERVATOR HAS BEEN APPOINTED AND NO PETITION IN A PROTECTIVE PROCEEDING IS PENDING IN THIS STATE, A DOMICILIARY FOREIGN CONSERVATOR MAY FILE WITH A COURT IN THIS STATE IN A COUNTY IN WHICH PROPERTY BELONGING TO THE PROTECTED PERSON IS LOCATED, AUTHENTICATED COPIES OF HIS APPOINTMENT AND OF ANY OFFICIAL BOND HE HAS GIVEN. THEREAFTER, HE MAY EXERCISE AS TO ASSETS IN THIS STATE ALL POWERS OF A LOCAL CONSERVATOR AND MAY MAINTAIN ACTIONS AND PROCEEDINGS IN THIS STATE SUBJECT TO ANY CONDITIONS IMPOSED UPON NON-RESIDENT PARTIES GENERALLY.

ARTICLE 5. POWERS OF ATTORNEY

14-5501. **When power of attorney not affected by disability**

WHENEVER A PRINCIPAL DESIGNATES ANOTHER HIS ATTORNEY-IN-FACT OR AGENT BY A POWER OF ATTORNEY IN WRITING AND THE WRITING CONTAINS THE WORDS "THIS POWER OF ATTORNEY SHALL NOT BE AFFECTED BY DISABILITY OF THE PRINCIPAL," OR "THIS POWER OF ATTORNEY SHALL

BECOME EFFECTIVE UPON THE DISABILITY OF THE PRINCIPAL," OR SIMILAR WORDS SHOWING THE INTENT OF THE PRINCIPAL THAT THE AUTHORITY CONFERRED SHALL BE EXERCISABLE NOTWITHSTANDING HIS DISABILITY, THE AUTHORITY OF THE ATTORNEY-IN-FACT OR AGENT IS EXERCISABLE BY HIM AS PROVIDED IN THE POWER ON BEHALF OF THE PRINCIPAL NOTWITHSTANDING LATER DISABILITY OR INCAPACITY OF THE PRINCIPAL AT LAW OR LATER UNCERTAINTY AS TO WHETHER THE PRINCIPAL IS DEAD OR ALIVE. ALL ACTS DONE BY THE ATTORNEY-IN-FACT OR AGENT PURSUANT TO THE POWER DURING ANY PERIOD OF DISABILITY OR INCOMPETENCE OR UNCERTAINTY AS TO WHETHER THE PRINCIPAL IS DEAD OR ALIVE HAVE THE SAME EFFECT AND INURE TO THE BENEFIT OF AND BIND THE PRINCIPAL OR HIS HEIRS, DEVISEES AND PERSONAL REPRESENTATIVE AS IF THE PRINCIPAL WERE ALIVE, COMPETENT AND NOT DISABLED. IF A CONSERVATOR THEREAFTER IS APPOINTED FOR THE PRINCIPAL, THE ATTORNEY-IN-FACT OR AGENT, DURING THE CONTINUANCE OF THE APPOINTMENT, SHALL ACCOUNT TO THE CONSERVATOR RATHER THAN THE PRINCIPAL. THE CONSERVATOR HAS THE SAME POWER THE PRINCIPAL WOULD HAVE HAD IF HE WERE NOT DISABLED OR INCOMPETENT, TO REVOKE, SUSPEND OR TERMINATE ALL OR ANY PART OF THE POWER OF ATTORNEY OR AGENCY.

14-5502. **Other powers of attorney not revoked until notice of death or disability**

A. THE DEATH, DISABILITY, OR INCOMPETENCE OF ANY PRINCIPAL WHO HAS EXECUTED A POWER OF ATTORNEY IN WRITING OTHER THAN A POWER AS DESCRIBED BY SECTION 14-5501, DOES NOT REVOKE OR TERMINATE THE AGENCY AS TO THE ATTORNEY-IN-FACT, AGENT OR OTHER PERSON WHO, WITHOUT ACTUAL KNOWLEDGE OF THE DEATH, DISABILITY OR INCOMPETENCE OF THE PRINCIPAL, ACTS IN GOOD FAITH UNDER THE POWER OF ATTORNEY OR AGENCY. ANY ACTION SO TAKEN, UNLESS OTHERWISE INVALID OR UNENFORCEABLE, BINDS THE PRINCIPAL AND HIS HEIRS, DEVISEES AND PERSONAL REPRESENTATIVES.

B. AN AFFIDAVIT, EXECUTED BY THE ATTORNEY-IN-FACT OR AGENT STATING THAT HE DID NOT HAVE, AT THE TIME OF DOING AN ACT PURSUANT TO THE POWER OF ATTORNEY, ACTUAL KNOWLEDGE OF THE REVOCATION OR TERMINATION OF THE POWER OF ATTORNEY BY DEATH, DISABILITY OR

INCOMPETENCE, IS, IN THE ABSENCE OF FRAUD, CONCLUSIVE PROOF OF THE NONREVOCATION OR NONTERMINATION OF THE POWER AT THAT TIME, IF THE EXERCISE OF THE POWER REQUIRES EXECUTION AND DELIVERY OF ANY INSTRUMENT WHICH IS RECORDABLE, THE AFFIDAVIT WHEN AUTHENTICATED FOR RECORD IS LIKEWISE RECORDABLE.

C. THIS SECTION SHALL NOT BE CONSTRUED TO ALTER OR AFFECT ANY PROVISION FOR REVOCATION OR TERMINATION CONTAINED IN THE POWER OF ATTORNEY.

ARTICLE 6. PUBLIC GUARDIAN AND CONSERVATOR

14-5601. **Establishment of public guardian and conservator**

A. EACH COUNTY BOARD OF SUPERVISORS SHALL, BY RESOLUTION OR ORDINANCE, CREATE THE OFFICE OF AND APPOINT A PUBLIC GUARDIAN AND CONSERVATOR.

B. COSTS INCURRED IN CONDUCTING THE OFFICE OF PUBLIC GUARDIAN AND CONSERVATOR SHALL BE A CHARGE AGAINST THE COUNTY.

14-5602. **Duties of public guardian and conservator; appointment**

THE COURT SHALL APPOINT A PUBLIC GUARDIAN OR CONSERVATOR FOR THOSE PERSONS IN NEED OF GUARDIANSHIP OR CONSERVATORSHIP AND FOR WHOM THERE IS NO PERSON OR CORPORATION QUALIFIED AND WILLING TO ACT IN SUCH CAPACITY.

14-5603. **Deposit of funds**

ALL FUNDS COMING INTO THE CUSTODY OF THE PUBLIC GUARDIAN AND CONSERVATOR SHALL BE DEPOSITED IN THE COUNTY TREASURY AND DISBURSED BY ORDER OF THE COURT OR SHALL BE DEPOSITED IN ONE OR MORE INSURED BANKS AUTHORIZED TO DO BUSINESS IN THE COUNTY OR INVESTED IN ONE OR MORE INSURED SAVINGS AND LOAN ASSOCIATIONS AUTHORIZED TO DO BUSINESS IN THE COUNTY, AND IF THERE ARE NO SUCH INSURED BANKS OR SUCH INSURED SAVINGS AND LOAN ASSOCIATIONS IN THE COUNTY, THEN THE PUBLIC GUARDIAN AND CONSERVATOR MAY DEPOSIT SUCH FUNDS IN ANY INSURED BANK OR INVEST SUCH FUNDS IN ANY INSURED

SAVINGS AND LOAN ASSOCIATION IN THE STATE. MONEY DEPOSITED WITH THE COUNTY TREASURER OR WITH AN INSURED BANK OR INVESTED IN AN ACCOUNT OR ACCOUNTS IN AN INSURED SAVINGS AND LOAN ASSOCIATION MAY BE WITHDRAWN ONLY UPON AN ORDER OF THE COURT.

14-5604. **Claim against estate for expenses**

THE PUBLIC GUARDIAN AND CONSERVATOR SHALL HAVE A CLAIM AGAINST THE WARD'S ESTATE FOR HIS REASONABLE EXPENSES INCURRED IN THE EXECUTION OF THE CONSERVATORSHIP, AND SUCH COMPENSATION FOR HIS SERVICES AND THOSE OF HIS ATTORNEY AS THE COURT IN WHICH HIS ACCOUNTS ARE SETTLED DEEMS JUST AND REASONABLE. ALL SUCH FUNDS RECEIVED FOR EXPENSES AND COMPENSATION SHALL BE PAID INTO THE COUNTY TREASURY TO BE CREDITED TO THE GENERAL FUND OF THE COUNTY.

CHAPTER 6.
NONPROBATE TRANSFERS
ARTICLE 1. MULTIPLE-PARTY ACCOUNTS

14-6101. **Definitions**

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "ACCOUNT" MEANS A CONTRACT OF DEPOSIT OF FUNDS BETWEEN A DEPOSITOR AND A FINANCIAL INSTITUTION, AND INCLUDES A CHECKING ACCOUNT, SAVINGS ACCOUNT, CERTIFICATE OF DEPOSIT, SHARE ACCOUNT AND OTHER LIKE ARRANGEMENT.

2. "BENEFICIARY" MEANS A PERSON NAMED IN A TRUST ACCOUNT AS ONE FOR WHOM A PARTY TO THE ACCOUNT IS NAMED AS TRUSTEE.

3. "FINANCIAL INSTITUTION" MEANS ANY ORGANIZATION AUTHORIZED TO DO BUSINESS UNDER STATE OR FEDERAL LAWS RELATING TO FINANCIAL INSTITUTIONS, INCLUDING, WITHOUT LIMITATION, BANKS, TRUST COMPANIES, SAVINGS AND LOAN ASSOCIATIONS, AND CREDIT UNIONS.

4. "JOINT ACCOUNT" MEANS AN ACCOUNT PAYABLE ON REQUEST TO ONE OR MORE OF TWO OR MORE PARTIES WHETHER OR NOT MENTION IS MADE OF ANY RIGHT OF SURVIVORSHIP.

5. "MULTIPLE-PARTY ACCOUNT" IS ANY OF THE FOLLOWING TYPES OF ACCOUNT:

(a) A JOINT ACCOUNT.

(b) A P.O.D. ACCOUNT.

(c) A TRUST ACCOUNT.

IT DOES NOT INCLUDE ACCOUNTS ESTABLISHED FOR DEPOSIT OF FUNDS OF A PARTNERSHIP, JOINT VENTURE OR OTHER ASSOCIATION FOR BUSINESS PURPOSES, OR ACCOUNTS CONTROLLED BY ONE OR MORE PERSONS AS THE DULY AUTHORIZED AGENT OR TRUSTEE FOR A CORPORATION, UNINCORPORATED ASSOCIATION, CHARITABLE OR CIVIC ORGANIZATION OR A REGULAR FIDUCIARY OR TRUST ACCOUNT IF THE RELATIONSHIP IS ESTABLISHED OTHER THAN BY DEPOSIT AGREEMENT.

6. "NET CONTRIBUTION" OF A PARTY TO A JOINT ACCOUNT AS OF ANY GIVEN TIME IS THE SUM OF ALL DEPOSITS THERETO MADE BY OR FOR HIM, LESS ALL WITHDRAWALS MADE BY OR FOR HIM WHICH HAVE NOT BEEN PAID TO OR APPLIED TO THE USE OF ANY OTHER PARTY, PLUS A PRO RATA SHARE OF ANY INTEREST OR DIVIDENDS INCLUDED IN THE CURRENT BALANCE. THE TERM INCLUDES, IN ADDITION, ANY PROCEEDS OF DEPOSIT LIFE INSURANCE ADDED TO THE ACCOUNT BY REASON OF THE DEATH OF THE PARTY WHOSE NET CONTRIBUTION IS IN QUESTION.

7. "PARTY" MEANS A PERSON WHO, BY THE TERMS OF THE ACCOUNT, HAS A PRESENT RIGHT, SUBJECT TO REQUEST, TO PAYMENT FROM A MULTIPLE-PARTY ACCOUNT. A P.O.D. PAYEE OR BENEFICIARY OF A TRUST ACCOUNT IS A PARTY ONLY AFTER THE ACCOUNT BECOMES PAYABLE TO HIM BY REASON OF HIS SURVIVING THE ORIGINAL PAYEE OR TRUSTEE. UNLESS THE CONTEXT OTHERWISE REQUIRES, IT INCLUDES A GUARDIAN, CONSERVATOR, PERSONAL REPRESENTATIVE OR ASSIGNEE, INCLUDING AN ATTACHING CREDITOR, OF A PARTY, IT ALSO INCLUDES A PERSON IDENTIFIED AS A TRUSTEE OF AN ACCOUNT FOR ANOTHER WHETHER OR NOT A BENEFICIARY IS NAMED, BUT IT DOES NOT INCLUDE ANY NAMED BENEFICIARY UNLESS HE HAS A PRESENT RIGHT OF WITHDRAWAL.

8. "PAYMENT" OF SUMS ON DEPOSIT INCLUDES WITHDRAWAL, PAYMENT ON CHECK OR OTHER DIRECTIVE OF A PARTY, AND ANY PLEDGE OF SUMS ON DEPOSIT BY A PARTY AND ANY SET-OFF, OR REDUCTION OR OTHER DISPOSITION OF ALL OR PART OF AN ACCOUNT PURSUANT TO A PLEDGE.

9. "PROOF OF DEATH" INCLUDES A DEATH CERTIFICATE OR RECORD OR REPORT WHICH IS PRIMA FACIE PROOF OF DEATH UNDER SECTION 14-1107.

10. "P.O.D. ACCOUNT" MEANS AN ACCOUNT PAYABLE ON REQUEST TO ONE PERSON DURING LIFETIME AND ON HIS DEATH TO ONE OR MORE P.O.D. PAYEES, OR TO ONE OR MORE PERSONS DURING THEIR LIFETIMES AND ON THE DEATH OF ALL OF THEM TO ONE OR MORE P.O.D. PAYEES.

11. "P.O.D. PAYEE" MEANS A PERSON DESIGNATED ON A P.O.D. ACCOUNT AS ONE TO WHOM THE ACCOUNT IS PAYABLE ON REQUEST AFTER THE DEATH OF ONE OR MORE PERSONS.

12. "REQUEST" MEANS A PROPER REQUEST FOR WITHDRAWAL, OR A CHECK OR ORDER FOR PAYMENT, WHICH COMPLIES WITH ALL CONDITIONS OF THE ACCOUNT, INCLUDING SPECIAL REQUIREMENTS CONCERNING NECESSARY SIGNATURES AND REGULATIONS OF THE FINANCIAL INSTITUTION, BUT IF THE FINANCIAL INSTITUTION CONDITIONS WITHDRAWAL OR PAYMENT ON ADVANCE NOTICE, FOR PURPOSES OF THIS ARTICLE THE REQUEST FOR WITHDRAWAL OR PAYMENT IS TREATED AS IMMEDIATELY EFFECTIVE AND A NOTICE OF INTENT TO WITHDRAW IS TREATED AS A REQUEST FOR WITHDRAWAL.

13. "SUMS ON DEPOSIT" MEANS THE BALANCE PAYABLE ON A MULTIPLE-PARTY ACCOUNT INCLUDING INTEREST, DIVIDENDS AND IN ADDITION ANY DEPOSIT LIFE INSURANCE PROCEEDS ADDED TO THE ACCOUNT BY REASON OF THE DEATH OF A PARTY.

14. "TRUST ACCOUNT" MEANS AN ACCOUNT IN THE NAME OF ONE OR MORE PARTIES AS TRUSTEE FOR ONE OR MORE BENEFICIARIES WHERE THE RELATIONSHIP IS ESTABLISHED BY THE FORM OF THE ACCOUNT AND THE DEPOSIT AGREEMENT WITH THE FINANCIAL INSTITUTION AND THERE IS NO SUBJECT OF THE TRUST OTHER THAN THE SUMS ON DEPOSIT IN THE ACCOUNT. IN A TRUST ACCOUNT IT IS NOT ESSENTIAL THAT

PAYMENT TO THE BENEFICIARY BE MENTIONED IN THE DEPOSIT AGREEMENT. A TRUST ACCOUNT DOES NOT INCLUDE A REGULAR TRUST ACCOUNT UNDER A TESTAMENTARY TRUST OR A TRUST AGREEMENT WHICH HAS SIGNIFICANCE APART FROM THE ACCOUNT, OR A FIDUCIARY ACCOUNT ARISING FROM A FIDUCIARY RELATION SUCH AS ATTORNEY-CLIENT.

15. "WITHDRAWAL" INCLUDES PAYMENT TO A THIRD PERSON PURSUANT TO CHECK OR OTHER DIRECTIVE OF A PARTY.

14-6102. **Ownership as between parties, and others; protection of financial institutions**

THE PROVISIONS OF SECTIONS 14-6103 THROUGH 14-6105 CONCERNING BENEFICIAL OWNERSHIP AS BETWEEN PARTIES, OR AS BETWEEN PARTIES AND P.O.D. PAYEES OR BENEFICIARIES OF MULTIPLE-PARTY ACCOUNTS, ARE RELEVANT ONLY TO CONTROVERSIES BETWEEN THESE PERSONS AND THEIR CREDITORS AND OTHER SUCCESSORS, AND HAVE NO BEARING ON THE POWER OF WITHDRAWAL OF THESE PERSONS AS DETERMINED BY THE TERMS OF ACCOUNT CONTRACTS. THE PROVISIONS OF SECTIONS 14-6108 THROUGH 14-6113 GOVERN THE LIABILITY OF FINANCIAL INSTITUTIONS WHO MAKE PAYMENTS PURSUANT THERETO, AND THEIR SET-OFF RIGHTS.

14-6103. **Ownership during lifetime**

A. A JOINT ACCOUNT BELONGS, DURING THE LIFETIME OF ALL PARTIES, TO THE PARTIES IN PROPORTION TO THE NET CONTRIBUTIONS BY EACH TO THE SUMS ON DEPOSIT, UNLESS THERE IS CLEAR AND CONVINCING EVIDENCE OF A DIFFERENT INTENT.

B. A P.O.D. ACCOUNT BELONGS TO THE ORIGINAL PAYEE DURING HIS LIFETIME AND NOT TO THE P.O.D. PAYEE OR PAYEES. IF TWO OR MORE PARTIES ARE NAMED AS ORIGINAL PAYEES, DURING THEIR LIFETIMES RIGHTS AS BETWEEN THEM ARE GOVERNED BY SUBSECTION A.

C. UNLESS A CONTRARY INTENT IS MANIFESTED BY THE TERMS OF THE ACCOUNT OR THE DEPOSIT AGREEMENT OR THERE IS OTHER CLEAR AND CONVINCING EVIDENCE OF AN IRREVOCABLE TRUST, A TRUST ACCOUNT BELONGS BENEFICIALLY TO THE TRUSTEE DURING HIS LIFETIME, AND IF TWO OR

MORE PARTIES ARE NAMED AS TRUSTEE ON THE ACCOUNT, DURING THEIR LIFETIMES BENEFICIAL RIGHTS AS BETWEEN THEM ARE GOVERNED BY SUBSECTION A. IF THERE IS AN IRREVOCABLE TRUST, THE ACCOUNT BELONGS BENEFICIALLY TO THE BENEFICIARY.

14-6104. **Right of survivorship**

A. SUMS REMAINING ON DEPOSIT AT THE DEATH OF A PARTY TO A JOINT ACCOUNT BELONG TO THE SURVIVING PARTY OR PARTIES AS AGAINST THE ESTATE OF THE DECEDENT UNLESS THERE IS CLEAR AND CONVINCING EVIDENCE OF A DIFFERENT INTENTION AT THE TIME THE ACCOUNT IS CREATED. IF THERE ARE TWO OR MORE SURVIVING PARTIES, THEIR RESPECTIVE OWNERSHIPS DURING LIFETIME SHALL BE IN PROPORTION TO THEIR PREVIOUS OWNERSHIP INTERESTS UNDER SECTION 14-6103 AUGMENTED BY AN EQUAL SHARE FOR EACH SURVIVOR OF ANY INTEREST THE DECEDENT MAY HAVE OWNED IN THE ACCOUNT IMMEDIATELY BEFORE HIS DEATH, AND THE RIGHT OF SURVIVORSHIP CONTINUES BETWEEN THE SURVIVING PARTIES.

B. IF THE ACCOUNT IS A P.O.D. ACCOUNT, ON DEATH OF THE ORIGINAL PAYEE OR OF THE SURVIVOR OF TWO OR MORE ORIGINAL PAYEES, ANY SUMS REMAINING ON DEPOSIT BELONG TO THE P.O.D. PAYEE OR PAYEES IF SURVIVING, OR TO THE SURVIVOR OF THEM IF ONE OR MORE DIE BEFORE THE ORIGINAL PAYEE. IF TWO OR MORE P.O.D. PAYEES SURVIVE, THERE IS NO RIGHT OF SURVIVORSHIP IN EVENT OF DEATH OF A P.O.D. PAYEE THEREAFTER UNLESS THE TERMS OF THE ACCOUNT OR DEPOSIT AGREEMENT EXPRESSLY PROVIDE FOR SURVIVORSHIP BETWEEN THEM.

C. IF THE ACCOUNT IS A TRUST ACCOUNT, ON DEATH OF THE TRUSTEE OR THE SURVIVOR OF TWO OR MORE TRUSTEES, ANY SUMS REMAINING ON DEPOSIT BELONG TO THE PERSON OR PERSONS NAMED AS BENEFICIARIES, IF SURVIVING, OR TO THE SURVIVOR OF THEM IF ONE OR MORE DIE BEFORE THE TRUSTEE, UNLESS THERE IS CLEAR AND CONVINCING EVIDENCE OF A CONTRARY INTENT. IF TWO OR MORE BENEFICIARIES SURVIVE, THERE IS NO RIGHT OF SURVIVORSHIP IN EVENT OF DEATH OF ANY BENEFICIARY THEREAFTER UNLESS THE TERMS OF THE ACCOUNT OR DEPOSIT AGREEMENT EXPRESSLY PROVIDE FOR SURVIVORSHIP BETWEEN THEM.

D. IN OTHER CASES, THE DEATH OF ANY PARTY TO A MULTIPLE-PARTY ACCOUNT HAS NO EFFECT ON BENEFICIAL OWNERSHIP OF THE ACCOUNT OTHER THAN TO TRANSFER THE RIGHTS OF THE DECEDENT AS PART OF HIS ESTATE.

E. A RIGHT OF SURVIVORSHIP ARISING FROM THE EXPRESS TERMS OF THE ACCOUNT OR UNDER THIS SECTION, A BENEFICIARY DESIGNATION IN A TRUST ACCOUNT OR A P.O.D. PAYEE DESIGNATION CANNOT BE CHANGED BY WILL.

14-6105. **Effect of written notice to financial institution**

PRIOR TO DEATH OF A PARTY, THE FORM OF AN ACCOUNT MAY BE ALTERED BY WRITTEN ORDER TO CHANGE THE FORM OR TO STOP OR VARY PAYMENT UNDER THE TERMS OF THE ACCOUNT. THE ORDER MUST BE SIGNED BY A PARTY, RECEIVED BY THE FINANCIAL INSTITUTION PRIOR TO THE DEATH, AND NOT COUNTERMANDED BY OTHER WRITTEN ORDER OF THE SAME PARTY PRIOR TO THE DEATH. AT THE DEATH OF A PARTY, RIGHTS OF SURVIVORSHIP UNDER SECTION 14-6104 ARE DETERMINED BY THE FORM OF THE ACCOUNT AT THAT TIME.

14-6106. **Accounts and transfers nontestamentary**

ANY TRANSFERS RESULTING FROM THE APPLICATION OF SECTION 14-6104 ARE EFFECTIVE BY REASON OF THE ACCOUNT CONTRACTS INVOLVED AND THIS ARTICLE AND ARE NOT TO BE CONSIDERED AS TESTAMENTARY OR SUBJECT TO CHAPTERS 2 THROUGH 4 OF THIS TITLE.

14-6107. **Rights of creditors**

A. NO MULTIPLE-PARTY ACCOUNT WILL BE EFFECTIVE AGAINST AN ESTATE OF A DECEASED PARTY TO TRANSFER TO A SURVIVOR SUMS NEEDED TO PAY DEBTS, TAXES AND EXPENSES OF ADMINISTRATION, INCLUDING STATUTORY ALLOWANCES TO THE SURVIVING SPOUSE AND DEPENDENT CHILDREN, IF OTHER ASSETS OF THE ESTATE ARE INSUFFICIENT.

B. A SURVIVING PARTY, P.O.D. PAYEE OR BENEFICIARY WHO RECEIVES PAYMENT FROM A MULTIPLE-PARTY ACCOUNT AFTER THE DEATH OF A DECEASED PARTY SHALL BE LIABLE TO ACCOUNT TO THE DECEASED PARTY'S PERSONAL REPRESENTATIVE FOR AMOUNTS THE DECEDENT OWNED BENEFICIALLY

IMMEDIATELY BEFORE HIS DEATH TO THE EXTENT NECESSARY TO DISCHARGE THE CLAIMS AND CHARGES MENTIONED IN SUBSECTION A REMAINING UNPAID AFTER APPLICATION OF THE DECEDENT'S ESTATE. NO PROCEEDING TO ASSERT THIS LIABILITY SHALL BE COMMENCED UNLESS THE PERSONAL REPRESENTATIVE HAS RECEIVED A WRITTEN DEMAND BY A SURVIVING SPOUSE, A CREDITOR OR ONE ACTING FOR A DEPENDENT CHILD OF THE DECEDENT, AND NO PROCEEDING SHALL BE COMMENCED LATER THAN TWO YEARS FOLLOWING THE DEATH OF THE DECEDENT. SUMS RECOVERED BY THE PERSONAL REPRESENTATIVE SHALL BE ADMINISTERED AS PART OF THE DECEDENT'S ESTATE.

C. THIS SECTION SHALL NOT AFFECT THE RIGHT OF A FINANCIAL INSTITUTION TO MAKE PAYMENT ON MULTIPLE-PARTY ACCOUNTS ACCORDING TO THE TERMS THEREOF, OR MAKE IT LIABLE TO THE ESTATE OF A DECEASED PARTY UNLESS BEFORE PAYMENT THE INSTITUTION HAS BEEN SERVED WITH PROCESS IN A PROCEEDING BY THE PERSONAL REPRESENTATIVE.

14-6108. **Financial institution protection; payment on signature of one party**

FINANCIAL INSTITUTIONS MAY ENTER INTO MULTIPLE-PARTY ACCOUNTS TO THE SAME EXTENT THAT THEY MAY ENTER INTO SINGLE-PARTY ACCOUNTS. ANY MULTIPLE-PARTY ACCOUNT MAY BE PAID, ON REQUEST, TO ANY ONE OR MORE OF THE PARTIES. A FINANCIAL INSTITUTION SHALL NOT BE REQUIRED TO INQUIRE AS TO THE SOURCE OF FUNDS RECEIVED FOR DEPOSIT TO A MULTIPLE-PARTY ACCOUNT, OR TO INQUIRE AS TO THE PROPOSED APPLICATION OF ANY SUM WITHDRAWN FROM AN ACCOUNT, FOR PURPOSES OF ESTABLISHING NET CONTRIBUTIONS.

14-6109. **Financial institution protection; payment after death or disability; joint account**

ANY SUMS IN A JOINT ACCOUNT MAY BE PAID, ON REQUEST, TO ANY PARTY WITHOUT REGARD TO WHETHER ANY OTHER PARTY IS INCAPACITATED OR DECEASED AT THE TIME THE PAYMENT IS DEMANDED, BUT PAYMENT MAY NOT BE MADE TO THE PERSONAL REPRESENTATIVE OR HEIRS OF A DECEASED PARTY UNLESS PROOF OF DEATH IS PRESENTED TO THE FINANCIAL INSTITUTION SHOWING THAT THE DECEDENT WAS

THE LAST SURVIVING PARTY OR UNLESS THERE IS NO RIGHT OF SURVIVORSHIP UNDER SECTION 14-6104.

14-6110. **Financial institution protection; payment of P.O.D. account**

ANY P.O.D. ACCOUNT MAY BE PAID, ON REQUEST, TO ANY ORIGINAL PARTY TO THE ACCOUNT. PAYMENT MAY BE MADE, ON REQUEST, TO THE P.O.D. PAYEE OR TO THE PERSONAL REPRESENTATIVE OR HEIRS OF A DECEASED P.O.D. PAYEE UPON PRESENTATION TO THE FINANCIAL INSTITUTION OF PROOF OF DEATH SHOWING THAT THE P.O.D. PAYEE SURVIVED ALL PERSONS NAMED AS ORIGINAL PAYEES. PAYMENT MAY BE MADE TO THE PERSONAL REPRESENTATIVE OR HEIRS OF A DECEASED ORIGINAL PAYEE IF PROOF OF DEATH IS PRESENTED TO THE FINANCIAL INSTITUTION SHOWING THAT HIS DECEDENT WAS THE SURVIVOR OF ALL OTHER PERSONS NAMED ON THE ACCOUNT EITHER AS AN ORIGINAL PAYEE OR AS P.O.D. PAYEE.

14-6111. **Financial institution protection; payment of trust account**

ANY TRUST ACCOUNT MAY BE PAID, ON REQUEST, TO ANY TRUSTEE. UNLESS THE FINANCIAL INSTITUTION HAS RECEIVED WRITTEN NOTICE THAT THE BENEFICIARY HAS A VESTED INTEREST NOT DEPENDENT UPON HIS SURVIVING THE TRUSTEE, PAYMENT MAY BE MADE TO THE PERSONAL REPRESENTATIVE OR HEIRS OF A DECEASED TRUSTEE IF PROOF OF DEATH IS PRESENTED TO THE FINANCIAL INSTITUTION SHOWING THAT HIS DECEDENT WAS THE SURVIVOR OF ALL OTHER PERSONS NAMED ON THE ACCOUNT EITHER AS TRUSTEE OR BENEFICIARY. PAYMENT MAY BE MADE, ON REQUEST, TO THE BENEFICIARY UPON PRESENTATION TO THE FINANCIAL INSTITUTION OF PROOF OF DEATH SHOWING THAT THE BENEFICIARY OR BENEFICIARIES SURVIVED ALL PERSONS NAMED AS TRUSTEES.

14-6112. **Financial institution protection; discharge**

ANY PAYMENT MADE PURSUANT TO SECTIONS 14-6108 THROUGH 14-6111 DISCHARGES THE FINANCIAL INSTITUTION FROM ALL CLAIMS FOR AMOUNTS SO PAID WHETHER OR NOT THE PAYMENT IS CONSISTENT WITH THE BENEFICIAL OWNERSHIP OF THE ACCOUNT AS BETWEEN PARTIES, P.O.D. PAYEES OR BENEFICIARIES OR THEIR SUCCESSORS. THE PROTECTION HERE GIVEN DOES NOT EXTEND TO PAYMENTS MADE AFTER A FINANCIAL INSTITUTION HAS RECEIVED WRITTEN NOTICE

FROM ANY PARTY ABLE TO REQUEST PRESENT PAYMENT TO THE EFFECT THAT WITHDRAWALS IN ACCORDANCE WITH THE TERMS OF THE ACCOUNT SHOULD NOT BE PERMITTED. UNLESS THE NOTICE IS WITHDRAWN BY THE PERSON GIVING IT, THE SUCCESSOR OF ANY DECEASED PARTY MUST CONCUR IN ANY DEMAND FOR WITHDRAWAL IF THE FINANCIAL INSTITUTION IS TO BE PROTECTED UNDER THIS SECTION. NO OTHER NOTICE OR ANY OTHER INFORMATION SHOWN TO HAVE BEEN AVAILABLE TO A FINANCIAL INSTITUTION SHALL AFFECT ITS RIGHT TO THE PROTECTION PROVIDED BY THIS SECTION. THE PROTECTION PROVIDED BY THIS SECTION SHALL HAVE NO BEARING ON THE RIGHTS OF PARTIES IN DISPUTES BETWEEN THEMSELVES OR THEIR SUCCESSORS CONCERNING THE BENEFICIAL OWNERSHIP OF FUNDS IN, OR WITHDRAWN FROM, MULTIPLE-PARTY ACCOUNTS AND IS IN ADDITION TO, AND NOT EXCLUSIVE OF, ANY PROTECTION PROVIDED THE FINANCIAL INSTITUTION BY ANY OTHER PROVISION OF LAW.

14-6113. **Financial institution protection; set-off**

WITHOUT QUALIFYING ANY OTHER STATUTORY RIGHT TO SET-OFF OR LIEN AND SUBJECT TO ANY CONTRACTUAL PROVISION, IF A PARTY TO A MULTIPLE-PARTY ACCOUNT IS INDEBTED TO A FINANCIAL INSTITUTION, THE FINANCIAL INSTITUTION HAS A RIGHT TO SET-OFF AGAINST THE ACCOUNT IN WHICH THE PARTY HAS OR HAD IMMEDIATELY BEFORE HIS DEATH A PRESENT RIGHT OF WITHDRAWAL. THE AMOUNT OF THE ACCOUNT SUBJECT TO SET-OFF IS THAT PROPORTION TO WHICH THE DEBTOR IS, OR WAS IMMEDIATELY BEFORE HIS DEATH, BENEFICIALLY ENTITLED, AND IN THE ABSENCE OF PROOF OF NET CONTRIBUTIONS, TO AN EQUAL SHARE WITH ALL PARTIES HAVING PRESENT RIGHTS OF WITHDRAWAL.

14-6114. **Rights in community property**

NOTHING IN THIS CHAPTER DEFEATS THE RIGHTS OF A SPOUSE IN COMMUNITY PROPERTY.

ARTICLE 2. PROVISIONS RELATING TO EFFECT OF DEATH

14-6201. **Provisions for payment or transfer at death**

A. ANY OF THE FOLLOWING PROVISIONS IN AN INSURANCE POLICY, CONTRACT OF EMPLOYMENT, BOND, MORTGAGE,

PROMISSORY NOTE, DEPOSIT AGREEMENT, PENSION PLAN, TRUST AGREEMENT, CONVEYANCE OR ANY OTHER WRITTEN INSTRUMENT EFFECTIVE AS A CONTRACT, GIFT, CONVEYANCE, OR TRUST IS DEEMED TO BE NONTESTAMENTARY, AND THIS TITLE DOES NOT INVALIDATE THE INSTRUMENT OR ANY PROVISION:

1. THAT MONEY OR OTHER BENEFITS THERETOFORE DUE TO, CONTROLLED OR OWNED BY A DECEDENT SHALL BE PAID AFTER HIS DEATH TO A PERSON DESIGNATED BY THE DECEDENT IN EITHER THE INSTRUMENT OR A SEPARATE WRITING, INCLUDING A WILL, EXECUTED AT THE SAME TIME AS THE INSTRUMENT OR SUBSEQUENTLY.

2. THAT ANY MONEY DUE OR TO BECOME DUE UNDER THE INSTRUMENT SHALL CEASE TO BE PAYABLE IN EVENT OF THE DEATH OF THE PROMISEE OR THE PROMISSOR BEFORE PAYMENT OR DEMAND.

3. THAT ANY PROPERTY WHICH IS THE SUBJECT OF THE INSTRUMENT SHALL PASS TO A PERSON DESIGNATED BY THE DECEDENT IN EITHER THE INSTRUMENT OR A SEPARATE WRITING, INCLUDING A WILL, EXECUTED AT THE SAME TIME AS THE INSTRUMENT OR SUBSEQUENTLY.

B. NOTHING IN THIS SECTION LIMITS THE RIGHTS OF CREDITORS UNDER OTHER LAWS OF THIS STATE.

C. ANY PROVISION IN A LEASE OF A SAFETY DEPOSIT REPOSITORY TO THE EFFECT THAT TWO OR MORE PERSONS SHALL HAVE ACCESS TO THE REPOSITORY, OR THAT PURPORTS TO CREATE A JOINT TENANCY IN THE REPOSITORY OR IN THE CONTENTS OF THE REPOSITORY, OR THAT PURPORTS TO VEST OWNERSHIP OF THE CONTENTS OF THE REPOSITORY IN THE SURVIVING LESSEE, IS INEFFECTIVE TO CREATE JOINT OWNERSHIP OF THE CONTENTS OF THE REPOSITORY OR TO TRANSFER OWNERSHIP AT DEATH OF ONE OF THE LESSEES TO THE SURVIVOR. OWNERSHIP OF THE CONTENTS OF THE REPOSITORY AND DEVOLUTION OF TITLE TO THOSE CONTENTS IS DETERMINED ACCORDING TO RULES OF LAW WITHOUT REGARD TO THE LEASE PROVISIONS.

LAWS OF ARIZONA

CHAPTER 7
TRUST ADMINISTRATION
ARTICLE 1. (BLANK)
ARTICLE 2. PROCEEDINGS CONCERNING TRUSTS

14-7201. **Court; exclusive jurisdiction of trusts**

A. THE COURT HAS EXCLUSIVE JURISDICTION OF PROCEEDINGS INITIATED BY INTERESTED PARTIES CONCERNING THE INTERNAL AFFAIRS OF TRUSTS. PROCEEDINGS WHICH MAY BE MAINTAINED UNDER THIS SECTION ARE THOSE CONCERNING THE ADMINISTRATION AND DISTRIBUTION OF TRUSTS, THE DECLARATION OF RIGHTS AND THE DETERMINATION OF OTHER MATTERS INVOLVING TRUSTEES AND BENEFICIARIES OF TRUSTS. THESE INCLUDE, BUT ARE NOT LIMITED TO, PROCEEDINGS TO:

1. APPOINT OR REMOVE A TRUSTEE.

2. REVIEW TRUSTEES' FEES AND REVIEW AND SETTLE INTERIM OR FINAL ACCOUNTS.

3. ASCERTAIN BENEFICIARIES, DETERMINE ANY QUESTION ARISING IN THE ADMINISTRATION OR DISTRIBUTION OF ANY TRUST INCLUDING QUESTIONS OF CONSTRUCTION OF TRUST INSTRUMENTS, INSTRUCT TRUSTEES AND DETERMINE THE EXISTENCE OR NONEXISTENCE OF ANY IMMUNITY, POWER, PRIVILEGE, DUTY OR RIGHT.

4. ORDER TRANSFER OF ADMINISTRATION OF THE TRUST TO ANOTHER STATE UPON APPROPRIATE CONDITIONS AS MAY BE DETERMINED BY THE COURT, OR ACCEPT TRANSFER OF ADMINISTRATION OF A TRUST FROM ANOTHER STATE TO THIS STATE UPON SUCH CONDITIONS AS MAY BE IMPOSED BY THE SUPERVISING COURT OF THE OTHER STATE, UNLESS THE COURT IN THIS STATE DETERMINES THAT SUCH CONDITIONS ARE INCOMPATIBLE WITH ITS OWN RULES AND PROCEDURES.

B. A PROCEEDING UNDER THIS SECTION DOES NOT RESULT IN CONTINUING SUPERVISION BY THE COURT OVER THE ADMINISTRATION OF THE TRUST. THE MANAGEMENT AND DISTRIBUTION OF A TRUST ESTATE, SUBMISSION OF ACCOUNTS AND REPORTS TO BENEFICIARIES, PAYMENT OF TRUSTEE'S FEES AND OTHER OBLIGATIONS OF A TRUST, ACCEPTANCE AND

CHANGE OF TRUSTEESHIP AND OTHER ASPECTS OF THE ADMINISTRATION OF A TRUST SHALL PROCEED EXPEDITIOUSLY CONSISTENT WITH THE TERMS OF THE TRUST, FREE OF JUDICIAL INTERVENTION AND WITHOUT ORDER, APPROVAL OR OTHER ACTION OF ANY COURT, SUBJECT TO THE JURISDICTION OF THE COURT AS INVOKED BY INTERESTED PARTIES OR AS OTHERWISE EXERCISED AS PROVIDED BY LAW.

14-7202. **Effect of administration in this state; consent to jurisdiction**

A. BY ACCEPTING THE TRUSTEESHIP OF A TRUST OF WHICH THE PRINCIPAL PLACE OF ADMINISTRATION IS IN THIS STATE, OR BY MOVING THE PRINCIPAL PLACE OF ADMINISTRATION OF A TRUST TO THIS STATE, THE TRUSTEE SUBMITS PERSONALLY TO THE JURISDICTION OF THE COURTS OF THIS STATE IN ANY PROCEEDING UNDER SECTION 14-7201 AS TO ANY MATTER RELATING TO THE TRUST ARISING WHILE THE PRINCIPAL PLACE OF ADMINISTRATION IS LOCATED IN THIS STATE.

B. TO THE EXTENT OF THE BENEFICIAL INTERESTS IN A TRUST OF WHICH THE PRINCIPAL PLACE OF ADMINISTRATION IS IN THIS STATE, THE BENEFICIARIES OF THE TRUST ARE SUBJECT TO THE JURISDICTION OF THE COURTS OF THIS STATE FOR PURPOSES OF PROCEEDINGS UNDER SECTION 14-7201.

C. UNLESS OTHERWISE DESIGNATED IN THE TRUST INSTRUMENT, THE PRINCIPAL PLACE OF ADMINISTRATION OF A TRUST IS THE TRUSTEE'S USUAL PLACE OF BUSINESS WHERE THE RECORDS PERTAINING TO THE TRUST ARE KEPT, OR AT THE TRUSTEE'S RESIDENCE IF HE HAS NO SUCH PLACE OF BUSINESS. IN THE CASE OF CO-TRUSTEES, THE PRINCIPAL PLACE OF ADMINISTRATION, IF NOT OTHERWISE DESIGNATED IN THE TRUST INSTRUMENT, IS:

1. THE USUAL PLACE OF BUSINESS OF THE CORPORATE TRUSTEE IF THERE IS BUT ONE CORPORATE CO-TRUSTEE.

2. THE USUAL PLACE OF BUSINESS OR RESIDENCE OF THE INDIVIDUAL TRUSTEE WHO IS A PROFESSIONAL FIDUCIARY IF THERE IS BUT ONE SUCH PERSON AND NO CORPORATE CO-TRUSTEE.

3. THE USUAL PLACE OF BUSINESS OR RESIDENCE OF ANY OF THE CO-TRUSTEES AS AGREED UPON BY THEM.

14-7203. **Trust proceedings; venue**

VENUE FOR PROCEEDINGS UNDER SECTION 14-7201 IS IN THE COUNTY WHERE THE TRUST HAS ITS PRINCIPAL PLACE OF ADMINISTRATION OF THE TRUST, OR AS OTHERWISE PROVIDED BY THE RULES OF CIVIL PROCEDURE.

14-7204. **Trust proceedings; initiation by notice; necessary parties**

PROCEEDINGS UNDER SECTION 14-7201 ARE INITIATED BY FILING A PETITION IN THE COURT AND GIVING NOTICE PURSUANT TO SECTION 14-1401 TO INTERESTED PARTIES. NOTICE TO THE TRUSTEE BY MAIL MAY BE ADDRESSED TO HIM AT THE PRINCIPAL PLACE OF ADMINISTRATION OF THE TRUST AS DEFINED IN SECTION 14-7202, SUBSECTION C. THE COURT MAY ORDER NOTIFICATION OF ADDITIONAL PERSONS. A DECREE IS VALID AS TO ALL WHO ARE GIVEN NOTICE OF THE PROCEEDING THOUGH FEWER THAN ALL INTERESTED PARTIES ARE NOTIFIED.

14-7205. **Trust proceedings; dismissal of matters relating to foreign trusts**

THE COURT WILL NOT, OVER THE OBJECTION OF A PARTY, ENTERTAIN PROCEEDINGS UNDER SECTION 14-7201 INVOLVING A TRUST WHICH IS UNDER THE CONTINUING SUPERVISION OF A FOREIGN COURT, IS REGISTERED IN ANOTHER STATE OR HAS ITS PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE, EXCEPT:

1. IF ALL APPROPRIATE PARTIES COULD NOT BE BOUND BY LITIGATION IN THE COURTS OF THE OTHER STATE.

2. IF THE INTERESTS OF JUSTICE WOULD BE SERIOUSLY IMPAIRED. THE COURT MAY CONDITION A STAY OR DISMISSAL OF A PROCEEDING ON THE CONSENT OF ANY PARTY TO THE JURISDICTION OF THE COURTS OF ANOTHER STATE, OR THE COURT MAY GRANT A CONTINUANCE OR ENTER ANY OTHER APPROPRIATE ORDER.

14-7206. **Proceedings for review of employment of agents and review of compensation of trustee and employees of trust**

ON PETITION OF AN INTERESTED PERSON, AFTER NOTICE TO ALL INTERESTED PERSONS, THE COURT MAY REVIEW THE

PROPRIETY OF EMPLOYMENT OF ANY PERSON BY A TRUSTEE INCLUDING ANY ATTORNEY, AUDITOR, INVESTMENT ADVISOR OR OTHER SPECIALIZED AGENT OR ASSISTANT, AND THE REASONABLENESS OF THE COMPENSATION OF ANY PERSON SO EMPLOYED, AND THE REASONABLENESS OF THE COMPENSATION DETERMINED BY THE TRUSTEE FOR HIS OWN SERVICES. ANY PERSON WHO HAS RECEIVED EXCESSIVE COMPENSATION FROM A TRUST MAY BE ORDERED TO MAKE APPROPRIATE REFUNDS.

14-7207. **Concurrent jurisdiction of litigation involving trusts and third parties**

THE COURT OF THE PLACE OF PRINCIPAL ADMINISTRATION OF THE TRUST HAS CONCURRENT JURISDICTION WITH OTHER COURTS OF THIS STATE OVER ACTIONS OR PROCEEDINGS TO DETERMINE THE EXISTENCE OR NONEXISTENCE OF TRUSTS CREATED OTHER THAN BY WILL, OF ACTIONS BY OR AGAINST CREDITORS OR DEBTORS OF TRUSTS, AND OF OTHER ACTIONS AND PROCEEDINGS INVOLVING TRUSTEES AND THIRD PARTIES. VENUE IS DETERMINED BY THE RULES GENERALLY APPLICABLE TO CIVIL ACTIONS.

ARTICLE 3. DUTIES AND LIABILITIES OF TRUSTEES

14-7301. **General duties not limited**

EXCEPT AS SPECIFICALLY PROVIDED, THE GENERAL DUTY OF THE TRUSTEE TO ADMINISTER A TRUST EXPEDITIOUSLY FOR THE BENEFIT OF THE BENEFICIARIES IS NOT ALTERED BY THIS TITLE.

14-7302. **Trustee's standard of care and performance**

EXCEPT AS OTHERWISE PROVIDED BY THE TERMS OF THE TRUST, THE TRUSTEE SHALL OBSERVE THE STANDARD IN DEALING WITH THE TRUST ASSETS THAT WOULD BE OBSERVED BY A PRUDENT MAN DEALING WITH THE PROPERTY OF ANOTHER, AND IF THE TRUSTEE HAS SPECIAL SKILLS OR IS NAMED TRUSTEE ON THE BASIS OF REPRESENTATIONS OF SPECIAL SKILLS OR EXPERTISE, HE IS UNDER A DUTY TO USE THOSE SKILLS.

14-7303. **Duty to inform and account to beneficiaries**

THE TRUSTEE SHALL KEEP THE BENEFICIARIES OF THE TRUST REASONABLY INFORMED OF THE TRUST AND ITS ADMINISTRATION. IN ADDITION:

1. WITHIN THIRTY DAYS AFTER HIS ACCEPTANCE OF THE TRUST, THE TRUSTEE SHALL INFORM IN WRITING THE BENEFICIARIES CURRENTLY ENTITLED TO RECEIVE INCOME, OF THE TRUSTEE'S NAME AND ADDRESS.

2. UPON REASONABLE REQUEST, THE TRUSTEE SHALL PROVIDE THE BENEFICIARY WITH A COPY OF THE TERMS OF THE TRUST WHICH DESCRIBE OR AFFECT HIS INTEREST AND WITH RELEVANT INFORMATION ABOUT THE ASSETS OF THE TRUST AND THE PARTICULARS RELATING TO THE ADMINISTRATION.

3. UPON REASONABLE REQUEST, A BENEFICIARY IS ENTITLED TO A STATEMENT OF THE ACCOUNTS OF THE TRUST ANNUALLY AND ON TERMINATION OF THE TRUST OR CHANGE OF THE TRUSTEE.

14-7304. **Duty to provide bond**

A TRUSTEE NEED NOT PROVIDE BOND TO SECURE PERFORMANCE OF HIS DUTIES UNLESS REQUIRED BY THE TERMS OF THE TRUST, REASONABLY REQUESTED BY A BENEFICIARY OR FOUND BY THE COURT TO BE NECESSARY TO PROTECT THE INTERESTS OF THE BENEFICIARIES WHO ARE NOT ABLE TO PROTECT THEMSELVES AND WHOSE INTERESTS OTHERWISE ARE NOT ADEQUATELY REPRESENTED. ON PETITION OF THE TRUSTEE OR OTHER INTERESTED PERSON THE COURT MAY EXCUSE A REQUIREMENT OF BOND, REDUCE THE AMOUNT OF THE BOND, RELEASE THE SURETY OR PERMIT THE SUBSTITUTION OF ANOTHER BOND WITH THE SAME OR DIFFERENT SURETIES. IF BOND IS REQUIRED, IT SHALL BE FILED IN THE COURT OF THE COUNTY WHERE THE TRUST HAS ITS PRINCIPAL PLACE OF ADMINISTRATION, OR OTHER APPROPRIATE COURT, IN AMOUNTS AND WITH SURETIES AND LIABILITIES AS PROVIDED IN SECTIONS 14-3604 AND 14-3606 RELATING TO BONDS OF PERSONAL REPRESENTATIVES.

14-7305. **Trustee's duties; appropriate place of administration; deviation**

A TRUSTEE IS UNDER A CONTINUING DUTY TO ADMINISTER THE TRUST AT A PLACE APPROPRIATE TO THE PURPOSES OF THE

TRUST AND TO ITS SOUND, EFFICIENT MANAGEMENT. IF THE PRINCIPAL PLACE OF ADMINISTRATION BECOMES INAPPROPRIATE FOR ANY REASON, THE COURT MAY ENTER ANY ORDER FURTHERING EFFICIENT ADMINISTRATION AND THE INTERESTS OF BENEFICIARIES, INCLUDING, IF APPROPRIATE, REMOVAL OF THE TRUSTEE AND APPOINTMENT OF A TRUSTEE IN ANOTHER STATE. TRUST PROVISIONS RELATING TO THE PLACE OF ADMINISTRATION AND TO CHANGES IN THE PLACE OF ADMINISTRATION OR OF TRUSTEE CONTROL UNLESS COMPLIANCE WOULD BE CONTRARY TO EFFICIENT ADMINISTRATION OR THE PURPOSES OF THE TRUST. VIEWS OF ADULT BENEFICIARIES SHALL BE GIVEN WEIGHT IN DETERMINING THE SUITABILITY OF THE TRUSTEE AND THE PLACE OF ADMINISTRATION.

14-7306. **Personal liability of trustee to third parties**

A. UNLESS OTHERWISE PROVIDED IN THE CONTRACT, A TRUSTEE IS NOT PERSONALLY LIABLE ON CONTRACTS PROPERLY ENTERED INTO IN HIS FIDUCIARY CAPACITY IN THE COURSE OF ADMINISTRATION OF THE TRUST ESTATE UNLESS HE FAILS TO REVEAL HIS REPRESENTATIVE CAPACITY AND IDENTIFY THE TRUST ESTATE IN THE CONTRACT.

B. A TRUSTEE IS PERSONALLY LIABLE FOR OBLIGATIONS ARISING FROM OWNERSHIP OR CONTROL OF PROPERTY OF THE TRUST ESTATE OR FOR TORTS COMMITTED IN THE COURSE OF ADMINISTRATION OF THE TRUST ESTATE ONLY IF HE IS PERSONALLY AT FAULT.

C. CLAIMS BASED ON CONTRACTS ENTERED INTO BY A TRUSTEE IN HIS FIDUCIARY CAPACITY, ON OBLIGATIONS ARISING FROM OWNERSHIP OR CONTROL OF THE TRUST ESTATE, OR ON TORTS COMMITTED IN THE COURSE OF TRUST ADMINISTRATION MAY BE ASSERTED AGAINST THE TRUST ESTATE BY PROCEEDING AGAINST THE TRUSTEE IN HIS FIDUCIARY CAPACITY, WHETHER OR NOT THE TRUSTEE IS PERSONALLY LIABLE THEREFOR.

D. THE QUESTION OF LIABILITY AS BETWEEN THE TRUST ESTATE AND THE TRUSTEE INDIVIDUALLY MAY BE DETERMINED IN A PROCEEDING FOR ACCOUNTING, SURCHARGE OR INDEMNIFICATION OR OTHER APPROPRIATE PROCEEDING.

14-7307. **Limitations on proceedings against trustees after final account**

UNLESS PREVIOUSLY BARRED BY ADJUDICATION, CONSENT OR LIMITATION, ANY CLAIM AGAINST A TRUSTEE FOR BREACH OF TRUST IS BARRED AS TO ANY BENEFICIARY WHO HAS RECEIVED A FINAL ACCOUNT OR OTHER STATEMENT FULLY DISCLOSING THE MATTER AND SHOWING TERMINATION OF THE TRUST RELATIONSHIP BETWEEN THE TRUSTEE AND THE BENEFICIARY UNLESS A PROCEEDING TO ASSERT THE CLAIM IS COMMENCED WITHIN SIX MONTHS AFTER RECEIPT OF THE FINAL ACCOUNT OR STATEMENT. IN ANY EVENT AND NOTWITHSTANDING LACK OF FULL DISCLOSURE A TRUSTEE WHO HAS ISSUED A FINAL ACCOUNT OR STATEMENT RECEIVED BY THE BENEFICIARY AND HAS INFORMED THE BENEFICIARY OF THE LOCATION AND AVAILABILITY OF RECORDS FOR HIS EXAMINATION IS PROTECTED AFTER THREE YEARS. A BENEFICIARY IS DEEMED TO HAVE RECEIVED A FINAL ACCOUNT OR STATEMENT IF, BEING AN ADULT, IT IS RECEIVED BY HIM PERSONALLY OR IF, BEING A MINOR OR DISABLED PERSON, IT IS RECEIVED BY HIS REPRESENTATIVE AS DESCRIBED IN SECTION 14-1403, PARAGRAPH 2.

Sec. 5. Section 6-433, Arizona Revised Statutes, is amended to read:

6-433. **Payment on disability or death of holder in his own right of account**

A. If the holder in his own right of an account becomes ~~incompetent and adjudication thereof has been made~~ DISABLED AND A CONSERVATOR HAS BEEN APPOINTED, by a court of competent jurisdiction, AND HAS QUALIFIED then the association may pay the value of such account and dividends thereon~~:~~ TO THE CONSERVATOR.

~~1. To the guardian of the estate of such holder in his own right upon his appointment by a court of competent jurisdiction and his qualification.~~

~~2. In the case of small estates as defined in section 14-501 where the appointment of a personal representative is unnecessary, then to the persons entitled thereto in accordance with the provisions of that section.~~ Until the association has actual knowledge that ~~such holder has been adjudicated incompetent~~ A CONSERVATOR HAS BEEN APPOINTED, it may pay to ~~him~~ THE PROTECTED PERSON personally and his receipt or acquittance therefor shall be a complete discharge of the association as to the amount so paid.

B. Upon the death of a holder in his own right of an account, the association, upon receipt of proper estate tax waivers, may pay the value thereof and dividends thereon:

1. To the personal representative of such deceased holder, if and when qualified, in the manner provided in this chapter for the voluntary withdrawal of account generally.

~~2. In the case of small estates as defined by section 14-501 where no personal representative is appointed, then to the persons entitled thereto in accordance with the provisions of such section.~~

2. TO THE SUCCESSOR OF SUCH DECEASED HOLDER UPON PRESENTATION OF AN AFFIDAVIT PURSUANT TO SECTION 14-3971.

Sec. 6. Section 6-508, Arizona Revised Statutes, is amended to read:

6-508. **Issuance of shares; minors**

A. Shares shall be issued in the name of the owner or may be issued in the name of two or more persons in ~~joint tenancy~~ ACCORDANCE WITH TITLE 14, CHAPTER 6, ARTICLE 1. ~~with right of survivorship, in which case payment may be made, in whole or in part, to any of such persons whether the others be living, or dead, and payment by the credit union to any such person shall be a complete discharge of the credit union's obligation as to the amount paid, provided that an agreement permitting such payment was signed by all persons when the shares were issued or thereafter.~~ Only one of such persons need have the common bond of interest or association or occupation specified in this chapter, and only that person may vote in a meeting of the members. A ~~joint owner~~ MULTIPLE OWNER not in the field of membership cannot become a member of the credit union. Such persons shall have no voting rights and shall not borrow from the credit union nor continue beyond the current dividend period the share account in the credit union after the death of the ~~joint owner~~ MULTIPLE OWNER member. Shares may be issued in the name of a minor or in trust in such manner as the bylaws may provide, provided the name of the actual beneficiary is disclosed to the credit union.

B. Upon authorization of the board of directors, the partial share holdings of a member in excess of one dollar which is carried on the books of the credit union at less than par value for a period of two whole years may be credited to the legal reserve of the credit union if upon written

notice mailed to the member at his last known address no action to withdraw such funds is taken by the member within thirty days after the mailing of such notice. All like share accounts of one dollar or less may be credited to the legal reserve without notice.

Sec. 7. Section 12-313, Arizona Revised Statutes, is amended to read:

12-313. **Probate conservatorship and guardianship fees**

A. On filing ~~a petition for letters of administration, probate of a will or appointment of a guardian,~~ ANY OF THE FOLLOWING:

1. A PETITION IN A FORMAL TESTACY OR APPOINTMENT PROCEEDING,

2. AN APPLICATION FOR INFORMAL PROBATE OR INFORMAL APPOINTMENT,

3. A PETITION FOR SUPERVISED ADMINISTRATION,

4. A PETITION TO APPOINT A GUARDIAN,

5. A PETITION TO APPOINT A CONSERVATOR OR MAKE OTHER PROTECTIVE ORDER,

twenty dollars shall be paid by the petitioner to the clerk of the superior court. If the same person petitions for special letters as well as for general letters IN A SINGLE ESTATE, he shall pay only one fee of twenty dollars. IF IN A SINGLE ESTATE THE SAME PERSON FILES AN APPLICATION OR PETITION UNDER CHAPTER 3 OF TITLE 14 AND A SUBSEQUENT PETITION UNDER THE SAME CHAPTER, NO FEE SHALL BE DUE FOR THE LATER FILING. IF A PETITION TO APPOINT A GUARDIAN ALSO REQUESTS APPOINTMENT OF A CONSERVATOR OR OTHER PROTECTIVE ORDER, ONLY ONE FEE SHALL BE DUE FOR THE FILING.

B. Any person opposing a petition ~~for letters of administration,~~ IN A TESTACY OR APPOINTMENT PROCEEDING OR appointment of a guardian~~, probate of a will, or a petition for letters testamentary~~ OR CONSERVATOR, shall pay the fees of a plaintiff to the clerk. Every person opposing such contest, unless he has theretofore paid a clerk's fee in the matter, shall pay the fees of a defendant to the clerk. The provisions of sections 12-311 and 12-312 in relation to several persons appearing by the same attorney are applicable to this section.

C. In all estates~~, and~~ guardianships AND CONSERVATORSHIPS wherein the original petition is filed and wherein the original fees of the contestants or resistants have been paid before ~~the effective date of this section,~~ JANUARY 1, 1974, no additional fees shall be payable.

Sec. 8. Section 12-1224, Arizona Revised Statutes, is amended to read:

12-1224. **Proceedings not exclusive; rules of procedure**

A. The provisions of this article shall not ~~affect the mode of proceeding prescribed by law for partition of estates of decedents, nor shall such provisions~~ preclude partition in any other manner authorized by law.

B. The rules of pleading and procedure which govern other civil actions shall govern actions for partition when not in conflict with the proceedings provided by this article.

Sec. 9. Section 12-1251, Arizona Revised Statutes, is amended to read:

12-1251. **Right of recovery; procedure**

A. A person having a valid subsisting interest in real property and a right to immediate possession thereof may recover the property by action against any person acting as owner, landlord or tenant of the property claimed.

B. The action shall be commenced and prosecuted as other civil actions.

C. THE HEIRS OR DEVISEES MAY THEMSELVES, OR JOINTLY WITH THE PERSONAL REPRESENTATIVE, MAINTAIN AN ACTION FOR POSSESSION OF THE REAL PROPERTY, OR TO QUIET TITLE THERETO AGAINST ANY PERSON EXCEPT THE PERSONAL REPRESENTATIVE.

D. AN ACTION INVOLVING TITLE OR RIGHT TO POSSESSION OF REAL PROPERTY BELONGING TO THE ESTATE OF DECEDENT MAY BE BROUGHT BY OR AGAINST THE PERSONAL REPRESENTATIVE WITHOUT JOINING THE HEIRS.

Sec. 10. Section 12-2101, Arizona Revised Statutes, is amended to read:

12-2101. **Judgments and orders which may be appealed**

A. An appeal may be taken to the court of appeals from the superior court in the instances specified in this section.

B. From a final judgment entered in an action or special proceeding commenced in a superior court, or brought into a superior court from any other court, except in actions of forcible entry and detainer when the annual rental value of the property is less than three hundred dollars.

C. From any special order made after final judgment.

D. From any order affecting a substantial right made in any action when the order in effect determines the action and prevents judgment from which an appeal might be taken.

E. From a final order affecting a substantial right made in a special proceeding or upon a summary application in an action after judgment.

F. From an order:

1. Granting or refusing a new trial, or granting a motion in arrest of judgment.

2. Granting or dissolving an injunction, or refusing to grant or dissolve an injunction~~,~~ or appointing a receiver.

3. Dissolving or refusing to dissolve an attachment or garnishment.

G. From an interlocutory judgment which determines the rights of the parties and directs an accounting or other proceeding to determine the amount of the recovery.

H. From an interlocutory judgment in any action for partition which determines the rights and interests of the respective parties, and directs partition to be made.

I. From any interlocutory judgment, decree~~,~~ or order made or entered in actions to redeem real or personal property from a mortgage thereof or lien thereon, determining such right to redeem and directing an accounting.

J. From a judgment, DECREE or order~~:~~ ENTERED IN ANY FORMAL PROCEEDINGS UNDER TITLE 14.

~~1. Granting or refusing to grant, revoking or refusing to revoke, letters testamentary, or of administration, or of guardianship.~~

~~2. Admitting or refusing to admit a will to probate, or against or in favor of the validity of a will, or revoking or refusing to revoke the probate thereof.~~

~~3. Against or in favor of setting apart property, or making allowance for a widow or child.~~

~~4. Against or in favor of directing the partition, sale, or conveyance of real property, or settling an account of an executor, administrator, guardian, or trustee.~~

~~5. Refusing, allowing, or directing the distribution or partition of an estate, or any part thereof, or payment of a debt, claim, legacy, or distributive share.~~

~~6. Confirming or refusing to confirm a report of an appraiser or appraisers setting apart a homestead.~~

~~7. Determining heirship.~~

K. From an order or judgment:

1. Adjudging a person insane or incompetent, or committing a person to the state hospital.

2. Revoking or refusing to revoke an order or judgment adjudging a person insane or incompetent, or restoring or refusing to restore to competency any person who has been declared insane or incompetent.

L. From an order or judgment made and entered on habeas corpus proceedings:

1. The petitioner may appeal from an order or judgment refusing his discharge.

2. The officer having the custody of the petitioner, or the county attorney on behalf of the state, from an order or judgment discharging the petitioner whereupon the court may admit the petitioner to bail pending the appeal.

M. If any of the orders or judgments referred to in this section are made or rendered by a judge they are appealable as if made by the court.

Sec. 11. Section 25-201, Arizona Revised Statutes, is amended to read:

25-201. **Ante-nuptial contracts; limitations; execution by minor**

A. Parties intending to marry may enter into agreements not contrary to good morals or law. ~~They shall not enter into an agreement or make a~~

~~renunciation the object of which is to alter law of descent of property either with respect to themselves or inheritance by their children or posterity which either may have by any other person, or with respect to their common children.~~

B. A matrimonial agreement must be acknowledged before an officer authorized to acknowledge deeds.

C. A minor capable of contracting matrimony may enter into an agreement authorized by this section with the written consent of both parents if both are living, and if not, with the consent of the survivor. If both parents are dead the minor may enter such agreements with the written consent of his guardian.

D. No matrimonial agreement shall be altered after solemnization of the marriage.

Sec. 12. Section 36-514, Arizona Revised Statutes, is amended to read:

36-514. **Appointment of counsel and designated examiners hearing; order for confinement**

A. At the time of apprehension or during detention, but before the hearing, the proposed patient apprehended shall be permitted to consult an attorney to represent him at the hearing. If he is not represented by an attorney, the court shall, before the hearing, appoint an attorney to represent him.

B. The judge shall require two or more witnesses acquainted with the proposed patient at the time of the alleged mental illness to be summoned for the hearing and examination, who shall be examined on oath as to the conversation, manners and general conduct of the proposed patient. The judge shall also appoint and require two or more designated examiners to be present at the examination. On the basis of the testimony and a personal examination of the proposed patient, the designated examiners shall make a written statement under oath stating their opinion as to the mental health of the proposed patient, whether he has a mental illness likely to be dangerous to himself or to the person or property of others if he is permitted to be at large, and whether the mental illness is likely to be temporary or permanent.

C. If the court finds that the proposed patient is mentally ill to such a degree that he is in danger of injuring himself or the person or property of others if permitted to remain at liberty, it shall order and direct his

confinement in the state hospital or other designated facility, or to the veterans administration pursuant to section 14-898 36-510.01. The patient shall be so confined and not discharged until sufficiently restored to reason, unless the order of commitment provided for observation of the patient as provided by law. If the court finds the proposed patient is not mentally ill to such a degree that he is in danger of injuring himself or the person or property of others it shall deny the petition.

D. If upon completion of the hearing and consideration of the examination and the record, the court, in addition to committing the proposed patient as provided in subsection C of this section, shall also adjudge the proposed patient as incompetent, it may appoint a guardian for the estate of the proposed patient at the time of the judgment of incompetency. However, unless adjudged incompetent, the proposed patient shall be considered competent and retain his civil rights. In the event a guardian is appointed, the court shall file with the clerk of the court a certificate so stating. And thereafter all proceedings relating to such guardianship shall be had as provided by law for guardians of estates.

Sec. 13. Section 36-523, Arizona Revised Statutes, is amended to read:

36-523. **Transfer of patient to a designated facility; notice of transfer; transfer to federal agencies**

A. The superintendent may, with the written consent of the patient, his parents, spouse or guardian, transfer, or authorize the transfer of a patient admitted pursuant to sections 36-505, 36-507 or 36-514, from the state hospital to another designated facility if the superintendent determines that it would be in the best interests of the patient so to do and the designated facility will accept the patient, and if the patient, his parents, spouse or guardian agree to pay the costs of hospitalization of the patient at the designated facility. When a patient is transferred, written notice thereof shall be given to his guardian, parents or spouse, or, if not known, to his nearest known relative or friend.

B. Transfers to federal agencies shall be accomplished pursuant to section 14-898 36-510.01.

Sec. 14. Section 42-1526, Arizona Revised Statutes, is amended to read:

42-1526. **Liability of personal representative; liability of clerk of court**

A. Any personal representative or trustee who fails to pay the lawful taxes due upon an estate under his administration or control shall be liable

for the amount of the taxes, and they may be recovered in an action against the personal representative or trustee, and the sureties on his official bond.

B. A clerk of the court who allows a personal representative or trustee to make a final settlement of the estate UNDER SECTION 14-3931 OR SECTION 14-3932, OR TO CLOSE THE ESTATE BY FILING UNDER SECTION 14-3933, without having paid the tax due by exhibiting a receipt from the commissioner therefor shall be liable upon his official bond for the amount of taxes.

Sec. 15. **Transfer and renumbering**

Title 14, chapter 2, article 2, Arizona Revised Statutes, is transferred for placement in the new Title 14, chapter 2, article 8, Arizona Revised Statutes, and the involved sections renumbered, the former number being replaced by the latter number as follows: 14-221 as 14-2804, 14-222 as 14-2805, 14-223 as 14-2806, 14-224 as 14-2807, 14-225 as 14-2808, 14-226 as 14-2809 and 14-227 as 14-2810.

Sec. 16. Section 14-2808, Arizona Revised Statutes, is amended to read:

14-2808. **Insurance policies**

Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously the proceeds of the policy shall be distributed as if the insured had survived the beneficiary, but if the policy is community property of the insured and his spouse and there is no alternative beneficiary, or no alternative beneficiary except the estate or personal representatives of the insured, the proceeds shall be distributed as community property under section ~~14-224~~ 14-2807.

Sec. 17. **Transfer and renumbering**

Section 14-477, Arizona Revised Statutes, is transferred for placement in the new Title 14, chapter 3, article 1, Arizona Revised Statutes, as section 14-3110.

Sec. 18. **Transfer and renumbering**

Sections 14-597 and 14-598, Arizona Revised Statutes, are transferred for placement in the new Title 14, chapter 3, article 5, Arizona Revised Statutes, as respectively sections 14-3506 and 14-3507.

Sec. 19. Section 14-3506, Arizona Revised Statutes, is amended to read:

14-3506. **Report of sale and request for confirmation; notice of hearing; hearing**

A. The ~~executor or administrator~~ PERSONAL REPRESENTATIVE shall, within twenty days after making a sale, prepare, verify and file with the clerk of the court in which the probate proceeding is pending, a full and complete report of the sale, stating the reasons therefor, the name and address of the purchaser, the amount and terms upon which the property was sold, and requesting the court to confirm the sale. If the sale was made at public auction a copy of the notice of sale shall be attached to the report.

B. Upon filing the report the clerk shall set a time and place for hearing on the report and request for confirmation of the sale, and shall give at least ten days notice thereof BY PUBLICATION ONE TIME IN A NEWSPAPER HAVING GENERAL CIRCULATION IN THE COUNTY WHERE THE HEARING IS TO BE HELD AND THE COUNTY WHERE THE PROPERTY IS LOCATED. ~~by posting in three public places in the county.~~ The notice shall describe the property and set forth the amount and terms of the sale, shall refer those concerned to the report for further particulars, and state that anyone interested in the estate may appear at the time of the hearing and show cause why the sale should or should not be confirmed.

C. At the hearing the court shall examine the report, hear testimony, determine whether the sale was necessary or in the best interest of the estate and those interested therein, and whether it was legally and fairly made or the sum bid disproportionate to the value of the property.

D. If at the hearing an offer more than that named in the report is made, the court may accept such offer or a higher or better offer and confirm the sale to the person making the higher or better offer.

E. If the court finds the sale was not necessary or not in the best interest of the estate and those interested therein, or that the sale was unfair or illegal, or that the property is worth more than the amount bid, or that a greater sum can be obtained therefor, it shall deny the petition for confirmation and may direct that a new sale be made.

Sec. 20. Section 14-3507, Arizona Revised Statutes, is amended to read:

14-3507. **Appraisal; confirmation of sale; recording of order; procedure when purchaser defaults; liability of defaulting purchaser**

A. A sale of real property at private sale shall not be confirmed by the court ~~unless the sum offered is at least ninety per cent of the appraised value thereof, nor~~ unless such real property has been appraised within one year of the time of the sale. If it has not been so appraised, or if the court is satisfied that the appraisement is too high or too low, appraisers shall be appointed, and they shall make an appraisement thereof ~~in the same manner as an original appraisement, which may be done~~ at any time before the sale or the confirmation.

B. If it appears to the court that the sale was legally made and fairly conducted, that the sum bid was not disproportionate to the value of the property sold and that a greater sum cannot be obtained, or if a higher or better offer is made and accepted by the court, the court shall thereupon make an order confirming the sale, and directing conveyances to be executed, and the sale shall be deemed effective from that time.

C. A certified copy of the order confirming the sale of real estate shall be recorded in the office of the county recorder of the county within which the land sold is located.

D. If the purchaser neglects or refuses to comply with the terms of the sale, the court, on motion of the ~~executor or administrator~~ PERSONAL REPRESENTATIVE and after notice to the purchaser, may order a re-sale of the property. If the amount of the re-sale does not cover the bid and expenses of the previous sale the original purchaser is liable to the estate for the deficiency.

Sec. 21. **Transfer and renumbering**

Section 14-898, Arizona Revised Statutes, is transferred for placement in Title 36, chapter 5, article 1, Arizona Revised Statutes, as section 36-510.01.

Sec. 22. **Transfer, entitling and renumbering**

Title 14, chapter 7, article 7, Arizona Revised Statutes, is transferred for placement in the new Title 14, chapter 7, Arizona Revised Statutes, as article 4, entitled UNIFORM PRINCIPAL AND INCOME ACT, and the involved sections renumbered, the former number being replaced by the latter number as follows: 14-1081 as 14-7401, 14-1082 as 14-7402, 14-1083 as 14-7403, 14-1084 as 14-7404, 14-1085 as 14-7405, 14-1086 as 14-7406, 14-1087 as 14-7407, 14-1088 as 14-7408, 14-1089 as 14-7409, 14-1090 as 14-7410, 14-1091 as 14-7411, 14-1092 as 14-7412, 14-1093 as 14-7413, 14-1094 as 14-7414, 14-1095 as 14-7415 and 14-1096 as 14-7416.

Sec. 23. Section 14-7408, Arizona Revised Statutes, is amended to read:

14-7408. **Principal comprising animals**

Where any part of the principal consists of animals employed in business, the provisions of section ~~14-1087~~ 14-7407 shall apply; and in other cases where the animals are held as a part of the principal partly or wholly because of the offspring or increase which they are expected to produce, all offspring or increase shall be deemed principal to the extent necessary to maintain the original number of such animals and the remainder shall be deemed income; and in all other cases such offspring or increase shall be deemed income.

Sec. 24. Section 14-7412, Arizona Revised Statutes, is amended to read:

14-7412. **Expenses; trust estates**

A. All ordinary expenses incurred in connection with the trust estate or with its administration and management, including regularly recurring taxes assessed against any portion of the principal, water rates, premiums on insurance taken upon the estates of both tenant and remainderman, interest on mortgages on the principal, ordinary repairs, trustees' compensation except commissions computed on principal, compensation of assistants, and court costs and attorneys' and other fees on regular accountings, shall be paid out of income. But such expenses where incurred in disposing of, or as carrying charges on, unproductive estate as defined in section ~~14-1091~~ 14-7411, shall be paid out of principal, subject to the provisions of subsection A of section ~~14-1091~~ 14-7411.

B. All other expenses, including trustees' commissions computed upon principal, cost of investing or reinvesting principal, attorneys' fees and other costs incurred in maintaining or defending any action to protect the trust or the property or assure the title thereof, unless due to the fault or cause of the tenant, and costs of, or assessments for, improvements to property forming part of the principal, shall be paid out of principal. Any tax levied by any authority, federal, state or foreign, upon profit or gain defined as principal under the terms of subsection B of section ~~14-1083~~ 14-7403 shall be paid out of principal, notwithstanding said tax may be denominated a tax upon income by the taxing authority.

C. Expenses paid out of income according to subsection A which represent regularly recurring charges shall be considered to have accrued from day to day, and shall be apportioned on that basis whenever the right

of the tenant begins or ends at some date other than the payment date of the expenses. Where the expenses to be paid out of income are of unusual amount, the trustee may distribute them throughout an entire year or part thereof, or throughout a series of years. After such distribution, where the right of the tenant ends during the period, the expenses shall be apportioned between tenant and remainderman on the basis of such distribution.

D. Where the costs of, or special taxes or assessments for, an improvement representing an addition of value to property held by the trustee as part of principal are paid out of principal, as provided in subsection B, the trustee shall reserve out of income and add to the principal each year a sum equal to the cost of the improvement divided by the number of years of the reasonably expected duration of the improvement.

Sec. 25. Section 14-7413, Arizona Revised Statutes, is amended to read:

14-7413. **Expenses; nontrust estates**

A. The provisions of section ~~14-1092~~ 14-7412, so far as applicable and excepting those dealing with costs of, or special taxes or assessments for, improvements to property, shall govern the apportionment of expenses between tenants and remaindermen where no trust has been created, subject, however, to any legal agreement of the parties or any specific direction of the taxing or other statutes; but where either tenant or remainderman has incurred an expense for the benefit of his own estate and without the consent or agreement of the other, he shall pay such expense in full.

B. Subject to the exceptions stated in subsection A the cost of, or special taxes or assessments for, an improvement representing an addition of value to property forming part of the principal shall be paid by the tenant, where such improvement cannot reasonably be expected to outlast the estate of the tenant. In all other cases a portion thereof only shall be paid by the tenant, while the remainder shall be paid by the remainderman. Such portion shall be ascertained by taking that percentage of the total which is found by dividing the present value of the tenant's estate by the present value of an estate of the same form as that of the tenant except that it is limited for a period corresponding to the reasonably expected duration of the improvement. The computation of present values of the estates shall be made on the expectancy basis set forth in the American experience tables of mortality and no other evidence of duration or expectancy shall be considered.

Sec. 26. **Transfer, entitling and renumbering**

Title 14, chapter 7, article 8, Arizona Revised Statutes, except sections 14-1110 through 14-1114, is transferred for placement in the new Title 14, chapter 7, Arizona Revised Statutes, as article 5, entitled UNIFORM FIDUCIARIES ACT, and the involved sections renumbered, the former number being replaced by the latter number as follows: 14-1101 as 14-7501, 14-1102 as 14-7502, 14-1104 as 14-7503, 14-1105 as 14-7504, 14-1106 as 14-7505, 14-1107 as 14-7506, 14-1108 as 14-7507 and 14-1109 as 14-7508.

Sec. 27. **Transfer, entitling and renumbering**

Title 14, chapter 7, article 9, Arizona Revised Statutes, is transferred for placement in the new Title 14, chapter 7, Arizona Revised Statutes, as article 6, entitled UNIFORM SIMPLIFICATION OF SECURITY TRANSFERS, and the involved sections renumbered, the former number being replaced by the latter number as follows: 14-1121 as 14-7601, 14-1122 as 14-7602, 14-1123 as 14-7603, 14-1124 as 14-7604, 14-1125 as 14-7605, 14-1126 as 14-7606, 14-1127 as 14-7607, 14-1128 as 14-7608, 14-1129 as 14-7609 and 14-1130 as 14-7610.

Sec. 28. **Repeals**

Sections 6-268, 6-431 and 12-504, Arizona Revised Statutes, are repealed.

Sec. 29. **Effective date**

The provisions of this Act shall become effective January 1, 1974.

Except as provided elsewhere in this Act, on the effective date of this Act:

1. the Act applies to any wills of decedents dying thereafter;

2. the Act applies to any proceedings thereafter commenced regardless of the time of the death of decedent or the time of creation of any trust, and to any proceedings in Court then pending except to the extent that in the opinion of the Court the former procedure should be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedure of this Act; any proceedings relating to estates of decedents then pending shall become proceedings in supervised administration, unless the decedent's will expressly provided otherwise;

3. every personal representative, guardian, or conservator holding an appointment on that date continues to hold the appointment but has only

the powers conferred by this Act and is subject to the duties and liabilities imposed with respect to any act occurring or done thereafter; every trustee of a trust existing on the effective date is subject to the duties and liabilities imposed by this Act with respect to any act occurring or done thereafter;

4. an act done before the effective date in any proceeding and any accrued right is not impaired by this Act; if a right is acquired, extinguished or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute before the effective date, the provisions shall remain in force with respect to that right;

5. any rule of construction or presumption provided in this Act applies to instruments executed and multiple-party accounts opened before the effective date unless there is a clear indication of a contrary intent.

Approved by the Governor–April 24, 1973

Filed in the Office of the Secretary of State–April 24, 1973

CHAPTER 76

Senate Bill 1203

AN ACT

RELATING TO EDUCATION; PROVIDING FOR INSTRUCTION RELATING TO THE NATURE AND HARMFUL EFFECTS OF ALCOHOL, TOBACCO, NARCOTIC AND DANGEROUS DRUGS ON THE HUMAN SYSTEM AND INSTRUCTION ON THE PREVENTION OF ALCOHOL, TOBACCO, NARCOTIC AND DANGEROUS DRUG ABUSE, AND AMENDING SECTION 15-1023, ARIZONA REVISED STATUTES.

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

Section 1. **Purpose**

The purpose of this act is to strengthen and expand the existing course of instruction in common and high schools which emphasizes and insures

desirable health habits, attitudes and knowledge of the effects of alcohol and narcotics upon the physical, mental and emotional development of persons by including in such course the same instruction on the nature and effects of tobacco and dangerous drugs, including the plant cannabis and all substances and parts of the plant.

Sec. 2. Section 15-1023, Arizona Revised Statutes, is amended to read:

15-1023. **Instruction on alcohol, tobacco and narcotic and dangerous drugs**

A. Instruction on the nature AND HARMFUL EFFECTS of alcohol, ~~and narcotics and their effects~~ TOBACCO, NARCOTIC DRUGS AND DANGEROUS DRUGS, INCLUDING THE PLANT CANNABIS AND ALL SUBSTANCES AND PARTS OF THE PLANT, on the human system, AND INSTRUCTION ON THE PREVENTION OF ALCOHOL, TOBACCO, NARCOTIC AND DANGEROUS DRUG ABUSE, INCLUDING THE PLANT CANNABIS AND ALL SUBSTANCES AND PARTS OF THE PLANT, shall be included in the courses of study in ~~grade~~ COMMON and high schools. The instruction may be combined with health, science, citizenship or similar studies.

B. The state board of education may, AT THE REQUEST OF A SCHOOL DISTRICT, ~~arrange~~ PROVIDE THE FOLLOWING for USE IN carrying out the provisions of this section: ~~by lecture or educational films.~~

1. A SUGGESTED COURSE OF STUDY.

2. A SYSTEM OF IN-SERVICE TRAINING FOR TEACHERS.

3. A LIST OF AVAILABLE FILMS AND OTHER TEACHING AIDS.

C. FOR THE PURPOSE OF THIS SECTION, THE DEFINITIONS OF "CANNABIS" AND "NARCOTIC DRUGS" AS DEFINED IN SECTION 36-1001 AND "DANGEROUS DRUG" AS DEFINED IN SECTION 32-1901, PARAGRAPH 9, ARE APPLICABLE.

Approved by the Governor—April 25, 1973

Filed in the Office of the Secretary of State—April 25, 1973

LAWS OF ARIZONA

CHAPTER 77

Senate Bill 1115

AN ACT

RELATING TO AGRICULTURE AND DAIRYING; INCREASING INSPECTION FEE CHARGED BY EGG INSPECTOR, AND AMENDING SECTION 3-716, ARIZONA REVISED STATUTES.

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

Section 1. Section 3-716, Arizona Revised Statutes, is amended to read:

3-716. **Inspection fees; report and payment by dealers; violation; penalty; collection; exception**

A. An inspection fee of not more than one ~~mill~~ AND ONE-HALF MILLS per dozen on shell eggs and five cents per thirty-pound can on egg products shall be paid by a dealer, producer-dealer, manufacturer or producer on all eggs and egg products regardless of origin, sold to a retailer, hotel, hospital, bakery, restaurant, other eating place or consumer for human consumption within this state. Inspection fees on eggs used for the purpose of breaking, freezing or drying shall be paid by the manufacturer, dealer, or distributor if sold or offered for sale to retailers or consumers for human consumption within this state.

B. If it appears that the revenue derived from inspection fee is more than is required for the administration of this article, the board shall have power to decrease the inspection fee and at any time thereafter it may increase or decrease the inspection fee, but at no time shall it exceed an amount of one ~~mill~~ AND ONE-HALF MILLS per dozen on shell eggs or five cents per thirty-pound can on egg products.

C. All manufacturers, dealers, producer-dealers and producers shall file:

1. A quarterly report to the board showing the name and address of the manufacturer, dealer, producer-dealer or producer.

2. Number of dozen of eggs or cans of egg products sold or delivered for the period to retail stores, hotels, hospitals, bakeries, restaurants, other eating places or consumers for human consumption within this state.

D. The report shall be accompanied by check or money order covering the inspection fee total of a value equal to the inspection fee in force at

that time on all eggs or egg products shown on such report within thirty days following the close of quarterly report periods.

E. The records shall be retained for a period of one year and shall be open at all times to the inspection of the board.

F. It is unlawful to sell eggs or egg products to retailers or consumers without filing a quarterly report and paying the inspection fee then required on such eggs or egg products, except that twenty-five cases per year of unclassified eggs as provided in section 3-715 may be sold by any person to retailers or consumers without being subject to the report and inspection fee as provided by this section.

G. In addition to the inspection fees prescribed by this section, a penalty of ten per cent shall be added for the delinquent filing of any report or the delinquent payment of any inspection fee, and if the report and payment are not made within ten days after notification of delinquency, the penalty shall be twenty-five per cent of the inspection fee. Persons filing a false report shall be penalized fifty per cent of the amount due for inspection fees. The penalties prescribed by this section shall be paid to the state treasurer and credited to the state egg inspection account.

H. Such inspection fees and penalties shall be collected by civil action filed by the county attorney.

Approved by the Governor–April 26, 1973

Filed in the Office of the Secretary of State–April 26, 1973

CHAPTER 78

Senate Bill 1182

AN ACT

RELATING TO MOTOR VEHICLES; PROVIDING FOR THE USE OF COMPUTER STORAGE DEVICES AND REPRODUCTION OF RECORDS THEREFROM BY THE STATE HIGHWAY DEPARTMENT; DEFINING THE TERMS "ENGINE OR SERIAL NUMBER"; AMENDING SECTIONS 18-116 AND 28-209, ARIZONA REVISED STATUTES; AMENDING TITLE 28, CHAPTER 2, ARTICLE 1, ARIZONA REVISED STATUTES, BY

ADDING SECTION 28-210; REPEALING SECTION 28-306, ARIZONA REVISED STATUTES, AND AMENDING TITLE 28, CHAPTER 3, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 28-306.

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

Section 1. Section 18-116, Arizona Revised Statutes, is amended to read:

18-116. **Reproduction of records; notification of reproduction; admissibility of reproductions as originals; destruction of nonessential or obsolete records**

A. The commission may cause any records kept by the highway department to be photographed, microphotographed, photostated or reproduced on film. The film or reproducing material shall be of durable material and the device used to reproduce the records on the film or material shall be such as to accurately reproduce and perpetuate the original records in all details.

B. When such photostatic copies, photographs, microphotographs or reproductions on films are placed in conveniently accessible files and provisions made for preserving, examining and using them, the commission may certify such fact to the director of the department of library and archives, who shall thereafter, within ninety days, direct the disposal, archival storage or destruction of the records or papers.

C. Such photostatic copy, photograph, microphotograph or photographic film of the original records shall be deemed to be an original record for all purposes, and shall be admissible in evidence in all courts or administrative agencies. A facsimile, exemplification or certified copy thereof shall, for all purposes recited in this section, be deemed to be a transcript exemplification or certified copy of the original.

D. Upon certification by the commission of any obsolete or nonessential records, which the commission determines are not of sufficient value to be preserved by being photographed, microphotographed, photostated or reproduced on film, the director of the department of library and archives shall order their destruction within ninety days from the certification, but the director may elect to have any such documents proposed to be destroyed transferred to his division upon request therefor, within the ninety day period.

E. THE COMMISSION MAY CAUSE THE INFORMATION CONTAINED ON ANY ORIGINAL RECORDS OR REPRODUCTIONS THEREOF MADE PURSUANT TO THIS SECTION TO BE PLACED ON COMPUTER STORAGE DEVICES BUT THE ORIGINAL RECORDS OR THE COPIES SHALL BE MAINTAINED BY THE DEPARTMENT SO LONG AS REQUIRED BY LAW OR THE COMMISSION DEEMS NECESSARY AFTER WHICH TIME THE RECORDS MAY BE DISPOSED OF AS PROVIDED IN THIS SECTION. SIGNATURES ON RECORDS NEED NOT BE PLACED ON THE COMPUTER STORAGE DEVICES.

F. A REPRODUCTION OF THE INFORMATION PLACED ON COMPUTER STORAGE DEVICES SHALL BE DEEMED TO BE AN ORIGINAL OF THE RECORD FOR ALL PURPOSES AND SHALL BE ADMISSIBLE IN EVIDENCE IN ALL COURTS OR ADMINISTRATIVE AGENCIES WHEN IT IS CERTIFIED BY THE CUSTODIAN OF THE RECORD. ANY PERSON WHO DISPUTES THE ACCURACY OR AUTHENTICITY OF A REPRODUCTION OR THE RECORD FROM WHICH THE INFORMATION WAS OBTAINED MAY, BY NOTIFYING THE RECORDS CUSTODIAN IN WRITING, HAVE THE RECORD OR A CERTIFIED COPY THEREOF PRODUCED FOR INSPECTION AND COMPARISON.

Sec. 2. Section 28-209, Arizona Revised Statutes, is amended to read:

28-209. **Copies of records; fees; stamps or coupons; exemptions**

A. The ~~motor vehicle division shall~~ DEPARTMENT MAY furnish information from ~~its~~ THE records REQUIRED BY THIS TITLE TO BE KEPT, or furnish copies therefrom and may~~, when the information furnished is to be used for commercial purposes,~~ charge ~~the cost to the division~~ A FEE for providing such information, provided the ~~charge~~ FEE shall be not ~~less than twenty-five cents nor~~ more than ~~fifty cents~~ ONE DOLLAR for each item, except that a ~~charge~~ FEE of ~~one dollar~~ TWO DOLLARS shall be made for each certified abstract furnished under the provisions of section 28-1123. The cost of such service, and the amount charged therefor, within the foregoing limits, shall be determined by the superintendent of the motor vehicle division.

B. The ~~division~~ DEPARTMENT may sell stamps or coupons in appropriate denominations for the convenient enforcement of this section. Such stamps or coupons may be used to accompany request for information in lieu of cash, but otherwise shall be nonredeemable and shall be cancelled by the division upon furnishing the information.

C. The ~~division~~ DEPARTMENT shall not make any charge for any copies of records, or for information furnished from its records, to the state or any of its departments, agencies or political subdivisions, to any court, or to the federal government or any of its agencies.

D. This section shall not apply to information required by law to be kept confidential nor to statistical information, the purpose of which relates to traffic accidents, traffic offenses, or traffic enforcement.

Sec. 3. Title 28, chapter 2, article 1, Arizona Revised Statutes, is amended by adding section 28-210, to read:

28-210. **Filing, compiling and indexing records; preservation of applications and records**

A. WHENEVER IN THIS TITLE AN APPLICATION OR RECORD IS REQUIRED TO BE FILED, AN INDEX MAINTAINED OR A RECORD COMPILED, THE COMMISSION MAY, BY RULE, PROVIDE THAT SUCH FILING, INDEXING OR COMPILATION BE ACCOMPLISHED BY USE OF A COMPUTER SO THAT ON INQUIRY TO THE COMPUTER IT WILL BE CAPABLE OF DISCLOSING AND REPRODUCING ALL INFORMATION REQUIRED BY LAW. SIGNATURES ON APPLICATIONS OR RECORDS NEED NOT BE STORED.

B. WHEN THE COMMISSION ADOPTS RULES PURSUANT TO SUBSECTION A, THE FORMER REQUIREMENT OF FILING, COMPILING OR INDEXING NEED NO LONGER BE COMPLIED WITH, EXCEPT AS PROVIDED IN SECTION A OF THIS SECTION, BUT THE APPLICATIONS OR RECORDS FROM WHICH THE INFORMATION WAS OBTAINED SHALL BE PRESERVED SO LONG AS REQUIRED BY LAW OR UNTIL A NEW APPLICATION IS FILED BY AN APPLICANT OR A NEW RECORD IS RECEIVED AND THE APPLICATION OR RECORD IS NO LONGER NEEDED TO CARRY OUT THE PROVISIONS OF THIS TITLE.

Sec. 4. Section 28-306, Arizona Revised Statutes, is repealed.

Sec. 5. Title 28, chapter 3, article 1, Arizona Revised Statutes, is amended by adding a new section 28-306, to read:

28-306. **Engine or serial number**

WHEN IN THIS CHAPTER THE TERM "ENGINE OR SERIAL NUMBER" IS USED, IT MEANS THAT NUMBER PLACED ON THE VEHICLE BY ITS MANUFACTURER OR ASSIGNED PURSUANT TO SECTION 28-320.

Approved by the Governor–April 26, 1973

Filed in the Office of the Secretary of State–April 26, 1973

LAWS OF ARIZONA

CHAPTER 79

Senate Bill 1271

AN ACT

RELATING TO WATERS; PRESCRIBING JURISDICTION OVER CERTAIN DAMS; PROVIDING FOR ADDITIONAL FEE ON CONSTRUCTION OR ALTERATION OF CERTAIN DAMS; PROVIDING FOR EMERGENCY MEASURES AND REMEDIES; PRESCRIBING POWERS AND DUTIES; AMENDING SECTIONS 45-701, 45-709, 45-711, 45-712 AND 45-716, ARIZONA REVISED STATUTES; AMENDING TITLE 45, CHAPTER 3, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 45-717, AND REPEALING TITLE 45, CHAPTER 3, ARTICLES 2 AND 3, ARIZONA REVISED STATUTES.

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

Section 1. Section 45-701, Arizona Revised Statutes, is amended to read:

45-701. **Definitions**

In this article, unless the context otherwise requires:

1. "Dam" means any ~~dam and~~ ARTIFICIAL BARRIER, INCLUDING appurtenant works for the impounding or diversion of water, ~~fifteen~~ TWENTY-FIVE feet or more in height ~~from ground level to the spillway crest,~~ or the ~~impounding~~ STORAGE capacity of which will be more than ~~ten~~ FIFTY acre feet, ~~except a dam reservoir, or appurtenant works constructed or used exclusively for watering livestock.~~ BUT DOES NOT INCLUDE ANY SUCH BARRIER WHICH IS OR WILL BE LESS THAN SIX FEET IN HEIGHT, REGARDLESS OF STORAGE CAPACITY, OR WHICH HAS OR WILL HAVE A STORAGE CAPACITY NOT IN EXCESS OF FIFTEEN ACRE FEET, REGARDLESS OF HEIGHT.

2. "HEIGHT" MEANS THE VERTICAL DISTANCE FROM THE LOWEST ELEVATION OF THE OUTSIDE LIMIT OF THE BARRIER AT ITS INTERSECTION WITH THE NATURAL GROUND SURFACE TO THE SPILLWAY CREST ELEVATION.

3. "OWNER" INCLUDES ANY PERSON OR ENTITY WHO OWNS, CONTROLS, OPERATES, MAINTAINS, MANAGES OR PROPOSES TO CONSTRUCT OR MODIFY A DAM, EXCEPT THE UNITED STATES

GOVERNMENT AND ITS AGENTS OR INSTRUMENTALITIES, IF A SAFETY PROGRAM AT LEAST AS STRINGENT AS THE STATE PROGRAM IS APPLICABLE TO AND ENFORCED AGAINST SUCH AGENT OR INSTRUMENTALITY.

4. "PERSON" MEANS ANY PERSON, FIRM, ASSOCIATION, ORGANIZATION, PARTNERSHIP, BUSINESS TRUST, CORPORATION, COMPANY OR DISTRICT.

~~2.~~ 5. "State engineer" means the state water engineer.

6. "STORAGE CAPACITY" MEANS THE MAXIMUM VOLUME OF WATER THAT CAN BE IMPOUNDED BY THE RESERVOIR WHEN THERE IS NO DISCHARGE OF WATER.

Sec. 2. Section 45-709, Arizona Revised Statutes, is amended to read:

45-709. **Notice of completion; license of final approval; removal of dam**

A. Immediately upon completion or enlargement of a dam, notice of completion shall be given the state engineer. As soon as possible thereafter supplementary drawings or descriptive matter showing or describing the dam as actually constructed shall be filed with the state engineer which shall include:

1. A record of all grout holes and grouting.

2. A record of permanent location points and bench marks.

3. A record of tests of concrete or other material used in the construction of the dam.

4. A record of other items of permanent value bearing on safety and permanence of construction.

B. When an existing dam is enlarged, the supplementary drawings and descriptive matter need apply only to the new work.

C. The owner of a completed dam shall file an affidavit of the total cost of the dam comprised of items set forth in section 45-704, and furnish such evidence in support thereof as the state engineer requires. No license of final approval shall issue until the affidavit is filed. The completed dam shall be inspected by the state engineer, and upon finding that the work has been done as required and that the dam is safe, he shall issue a license

of final approval forthwith, subject to such terms as he deems necessary for the protection of life and property. IN THE EVENT THE TOTAL COST EXCEEDS THE ESTIMATED COST THE FEE SHALL BE RECOMPUTED IN ACCORDANCE WITH THE SCHEDULE IN SECTION 45-704, SUBSECTION B. THE OWNER SHALL PAY THE DIFFERENCE BETWEEN THE FEE ALREADY PAID AND THE RECOMPUTED FEE.

D. Pending issuance of the license, the dam shall not be used except on written consent of the state engineer, subject to conditions he may impose.

E. When a dam is removed the owner shall file with the state engineer evidence showing that a sufficient portion has been removed to permit the free passage of flood waters. Before final approval of the removal of the dam the state engineer shall inspect the work to ascertain its safety.

Sec. 3. Section 45-711, Arizona Revised Statutes, is amended to read:

45-711. **Time for filing petition; board of review**

A. The petition for review shall be in writing and shall be filed with the state engineer within ten days after issuance of the approval, disapproval or order of which complaint is made. Upon receipt of the petition, the state engineer shall prepare a list of ten qualified experts. ~~From the list~~ WITHIN TEN DAYS the petitioner shall select THREE INDIVIDUALS FROM THE LIST WHO SHALL THEN SERVE AS the board of review. The board shall serve at the expense of the petitioners. Within thirty days from its designation, or within such further time as the state engineer allows, the board shall report to the state engineer and he shall forthwith affirm, change or modify the report, and his action shall be final and not subject to further review. No board of review shall be appointed to consider any action taken by the state engineer relative to emergency regulation and control of a dam under section 45-712.

B. Pending examination, change or modification by the state engineer, his approval, disapproval or order issued shall remain operative. Operations shall be suspended if an applicant or owner files a petition for a board of review unless the state engineer orders work to proceed because of emergency conditions.

Sec. 4. Section 45-712, Arizona Revised Statutes, is amended to read:

45-712. **Supervision over maintenance and operation; remedial measures; lien**

A. Supervision over the maintenance and operation of dams to safeguard life and property is vested exclusively in the state engineer. He shall ~~require~~ MAKE complete inspections ~~to be made~~, require reports from owners or operators and shall issue rules, regulations and orders necessary to secure maintenance and operation of dams which will safeguard life and property.

B. ~~If an owner or operator fails to comply therewith, the state engineer shall forthwith select a board of five competent engineers for the purpose of determining the necessity of employing any remedial means to protect life and property.~~ If the ~~board~~ STATE ENGINEER determines that the dam under consideration is dangerous to the safety of life and property, and that there is not sufficient time to issue and enforce an order relative to its maintenance or operation, or if the ~~board~~ STATE ENGINEER believes that imminent floods threaten the safety of the dam under consideration, the state engineer shall immediately employ remedial measures necessary to protect life and property.

C. In applying ~~authorized~~ remedial measures the state engineer may lower the water level of a reservoir by releasing water impounded, may completely empty the reservoir, may destroy the dam or reservoir or such portions thereof as appear necessary, or may construct, reconstruct, repair or enlarge the dam, and may exercise any other control of the dam, reservoir and appurtenances essential to safeguard life and property. The state engineer shall remain in full charge and control of the dam, reservoir and appurtenances until they have been rendered safe or the emergency has terminated.

D. The costs and expenses of the control, regulation and abatement, provided by this section, including costs of construction work done to render the dam, reservoir, or appurtenances safe, shall constitute a lien against all property ~~benefited~~ OF THE OWNER, and the lien shall be prior and superior to all other mortgages, liens or encumbrances of record. The lien shall have the force and effect of a mechanic's and materialman's lien, and may be foreclosed at any time within two years.

Sec. 5. Section 45-716, Arizona Revised Statutes, is amended to read:

45-716. **Violations; penalties**

A. It is unlawful for an owner, director, officer, agent, employee, contractor or his agents to construct, reconstruct, repair, enlarge, alter or remove a dam without an approval as provided in this ~~article~~ CHAPTER, or contrary to an approval issued. It is unlawful for the agents or

employees of the state engineer to permit such work to be done without immediately notifying the state engineer. ~~Any person who violates this subsection is guilty of a felony.~~

B. A person who violates this article, except as otherwise provided, is guilty of a misdemeanor, and each day such violation continues constitutes a separate offense.

Sec. 6. Title 45, chapter 3, article 1, Arizona Revised Statutes, is amended by adding section 45-717, to read:

45-717. **Action and procedures to restrain violations**

A. THE STATE ENGINEER MAY TAKE ANY LEGAL ACTION PROPER AND NECESSARY FOR THE ENFORCEMENT OF THIS CHAPTER.

B. AN ACTION OR PROCEEDING UNDER THIS SECTION MAY BE COMMENCED WHENEVER ANY OWNER OR ANY PERSON ACTING AS A DIRECTOR, OFFICER, AGENT OR EMPLOYEE OF ANY OWNER, OR ANY CONTRACTOR OR AGENT OR EMPLOYEE OF SUCH CONTRACTOR IS:

1. FAILING OR OMITTING OR ABOUT TO FAIL OR OMIT TO DO ANYTHING REQUIRED TO HIM BY THIS CHAPTER OR BY ANY APPROVAL, ORDER, RULE, REGULATION OR REQUIREMENT OF THE STATE ENGINEER UNDER THE AUTHORITY OF THIS CHAPTER; OR

2. DOING OR PERMITTING ANYTHING OR ABOUT TO DO OR PERMIT ANYTHING TO BE DONE IN VIOLATION OF OR CONTRARY TO THIS CHAPTER OR ANY APPROVAL, ORDER, RULE, REGULATION OR REQUIREMENT OF THE STATE ENGINEER UNDER THIS CHAPTER; OR

3. IN THE OPINION OF THE STATE ENGINEER, IN ANY MANNER IN VIOLATION OF THIS CHAPTER.

C. ANY ACTION OR PROCEEDING UNDER THIS SECTION SHALL BE COMMENCED IN A COURT OF APPROPRIATE JURISDICTION IN WHICH:

1. THE CAUSE OR SOME PART THEREOF AROSE; OR

2. THE OWNER OR PERSON COMPLAINED OF HAS HIS PRINCIPAL PLACE OF BUSINESS; OR

3. THE PERSON COMPLAINED OF RESIDES.

Sec. 7. **Repeal**

Title 45, chapter 3, articles 2 and 3, Arizona Revised Statutes, are repealed.

Approved by the Governor–April 26, 1973

Filed in the Office of the Secretary of State–April 26, 1973

CHAPTER 80

Senate Bill 1006

AN ACT

RELATING TO PRISONS AND PRISONERS; PROVIDING FOR HEARINGS UNDER INTERSTATE COMPACT FOR THE SUPERVISION OF PAROLEES AND PROBATIONERS; PROVIDING FOR TITLE CHANGE FOR TITLE 31, CHAPTER 3, ARTICLE 4, ARIZONA REVISED STATUTES, AND AMENDING TITLE 31, CHAPTER 3, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 31-462 THROUGH 31-465.

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

Section 1. Title 31, chapter 3, article 4, Arizona Revised Statutes, is amended by adding sections 31-462 through 31-465, to read:

31-462. **Parole or probation violation; retaking; notice; hearing; custody pending hearing**

WHERE SUPERVISION OF A PAROLEE OR PROBATIONER IS BEING ADMINISTERED PURSUANT TO THE INTERSTATE COMPACT FOR THE SUPERVISION OF PAROLEES AND PROBATIONERS, THE APPROPRIATE JUDICIAL OR ADMINISTRATIVE AUTHORITIES IN THIS STATE SHALL NOTIFY THE COMPACT ADMINISTRATOR OF

THE SENDING STATE WHENEVER, IN THEIR VIEW, CONSIDERATION SHOULD BE GIVEN TO RETAKING OR REINCARCERATION FOR A PAROLE OR PROBATION VIOLATION. PRIOR TO THE GIVING OF ANY SUCH NOTIFICATION, A HEARING SHALL BE HELD IN ACCORDANCE WITH THIS ARTICLE WITHIN A REASONABLE TIME, UNLESS SUCH HEARING IS WAIVED BY THE PAROLEE OR PROBATIONER. THE APPROPRIATE OFFICER OR OFFICERS OF THIS STATE SHALL AS SOON AS PRACTICABLE, FOLLOWING TERMINATION OF ANY SUCH HEARING, REPORT TO THE SENDING STATE, FURNISH A COPY OF THE HEARING RECORD, AND MAKE RECOMMENDATIONS REGARDING THE DISPOSITION TO BE MADE OF THE PAROLEE OR PROBATIONER BY THE SENDING STATE. PENDING ANY PROCEEDING PURSUANT TO THIS SECTION, THE APPROPRIATE OFFICERS OF THIS STATE MAY TAKE CUSTODY OF AND DETAIN THE PAROLEE OR PROBATIONER INVOLVED FOR A PERIOD NOT TO EXCEED FIFTEEN DAYS PRIOR TO THE HEARING AND, IF IT APPEARS TO THE HEARING OFFICER OR OFFICERS THAT RETAKING OR REINCARCERATION IS LIKELY TO FOLLOW, FOR SUCH REASONABLE PERIOD AFTER THE HEARING OR WAIVER AS MAY BE NECESSARY TO ARRANGE FOR THE RETAKING OR REINCARCERATION.

31-463. **Hearing officer**

ANY HEARING PURSUANT TO THIS ARTICLE MAY BE BEFORE THE ADMINISTRATOR OF THE INTERSTATE COMPACT FOR THE SUPERVISION OF PAROLEES AND PROBATIONERS, A DEPUTY OF SUCH ADMINISTRATOR, OR ANY OTHER PERSON AUTHORIZED PURSUANT TO THE LAWS OF THIS STATE TO HEAR CASES OF ALLEGED PAROLE OR PROBATION VIOLATION, EXCEPT THAT NO HEARING OFFICER SHALL BE THE PERSON MAKING THE ALLEGATION OF VIOLATION.

31-464. **Hearing rights of parolee or probationer**

WITH RESPECT TO ANY HEARING PURSUANT TO THIS ARTICLE, THE PAROLEE OR PROBATIONER:

1. SHALL HAVE REASONABLE NOTICE IN WRITING OF THE NATURE AND CONTENT OF THE ALLEGATIONS TO BE MADE, INCLUDING NOTICE THAT ITS PURPOSE IS TO DETERMINE WHETHER THERE IS PROBAGLE CAUSE TO BELIEVE THAT HE HAS COMMITTED A VIOLATION THAT MAY LEAD TO A REVOCATION OF PAROLE OR PROBATION.

2. SHALL BE PERMITTED TO ADVISE WITH ANY PERSONS WHOSE ASSISTANCE HE REASONABLY DESIRES, PRIOR TO THE HEARING.

3. SHALL HAVE THE RIGHT TO CONFRONT AND EXAMINE ANY PERSONS WHO HAVE MADE ALLEGATIONS AGAINST HIM, UNLESS THE HEARING OFFICER DETERMINES THAT SUCH CONFRONTATION WOULD PRESENT A SUBSTANTIAL PRESENT OR SUBSEQUENT DANGER OF HARM TO SUCH PERSON OR PERSONS.

4. MAY ADMIT, DENY OR EXPLAIN THE VIOLATION ALLEGED AND MAY PRESENT PROOF, INCLUDING AFFIDAVITS AND OTHER EVIDENCE, IN SUPPORT OF HIS CONTENTIONS. A RECORD OF THE PROCEEDINGS SHALL BE MADE AND PRESERVED.

31-465. **Hearings in other states; effect**

IN ANY CASE OF ALLEGED PAROLE OR PROBATION VIOLATION BY A PERSON BEING SUPERVISED IN ANOTHER STATE PURSUANT TO THE INTERSTATE COMPACT FOR THE SUPERVISION OF PAROLEES AND PROBATIONERS, ANY APPROPRIATE JUDICIAL OR ADMINISTRATIVE OFFICER OR AGENCY IN ANOTHER STATE IS AUTHORIZED TO HOLD A HEARING ON THE ALLEGED VIOLATION. UPON RECEIPT OF THE RECORD OF A PAROLE OR PROBATION VIOLATION HEARING HELD IN ANOTHER STATE PURSUANT TO A STATUTE SUBSTANTIALLY SIMILAR TO THIS ARTICLE, SUCH RECORD SHALL HAVE THE SAME STANDING AND EFFECT AS THOUGH THE PROCEEDING OF WHICH IT IS A RECORD WAS HAD BEFORE THE APPROPRIATE OFFICER OR OFFICERS IN THIS STATE, AND ANY RECOMMENDATIONS CONTAINED IN OR ACCOMPANYING THE RECORD SHALL BE FULLY CONSIDERED BY THE APPROPRIATE OFFICER OR OFFICERS OF THIS STATE IN MAKING DISPOSITION OF THE MATTER.

Sec. 2. **Article title change**

The title of title 31, chapter 3, article 4, Arizona Revised Statutes, is changed from "UNIFORM ACT FOR OUT-OF-STATE PAROLEE SUPERVISION" to "INTERSTATE COMPACT FOR THE SUPERVISION OF PAROLEES AND PROBATIONERS".

Approved by the Governor–April 27, 1973

Filed in the Office of the Secretary of State–April 27, 1973

LAWS OF ARIZONA

CHAPTER 81

Senate Bill 1034

AN ACT

RELATING TO GRAND JURIES; PROVIDING FOR INVESTIGATION BEFORE GRAND JURY BY ATTORNEY GENERAL OF MATTERS INVOLVING OFFICE OF COUNTY ATTORNEY, AND AMENDING SECTIONS 21-407 AND 21-408, ARIZONA REVISED STATUTES.

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

Section 1. Section 21-407, Arizona Revised Statutes, is amended to read:

21-407. **Duties of grand jurors**

A. The grand jurors shall inquire into every offense which may be tried within the county which is presented to them by the county attorney or other prosecuting officer at the request of the county attorney, or by THE ATTORNEY GENERAL AS a special prosecutor appointed by the presiding judge of the superior court for the purpose of proceedings under SECTION 21-408, SUBSECTION B, OR section 38-344, and shall have access to all jails, public institutions, and public records.

B. If a grand juror knows of or has reason to believe that an offense which may be tried within the county has been committed he shall report such knowledge or belief to the county attorney or to the presiding judge of the superior court. If an investigation of such alleged offense is undertaken under a charge to the grand jury as provided in subsection B of section 21-409, the grand juror may be sworn as a witness.

Sec. 2. Section 21-408, Arizona Revised Statutes, is amended to read:

21-408. **Attendance of prosecuting attorney**

A. The county attorney or other prosecuting officer shall attend the grand jurors when requested by them, and may do so although not requested for the purpose of examining witnesses, in their presence, or of giving the grand jurors legal advice regarding any matter cognizable by them. He shall also, when requested by them, draft indictments and cause process to issue for the attendance of witnesses and other evidence.

B. If a charge against or AN OFFENSE PERSONALLY involving the prosecuting attorney, or an assistant prosecuting attorney or any one employed by ~~or connected with~~ the office of the prosecuting attorney is being investigated by the grand jury, NEITHER SUCH PROSECUTING ATTORNEY NOR ANYONE EMPLOYED BY THE OFFICE OF SUCH PROSECUTING ATTORNEY, INCLUDING such person or persons under investigation, shall ~~not~~ be allowed to be present before the grand jury when such charge is being investigated other than as a witness. The person under investigation after making an appearance as a witness shall leave the place where the grand jury is holding its session.

Approved by the Governor–April 27, 1973

Filed in the Office of the Secretary of State–April 27, 1973

CHAPTER 82

Senate Bill 1073

AN ACT

RELATING TO COURTS AND CIVIL PROCEEDINGS; AUTHORIZING THE STATE OF ARIZONA AND POLITICAL SUBDIVISIONS THEREOF TO ENTER INTO AGREEMENTS TO SUBMIT DISPUTES TO ARBITRATION, AND AMENDING TITLE 12, CHAPTER 9, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 12-1518.

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

Section 1. Title 12, chapter 9, article 1, Arizona Revised Statutes, is amended by adding section 12-1518, to read:

12-1518. **State and political subdivisions**

IN THE DISCRETION OF ANY STATE AGENCY, BOARD OR COMMISSION OR ANY POLITICAL SUBDIVISION OF THE STATE OF ARIZONA, THE SERVICES OF THE AMERICAN ARBITRATION ASSOCIATION, OR ANY OTHER SIMILAR BODY, MAY BE USED AS PROVIDED BY THIS ARTICLE. ANY AGREEMENT TO MAKE USE OF ARBITRATION SHALL BE MADE EITHER AT THE TIME OF

ENTERING INTO A CONTRACT OR BY WRITTEN MUTUAL AGREEMENT AT A SUBSEQUENT TIME PRIOR TO THE FILING OF ANY CIVIL ACTION.

Approved by the Governor–April 27, 1973

Filed in the Office of the Secretary of State–April 27, 1973

CHAPTER 83

Senate Bill 1076

AN ACT

MAKING AN APPROPRIATION TO THE EMPLOYMENT SECURITY COMMISSION FOR ADMINISTERING THE ARIZONA MODEL EX-OFFENDERS' PROGRAM.

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

Section 1. **Appropriation; purpose**

The sum of sixty thousand dollars is appropriated to the employment security commission for the Arizona state employment service division to be immediately available for the purpose of administering the Arizona model ex-offenders' program through June 30, 1973.

Sec. 2. **Emergency**

To preserve the public peace, health and safety it is necessary that this act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.

Approved by the Governor–April 27, 1973

Filed in the Office of the Secretary of State–April 27, 1973

LAWS OF ARIZONA

CHAPTER 84

Senate Bill 1224

AN ACT

RELATING TO CRIMES; PROVIDING FOR RETURN OF STOLEN PROPERTY TO OWNER WITHOUT CHARGE, AND AMENDING SECTION 13-1471, ARIZONA REVISED STATUTES.

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

Section 1. Section 13-1471, Arizona Revised Statutes, is amended to read:

13-1471. **Disposition and return of stolen or embezzled property**

A. When property alleged to have been stolen or embezzled comes into the custody of a peace officer or of a magistrate, he shall hold it subject to the order of the magistrate before whom the complaint is laid or who examines the charge against the person accused of stealing or embezzling such property.

B. The person to whom the property is delivered shall enter in a suitable book a description of every article of property alleged to be stolen or embezzled and brought into the office, or taken from the person of a prisoner, and shall attach a number to each article and make a corresponding entry thereof.

C. The magistrate shall, upon satisfactory proof of the ownership, order the property to be delivered to the owner. ~~upon his paying the necessary expenses incurred in its preservation.~~ The order entitles the owner to demand and receive the property unless the property, or any part thereof, is required as evidence in any criminal action. If it is so required, it shall remain in possession of the officer or magistrate until the termination of the action.

D. If the property has not been delivered to the owner, the court before which a trial is had for the theft or embezzlement of the property may, on proof of title of the owner, order it restored to him.

E. NO CHARGE OR FEE MAY BE IMPOSED UPON THE OWNER OF PROPERTY ORDERED TO BE RETURNED TO HIM PURSUANT TO THIS SECTION.

Approved by the Governor–April 27, 1973

Filed in the Office of the Secretary of State–April 27, 1973

LAWS OF ARIZONA

CHAPTER 85

Senate Bill 1131

AN ACT

RELATING TO AERONAUTICS; PROVIDING FOR APPOINTMENT OF AIRPORT POLICEMEN; PRESCRIBING QUALIFICATIONS AND LIABILITY, AND AMENDING TITLE 2, CHAPTER 3, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 2-314.

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

Section 1. Title 2, chapter 3, article 1, Arizona Revised Statutes, is amended by adding section 2-314, to read:

2-314. **Airport police, powers, qualifications; liability of airports**

A. THE GOVERNING BODY OF ANY PUBLIC AIRPORT OPERATING PURSUANT TO THE PROVISIONS OF SECTIONS 2-311 AND 2-312 MAY APPOINT ONE OR MORE PERSONS TO BE DESIGNATED BY SUCH AIRPORT AS AIRPORT POLICEMEN TO AID AND SUPPLEMENT THE LAW ENFORCEMENT AGENCIES OF THIS STATE IN THE PROTECTION OF PERSONS AND PROPERTY. WHILE ENGAGED IN THE CONDUCT OF THIS EMPLOYMENT EACH SUCH AIRPORT POLICEMAN POSSESSES AND SHALL EXERCISE ALL LAW ENFORCEMENT POWERS OF PEACE OFFICERS IN THIS STATE.

B. ANY PERSON APPOINTED AS AN AIRPORT POLICEMAN UNDER THE PROVISIONS OF SUBSECTION A OF THIS SECTION SHALL FIRST HAVE THE MINIMUM QUALIFICATIONS ESTABLISHED BY THE ARIZONA LAW ENFORCEMENT OFFICER ADVISORY COUNCIL FOR PEACE OFFICERS AND POLICE OFFICERS PURSUANT TO SECTION 41-1822. THE AIRPORT SHALL FILE THE NAME OF EACH SUCH AIRPORT POLICEMAN ON THE DATE OF HIS APPOINTMENT WITH THE DIRECTOR OF THE DEPARTMENT OF PUBLIC SAFETY. IF THE APOINTEE MEETS THE MINIMUM QUALIFICATIONS ESTABLISHED BY THE ARIZONA LAW ENFORCEMENT OFFICER ADVISORY COUNCIL, THE DIRECTOR OF THE DEPARTMENT OF PUBLIC SAFETY SHALL ISSUE HIM A CERTIFICATE OF AUTHORITY TO ACT AS A PEACE OFFICER, AND MAY THEREAFTER REVOKE SUCH CERTIFICATE FOR GOOD CAUSE SHOWN.

C. THE GOVERNING BODY OF EACH AIRPORT APPOINTING ANY AIRPORT POLICE SHALL BE LIABLE FOR ANY AND ALL ACTS OF SUCH AIRPORT POLICE WITHIN THE SCOPE OF THEIR EMPLOYMENT. NEITHER THE STATE NOR ANY OTHER POLITICAL SUBDIVISION SHALL BE LIABLE FOR ANY ACT OR FAILURE TO ACT BY ANY SUCH AIRPORT POLICEMAN, UNLESS THE STATE OR A POLITICAL SUBDIVISION IS THE GOVERNING BODY OF SUCH AIRPORT.

Approved by the Governor–April 30, 1973

Filed in the Office of the Secretary of State–April 30, 1973

CHAPTER 86

Senate Bill 1195

AN ACT

RELATING TO CITIES AND TOWNS; PROVIDING FOR MAJORITY VOTE OF QUALIFIED ELECTORS VOTING THEREON FOR PERMITTING TOWN COUNCILMEN TO HOLD OFFICE FOR FOUR-YEAR STAGGERED TERMS; PROVIDING FOR CHANGE FROM TOWN TO CITY BY MAJORITY VOTE OF ELECTORS VOTING ON THE QUESTION; PROVIDING FOR MAJORITY VOTE OF QUALIFIED ELECTORS OF CITY VOTING THEREON FOR CLASSIFICATION OF COUNCILMEN FOR PURPOSES OF ELECTION, AND AMENDING SECTIONS 9-232.02, 9-271 AND 9-272, ARIZONA REVISED STATUTES.

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

Section 1. Section 9-232.02, Arizona Revised Statutes, is amended to read:

9-232.02. **Permitting town councilmen to hold office for four-year staggered terms**

The common council may, by majority vote of the qualified electors of the town VOTING THEREON, provide for four-year staggered terms for members of the town council in the manner provided in section 9-272,

with respect to cities. In the event the common council consists of five members only, the first class shall consist of two councilmen and the second class shall consist of three councilmen.

Sec. 2. Section 9-271, Arizona Revised Statutes, is amended to read:

9-271. **Procedure for change; city officers**

A. When a town has acquired a population of three thousand or over and the council shall by resolution so declare, the town may by majority vote of the qualified electors VOTING THEREON assume a city organization having and exercising all rights, powers, authority, duties and privileges of a city under such name as the council may designate.

B. Upon making the change from a town to a city organization the officers of the city shall consist of:

1. Seven councilmen elected at large by the qualified electors residing in the city at the regular election which would have been held had the change not been made.

2. A mayor elected by and from among the members of the council.

3. The following officers appointed by the mayor and city council:

(a) A city clerk and ex officio treasurer.

(b) A city attorney.

(c) A city marshal or chief of police.

(d) A city physician.

(e) A city engineer.

(f) When provided by ordinance, a city health or sanitary officer, a superintendent of streets, a fire chief and such other officers as the council deems necessary.

C. The same person may hold two or more of the appointive offices enumerated in paragraph 3 of subsection B.

D. Pending the holding of the first regular election after the change, the officers of the municipality and their terms of office shall continue as though the change from town to city government had not been made.

Sec. 3. Section 9-272, Arizona Revised Statutes, is amended to read:

9-272. **Classification of councilmen for purposes of election; terms of office**

A. The common council may, by a majority vote of the qualified electors of the city VOTING THEREON, provide by ordinance or resolution, that the members of the council be divided by lot into two classes. The first class shall consist of three councilmen and the second class of four. Those of the first class shall hold office until the next regular election, and those of the second class until the second regular election. At the first regular election held after the change, three councilmen shall be elected, and at the second regular election four councilmen shall be elected.

B. Thereafter councilmen shall be elected in classes of three and four at successive, regular elections and shall hold their office for terms of four years each and until their successors are elected and qualified.

Approved by the Governor–April 30, 1973

Filed in the Office of the Secretary of State–April 30, 1973

CHAPTER 87

House Bill 2117

AN ACT

RELATING TO PUBLIC OFFICERS AND EMPLOYEES; PROVIDING THAT CERTAIN BENEFITS SHALL NOT BE REDUCED BY SOCIAL SECURITY PAYMENTS, AND AMENDING TITLE 38, CHAPTER 5, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTION 38-852.01.

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

Section 1. Title 38, chapter 5, article 4, Arizona Revised Statutes, is amended by adding section 38-852.01, to read:

38-852.01. **Benefits not to be reduced by social security payments**

FROM AND AFTER THE EFFECTIVE DATE OF THIS SECTION, ALL BENEFITS NOW OR HEREAFTER RECEIVED PURSUANT TO THIS ARTICLE OR PRIOR RETIREMENT SYSTEMS SHALL NOT BE REDUCED BECAUSE OF ANY PAYMENT RECEIVED AS BENEFITS UNDER THE FEDERAL OLD AGE AND SURVIVORS INSURANCE SYSTEM.

Sec. 2. **Emergency**

To preserve the public peace, health and safety it is necessary that this act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.

Approved by the Governor–May 1, 1973

Filed in the Office of the Secretary of State–May 1, 1973

CHAPTER 88

House Bill 2151

AN ACT

RELATING TO STATE GOVERNMENT; REPEALING LAWS RELATING TO COMMISSIONER OF DEEDS; ESTABLISHING A DEPARTMENT OF STATE; PRESCRIBING POWERS AND DUTIES OF THE SECRETARY OF STATE; AMENDING SECTIONS 12-2223, 33-511 AND 38-294, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 1, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-121.02, AND REPEALING TITLE 41, CHAPTER 2, ARTICLE 1, ARIZONA REVISED STATUTES.

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

Section 1. Section 12-2223, Arizona Revised Statutes, is amended to read:

12-2223. **Persons authorized to administer oath or affirmation within or without United States**

A. An oath or affirmation when taken without this state, but within the United States, may be taken before any judge, commissioner or clerk of a court of record having a seal, master in chancery, notary public authorized to administer oaths and affirmations by the law of the state wherein such oaths and affirmations may be taken. ~~, or before any commissioner of deeds appointed and qualified under the laws of this state for some other state in the state for which he is appointed.~~ If the oath or affirmation purports to have been taken before any such officer, and has his seal of office affixed, such oath or affidavit may be used within this state as though taken before a like officer within this state.

B. An oath or affirmation taken without the United States may be taken before any ambassador, minister, charge d'affairs, consul, deputy consul, vice-consul or consular agent of the United States resident and officiating as such in the country where taken, or before any notary public of the country where taken whose official authority is authenticated under the seal of any ambassador, minister, charge d'affairs, consul, deputy consul, vice-consul or consular agent.

Sec. 2. Section 33-511, Arizona Revised Statutes, is amended to read:

33-511. **Acknowledgment within the State**

The acknowledgment of any instrument may be made in this state before:

1. A judge of a court of record.

2. A clerk or deputy clerk of a court having a seal.

3. A ~~commissioner or~~ recorder of deeds.

4. A notary public.

5. A justice of the peace.

6. A county recorder.

Sec. 3. Section 38-294, Arizona Revised Statutes, is amended to read:

38-294. **Resignations**

Resignations shall be in writing, and made as follows:

1. By members of the legislature, to the presiding officer of the body of

which he is a member, who shall immediately transmit the resignation to the governor.

2. By state officers, notaries public~~, commissioners of deeds~~ and officers of the militia, to the governor.

3. By other officers commissioned by the governor, to the governor.

4. By county officers, to the chairman of the board of supervisors of their county.

5. By the chairman of the board of supervisors, to the county recorder of the county.

6. In cases not otherwise provided for, by filing the resignation in the office of the secretary of state.

7. By appointive officers, to the body or officer which appointed them, unless otherwise provided.

Sec. 4. Title 41, chapter 1, article 2, Arizona Revised Statutes, is amended by adding section 41-121.02, to read:

41-121.02. **Department of state**

A. THERE IS ESTABLISHED THE DEPARTMENT OF STATE WHICH SHALL BE COMPOSED OF THE OFFICE OF THE SECRETARY OF STATE.

B. THE SECRETARY OF STATE SHALL HAVE CHARGE OF AND DIRECT THE DEPARTMENT OF STATE.

Sec. 5. **Repeal**

Title 41, chapter 2, article 1, Arizona Revised Statutes, is repealed.

Sec. 6. **Name change**

The designation of title 41, chapter 1, article 2, Arizona Revised Statutes, is changed from "ARTICLE 2. THE SECRETARY OF STATE" to "ARTICLE 2. THE SECRETARY OF STATE AND THE DEPARTMENT OF STATE".

Sec. 7. **Effective date**

The provisions of this act shall become effective on July 1, 1974, unless the governor by executive order declares that the department of state shall become operative at an earlier date.

Approved by the Governor–May 1, 1973

Filed in the Office of the Secretary of State–May 1, 1973

CHAPTER 89

House Bill 2152

AN ACT

RELATING TO MINES; PROVIDING FOR APPOINTMENT OF DEPUTY INSPECTORS; ABOLISHING THE POSITION OF STATE MINE DUST ENGINEER; PROVIDING FOR DUST INSPECTION BY STATE MINE INSPECTOR; AMENDING SECTIONS 27-122 AND 27-123, ARIZONA REVISED STATUTES; AMENDING TITLE 27, CHAPTER 1, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 27-128; REPEALING TITLE 27, CHAPTER 1, ARTICLE 3, ARIZONA REVISED STATUTES, AND AMENDING SECTION 27-411, ARIZONA REVISED STATUTES.

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

Section 1. Section 27-122, Arizona Revised Statutes, is amended to read:

27-122. **Deputy inspectors**

The state mine inspector may appoint ~~six deputies~~ AND ASSIGN SUCH DEPUTY INSPECTORS TO PERFORM THE DUTIES OF THE STATE MINE INSPECTOR AS PRESCRIBED BY LAW. ~~The deputies shall have the same qualifications as are prescribed for the mine inspector. They~~ ALL DEPUTIES shall ~~each~~ receive compensation as determined pursuant to

section 38-611. ANY DEPUTY INSPECTOR REGULARLY PERFORMING THE DUTIES PRESCRIBED BY SECTION 27-128 SHALL BE A MINING ENGINEER GRADUATED FROM AN ACCREDITED SCHOOL OF MINING OR GEOLOGY, WHO IS EXPERIENCED IN MAKING DUST SURVEYS AND WHO HAS HAD NOT LESS THAN THREE YEARS ACTUAL EXPERIENCE IN MINING, OF WHICH NOT LESS THAN ONE YEAR WAS IN MINE VENTILATION AND DUST CONTROL WORK.

Sec. 2. Section 27-123, Arizona Revised Statutes, is amended to read:

27-123. **Dust control; duties of deputy inspectors**

Each deputy ~~state mine~~ inspector shall cooperate with the state mine ~~dust engineer~~ INSPECTOR in the prevention and elimination of hazardous dust conditions, and shall immediately notify the state mine ~~dust engineer~~ INSPECTOR of any hazardous dust condition which he has reason to believe exists within his district. ~~Each deputy state mine inspector shall be furnished by the state mine dust engineer with a copy of the notice of the existence of any hazardous dust condition in a mine within his district, and a copy of any order for cessation of operations within the mine. Each deputy state mine inspector shall ascertain and report to the state mine dust engineer any failure on the part of a mine operator to install, maintain and operate dust control practices to remedy a hazardous dust condition of which the mine operator has been notified or any violation of an order of the state mine dust engineer given or made pursuant to section 27-142.~~

Sec. 3. Title 27, chapter 1, article 2, Arizona Revised Statutes, is amended by adding section 27-128, to read:

27-128. **Inspection of mines**

A. THE STATE MINE INSPECTOR OR A DEPUTY INSPECTOR SHALL INSPECT EACH MINE IN THE STATE AS FREQUENTLY AS NECESSARY TO DETERMINE WHETHER ANY HAZARDOUS DUST CONDITION EXISTS THEREIN. THERE SHALL BE A PROMPT INSPECTION OF ANY MINE IN WHICH HE OR A DEPUTY INSPECTOR HAS REASON TO BELIEVE A HAZARDOUS DUST CONDITION EXISTS OR WITH RESPECT TO WHICH COMPLAINT OF A HAZARDOUS DUST CONDITION HAS BEEN MADE AS PROVIDED IN SECTION 27-308. THE MINE INSPECTOR OR A DEPUTY INSPECTOR SHALL MAKE RECOMMENDATIONS TO MINE OPERATORS AS TO METHODS OF REDUCING DUST AND WHENEVER HE FINDS A

HAZARDOUS DUST CONDITION HE SHALL NOTIFY THE MINE OPERATOR THEREOF. THE NOTICE SHALL BE IN WRITING AND SHALL SPECIFY A REASONABLE TIME WITHIN WHICH THE DUST CONDITION MUST BE REMEDIED. THE MINE OPERATOR SHALL INSTALL WITHIN THE TIME SPECIFIED, AND THEREAFTER MAINTAIN AND OPERATE, DUST PREVENTION PRACTICES WHICH REMEDY THE HAZARDOUS DUST CONDITION.

B. IF THE DUST PREVENTION PRACTICES ARE NOT INSTALLED WITHIN THE TIME SPECIFIED IN THE NOTICE OR ARE NOT THEREAFTER MAINTAINED, THE STATE MINE INSPECTOR OR A DEPUTY INSPECTOR SHALL FORTHWITH ORDER CESSATION OF OPERATIONS, EXCEPT FOR NECESSARY MAINTENANCE AND REPAIR WORK, IN ALL PARTS OF THE MINE IN WHICH HAZARDOUS DUST CONDITIONS EXIST OR ARE PRODUCED BY OPERATIONS UNTIL THE CONDITION IS REMEDIED. WRITTEN NOTICE OF THE ORDER SHALL BE GIVEN THE MINE OPERATOR AND ANY MINE OPERATOR WHO THEREAFTER FAILS TO OBEY THE ORDER IS GUILTY OF A MISDEMEANOR.

Sec. 4. **Repeal**

Title 27, chapter 1, article 3, Arizona Revised Statutes, is repealed.

Sec. 5. Section 27-411, Arizona Revised Statutes, is amended to read:

27-411. **Definitions**

In this article, unless the context otherwise requires:

1. "Dust prevention practices" includes ventilation, suction or exhaust methods of removing dust, wet methods for settling dust, and the use of respirators when the condition or exposure is temporary or intermittent, and other means of removing or settling dust from mine air as approved by the state mine ~~dust engineer~~ INSPECTOR.

2. A "hazardous dust or gas condition" shall exist when the breathing zone of an employee while engaged in the performance of his work contains higher concentration limits ~~than specified in the following tables:~~

~~Toxic Dust and Fumes~~

~~Name~~	~~Milligrams per Cubic Meter of Air~~
~~Antimony~~	~~.5~~
~~Arsenic~~	~~.5~~

~~Name~~	~~Miligrams per Cubic Meter of Air~~
~~Barium~~	~~.5~~
~~Cadmium~~	~~.1~~
~~Cyanide~~	~~5.0~~
~~Lead~~	~~.15~~
~~Manganese~~	~~6.0~~
~~Mercury~~	~~.1~~
~~Sulphuric Acid~~	~~1.0~~
~~Tellurium~~	~~.1~~
~~Zinc Oxide Fumes~~	~~15.0~~
~~Uranium (Soluble)~~	~~.05~~
~~Uranium (Insoluble)~~	~~.25~~

~~Mineral Dusts~~

~~Name~~	~~Million Particles Per Cubic Foot of Air~~
~~Asbestos~~	~~5~~
~~Dust Without Free Silica~~	~~50~~
~~Mica Below 5% Free Silica~~	~~20~~
~~Portland Cement~~	~~50~~
~~Talc~~	~~20~~
~~Silica:~~	
~~Above 50% Free Si O_2~~	~~5~~
~~5% to 50% Free Si O_2~~	~~10~~
~~Below 5% Free Si O_{12}~~	~~50~~
~~Slate~~	~~50~~

~~Gases~~

~~Name~~	~~Per Cent by Volume~~
~~CO_2~~	~~0.5~~
~~CO~~	~~0.01~~
~~NO_2~~	~~0.0025~~
~~O_2~~	~~20.~~
~~SO_2~~	~~0.0005~~

OF TOXIC DUST AND FUMES, MINERAL DUSTS, AND GASES THAN SPECIFIED BY THE STATE MINE INSPECTOR IN THE RULES AND REGULATIONS. Dust counts shall be determined in accordance with techniques prescribed by the inspector and shall be made when necessary.

3. "Respirators" means only those respirators approved by the United States bureau of mines or which may be approved hereafter by the United States bureau of mines and by the state mine ~~dust engineer~~ INSPECTOR.

4. "Breathing zone", in the case of persons wearing respirators, is the air space created after the passage of air through the protective device.

Approved by the Governor–May 1, 1973

Filed in the Office of the Secretary of State–May 1, 1973

CHAPTER 90

House Bill 2250

AN ACT

RELATING TO TRADE AND COMMERCE; PRESCRIBING DEFINITION OF "CLEARING CORPORATION"; PROVIDING AUTHORITY TO DEPOSIT SECURITIES HELD AS TRUST ESTATES AND STOCK AND SECURITIES HELD BY BANK, TITLE INSURANCE COMPANY OR OTHER FIDUCIARIES IN SUCH CLEARING CORPORATIONS, AND AMENDING SECTIONS 6-871, 14-1042, 14-1121 AND 44-3002, ARIZONA REVISED STATUTES.

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

Section 1. Section 6-871, Arizona Revised Statutes, is amended to read:

6-871. **Establishment of common trust funds**

Any bank or trust company qualified to act as fiduciary in this state may establish common trust funds for the purpose of furnishing investments to itself as fiduciary, or to itself and others, as cofiduciaries. A qualified bank or trust company may as fiduciary or cofiduciary, invest funds it lawfully holds in interests in such common trust funds, if such investment is not prohibited by the instrument, judgment, decree or order creating such fiduciary relationship, and if, in the case of cofiduciaries, the bank or trust company procures the consent of its cofiduciary or cofiduciaries to any such investment. SECURITIES WHICH CONSTITUTE PART OR ALL OF THE TRUST ESTATE MAY BE DEPOSITED IN A CLEARING CORPORATION AS DEFINED IN SECTION 44-3002, SUBSECTION C.

Sec. 2. Section 14-1042, Arizona Revised Statutes, is amended to read:

14-1042. **Investments in name of nominee**

A. Any state or national bank or title insurance company, when acting in this state as a fiduciary or a cofiduciary with others, may with the consent of its cofiduciary or cofiduciaries, if any, who are hereby authorized to give such consent, cause any investment held in any such capacity, to be registered and held in the name of a nominee or nominees of such bank or title insurance company. Such bank or title insurance company shall be liable for the acts of any such nominee with respect to any investment so registered.

B. The records of such bank or title insurance company shall at all times show the ownership of any such investment, which investment shall be in the possession and control of such bank or title insurance company and be kept separate and apart from the assets of such bank or title insurance company EXCEPT THAT A STATE OR NATIONAL BANK OR TITLE INSURANCE COMPANY MAY DEPOSIT STOCK OR OTHER SECURITIES SO HELD IN A CLEARING CORPORATION AS DEFINED IN SECTION 44-3002, SUBSECTION C.

Sec. 3. Section 14-1121, Arizona Revised Statutes, is amended to read:

14-1121. **Definitions**

In this article, unless the context otherwise requires:

1. "Assignment" includes any written stock power, bond power, bill of sale, deed, declaration of trust or other instrument of transfer.

2. "Claim of beneficial interest" includes a claim of any interest by a decedent's legatee, distributee, heir or creditor, a beneficiary under a trust, a ward, a beneficial owner of a security registered in the name of a nominee, or a minor owner of a security registered in the name of a custodian, or a claim of any similar interest, whether the claim is asserted by the claimant or by a fiduciary or by any other authorized person on his behalf, and includes a claim that the transfer would be in breach of fiduciary duties.

3. "Corporation" means a private or public corporation, association or trust issuing a security AND INCLUDES A CLEARING CORPORATION AS DEFINED IN SECTION 44-3002, SUBSECTION C.

4. "Fiduciary" means an executor, administrator, trustee, guardian, committee, conservator, curator, tutor, custodian or nominee.

5. "Person" includes an individual, a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

6. "Security" includes any share of stock, bond, debenture, note or other security issued by a corporation which is registered as to ownership on the books of the corporation.

7. "Transfer" means a change on the books of a corporation in the registered ownership of a security.

8. "Transfer agent" means a person employed or authorized by a corporation to transfer securities issued by the corporation.

Sec. 4. Section 44-3002, Arizona Revised Statutes, is amended to read:

44-3002. **Definitions and index of definitions**

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

1. A "security" is an instrument which:

(a) Is issued in bearer or registered form; and

(b) Is of a type commonly dealt in upon securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment; and

(c) Is either one of a class or series or by its terms is divisible into a class or series of instruments; and

(d) Evidences a share, participation or other interest in property or in an enterprise or evidences an obligation of the issuer.

2. A writing which is a security is governed by this article and not by the uniform commercial code-commercial paper even though it also meets the requirements of that article. This article does not apply to money.

3. A security is in "registered form" when it specifies a person entitled to the security or to the rights it evidences and when its transfer may be registered upon books maintained for that purpose by or on behalf of an issuer or the security so states.

4. A security is in "bearer form" when it runs to bearer according to its terms and not by reason of any indorsement.

B. A "subsequent purchaser" is a person who takes other than by original issue.

~~C. A "clearing corporation" is a corporation all of the capital stock of which is held by or for a national securities exchange or association registered under a statute of the United States such as the securities exchange act of 1934.~~

C. A "CLEARING CORPORATION" IS A CORPORATION:

1. AT LEAST NINETY PER CENT OF THE CAPITAL STOCK OF WHICH IS HELD BY OR FOR ONE OR MORE PERSONS, OTHER THAN INDIVIDUALS, EACH OF WHOM:

(a) IS SUBJECT TO SUPERVISION OR REGULATION PURSUANT TO THE PROVISIONS OF FEDERAL OR STATE BANKING LAWS OR STATE INSURANCE LAWS; OR

(b) IS A BROKER OR DEALER OR INVESTMENT COMPANY REGISTERED UNDER THE SECURITIES EXCHANGE ACT OF 1934 OR THE INVESTMENT COMPANY ACT OF 1940; OR

(c) IS A NATIONAL SECURITIES EXCHANGE OR ASSOCIATION REGISTERED UNDER A STATUTE OF THE UNITED STATES SUCH AS THE SECURITIES EXCHANGE ACT OF 1934,

AND NONE OF WHOM, OTHER THAN A NATIONAL SECURITIES EXCHANGE OR ASSOCIATION, HOLDS IN EXCESS OF TWENTY PER CENT OF THE CAPITAL STOCK OF SUCH CORPORATION; AND

2. ANY REMAINING CAPITAL STOCK OF WHICH IS HELD BY INDIVIDUALS WHO HAVE PURCHASED SUCH CAPITAL STOCK AT OR PRIOR TO THE TIME OF THEIR TAKING OFFICE AS DIRECTORS OF SUCH CORPORATIONS AND WHO HAVE PURCHASED ONLY SO MUCH OF SUCH CAPITAL STOCK AS MAY BE NECESSARY TO PERMIT THEM TO QUALIFY AS SUCH DIRECTORS.

D. A "custodian bank" is any bank or trust company which is supervised and examined by state or federal authority having supervision over banks and which is acting as custodian for a clearing corporation.

E. Other definitions applying to this article and the sections in which they appear are:

1. "Adverse claim". Section 44-3016.

2. "Bona fide purchaser". Section 44-3017.

3. "Broker". Section 44-3018.

4. "Guarantee of the signature". Section 44-3037.

5. "Intermediary bank". Section 44-2605.

6. "Issuer". Section 44-3008.

7. "Overissue". Section 44-3004.

F. In addition article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

Approved by the Governor–May 1, 1973

Filed in the Office of the Secretary of State–May 1, 1973

CHAPTER 91

House Bill 2269

AN ACT

RELATING TO PUBLIC OFFICERS AND EMPLOYEES; REMOVING CERTAIN UNITED STATES CODE REFERENCES FROM TAX DEFERRED ANNUITY AND COMPENSATION PLAN STATUTES, AND AMENDING SECTIONS 9-500, 11-251 AND 38-871, ARIZONA REVISED STATUTES.

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

Section 1. Section 9-500, Arizona Revised Statutes, is amended to read:

9-500. **Authority for providing for tax deferred annuity and deferred compensation plans for employees**

A. The governing body of a city or town may provide through ordinance or resolution a plan or plans for their employees which provide tax deferred annuity and deferred compensation plans as authorized pursuant to title 26, ~~sections 401, 403 and 404,~~ United States Code Annotated.

B. Such plans shall be established to allow voluntary participation by all employees of a city or town.

C. Participating employees shall authorize the city or town to make reductions in their remuneration as provided in an executed deferred compensation agreement.

Sec. 2. Section 11-251, Arizona Revised Statutes, is amended to read:

11-251. **Powers of board**

The board of supervisors, under such limitations and restrictions as are prescribed by law, may:

1. Supervise the official conduct of all county officers and officers of all districts and other subdivisions of the county charged with assessing, collecting, safekeeping, managing or disbursing the public revenues, see that such officers faithfully perform their duties, direct prosecutions for delinquencies, and, when necessary, require the officers to renew their official bonds, make reports and present their books and accounts for inspection.

2. Divide the counties into such districts or precincts as required by law, change them and create others as convenience requires.

3. Establish, abolish and change election precincts, appoint inspectors and judges of elections, canvass election returns, declare the result and issue certificates thereof.

4. Lay out, maintain, control and manage public roads, ferries and bridges within the county and levy such tax therefor as may be authorized by law.

5. Provide for the care and maintenance of the indigent sick of the county, erect and maintain hospitals therefor and, in their discretion, provide a farm in connection with the county hospital and adopt regulations for working the farm.

6. Provide suitable rooms for county purposes.

7. Purchase, receive by donation or lease real or personal property necessary for the use of the county prison and take care of, manage and control it, but no purchase of real property shall be made unless the value has been previously estimated by three disinterested citizens of the

county, appointed by the board for that purpose, and no more than the appraised value shall be paid therefor.

8. Cause to be erected and furnished a courthouse, jail, hospital and such other buildings as necessary, and construct and establish a branch jail, when necessary, at a point distant from the county seat.

9. Sell at public auction at the courthouse door, after thirty days' previous notice given by publication in a newspaper of the county, and convey to the highest bidder, for cash or contract of purchase extending not more than five years from date of sale and upon such terms and conditions and for such consideration as the board shall prescribe, any property belonging to the county which the board deems advantageous for the county to sell, or which the board deems unnecessary for use by the county, and shall pay the proceeds thereof into the county treasury for use of the county, except that personal property need not be sold but may be used as a trade-in on the purchase of personal property when the board deems this disposition of the personal property to be in the best interests of the county. When the property for sale is real property, the board shall have such property appraised by a practicing attorney, a licensed real estate broker and a qualified employee of a bank or title and trust company dealing in real property transactions. They shall establish a minimum price which shall in no instance be less than ninety per cent of the appraised value. The notice regarding the sale of real property shall be published in the county where the property is situated and may be published in one or more other counties, and shall contain, among other things, the appraised value, the minimum acceptable sale price, and the common and legal description of the real property.

10. Examine and exhibit the accounts of all officers having the care, management, collection or disbursement of money belonging to the county or appropriated by law or otherwise for the use and benefit of the county.

11. Examine, settle and allow all accounts legally chargeable against the county, order warrants to be drawn on the county treasurer therefor and provide for issuing the warrants.

12. Levy such tax annually on the taxable property of the county as may be necessary to defray the general current expenses thereof, including salaries otherwise unprovided for, not exceeding two dollars on every one hundred dollars of value for any one year, and levy such other taxes as are required to be levied by law.

13. Equalize assessments.

14. Direct and control the prosecution and defense of all actions to which the county is a party, and compromise them.

15. Insure the county buildings in the name of and for the benefit of the county.

16. Fill by appointment all vacancies occurring in county or precinct offices.

17. Adopt provisions necessary to preserve the health of the county, and provide for the expenses thereof.

18. Contract for county printing and advertising, and provide books and stationery for county officers.

19. Provide for rebinding county records, or, if necessary, the transcribing of county records.

20. Make and enforce necessary rules and regulations for the government of their body the preservation of order and transaction of business.

21. Adopt a seal for the board, a description and impression of which shall be filed by the clerk in the office of the county recorder, and the secretary of state.

22. Establish, maintain and conduct, or aid in establishing, maintaining and conducting public aviation fields, purchase, receive by donation or lease any property necessary therefor, lease, at a nominal rental if desired, sell such aviation fields or property to the United States or any department thereof, or sell or lease such aviation fields to a city, exchange lands acquired pursuant to this section for other lands, or act in conjunction with the United States in maintaining, managing and conducting all thereof, and, when any such property or part thereof is not needed for the purposes herein mentioned, it shall be sold by the board and the proceeds paid into the general fund of the county.

23. Acquire and hold property for the use of county fairs, and conduct, take care of and manage them.

24. Authorize the sheriff to offer a reward, not exceeding five hundred dollars in one case, for the apprehension of persons convicted of or charged with crime.

25. Contract for the transportation of insane persons to the state hospital, or direct the sheriff to transport such persons and allow the expenses thereof.

26. Bury deceased indigents and mark their graves with a stone, giving the name, age and date of death.

27. Sell or grant to the United States the title or interest of the county in any toll road or toll train in or partly within a national park, upon such terms and consideration as may be agreed upon by the board and the secretary of the interior of the United States.

28. Enter into agreements for acquiring rights of way, construction, reconstruction or maintenance of highways in their respective counties with the government of the United States, acting through its duly authorized officers or agents pursuant to any act of congress, and any such agreements entered into prior to June 26, 1952 are validated and confirmed.

29. Do and perform all other acts and things necessary to the full discharge of its duties as the legislative authority of the county government.

30. Make and enforce all local, police, sanitary and other regulations not in conflict with general law.

31. Budget for funds for foster home care during the school week for mentally retarded and otherwise handicapped children who reside within the county and attend a school for the handicapped in a city or town within such county.

32. Do and perform all acts necessary to enable the county to participate in the "Economic Opportunity Act of 1964" (P.L. 88-452; 78 Stat. 508, as amended).

33. Provide a plan or plans for their employees which provide tax deferred annuity and deferred compensation plans as authorized pursuant to title 26, ~~sections 401, 403 and 404,~~ United States Code Annotated. Such plans shall allow voluntary participation by all employees of the county. Participating employees shall authorize the board to make reductions in their remuneration as provided in an executed deferred compensation agreement.

Sec. 3. Section 38-871, Arizona Revised Statutes, is amended to read:

38-871. **Annuity and deferred compensation governing committee; members; duties**

A. There is established a governing committee for tax deferred annuity and deferred compensation plans which shall consist of the following seven members:

1. Three employees of the state appointed by the governor.

2. The director of the state personnel commission.

3. The superintendent of the state banking department.

4. The commissioner of finance.

5. The attorney general.

B. The governing committee may:

1. Investigate and approve tax deferred compensation and annuity programs which give employees of the state income tax benefits authorized by title 26, ~~sections 401, 403 and 404,~~ United States Code Annotated.

2. In carrying out the purposes of this article, enter into agreements with life insurance companies authorized to do business in this state and with bank trustees or custodians and investment counseling firms registered with the securities exchange commission.

C. The governing committee shall:

1. Arrange for consolidated billing and efficient administrative services in order that any such plans approved shall operate without cost or contribution from the state except for the incidental expense of administering the payroll salary deduction or reduction and remittance thereof to the trustee or custodian of the plan or plans.

2. Promulgate rules and regulations governing the solicitation of employees by persons offering tax deferred compensation or annuity plans to such employees.

Approved by the Governor–May 1, 1973

Filed in the Office of the Secretary of State–May 1, 1973

LAWS OF ARIZONA

CHAPTER 92

House Bill 2297

AN ACT

RELATING TO TAXATION; ELIMINATING REQUIREMENT FOR COUNTY TREASURER TO MAINTAIN AN ANNUAL BACK TAX BOOK; AMENDING SECTION 42-384, ARIZONA REVISED STATUTES, AND REPEALING SECTION 42-383, ARIZONA REVISED STATUTES.

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

Section 1. **Repeal**

Section 42-383, Arizona Revised Statutes, is repealed.

Sec. 2. Section 42-384, Arizona Revised Statutes, is amended to read:

42-384. **Back tax book; interest on delinquent taxes; exemption from penalties and interest**

A. The county treasurer shall keep a back tax book. ~~in which the annual back tax books shall be consolidated, and within~~ WITHIN ten days after ~~completion of the annual back tax book~~ THE FIRST MONDAY IN MAY HE shall enter the delinquent property and NAMES OF persons ~~both on the annual book and~~ upon the ~~consolidated~~ BACK TAX book, with the data on the rolls in separate columns, together with columns for interest, fees and other charges AND SHALL COLLECT THE TAX MONIES DUE THEREON. THE COUNTY TREASURER SHALL LEVY UPON, SEIZE AND DISTRAIN PERSONAL PROPERTY AND SELL IT FOR SUCH TAXES. The back tax book shall be cross-indexed as to owners and property. Failure to complete a back tax book within the time prescribed, or any informality therein, shall not affect its validity. The total amount of taxes originally due as shown in the back tax book shall agree with the total shown by the several delinquent lists as corrected by the board, and such amount or total amount shall be debited at the end of the back tax book against the county treasurer.

B. All taxes shall bear interest from the time of delinquency at the rate of ten per cent per annum until paid, and a fraction of a month shall be counted as a whole month, EXCEPT THAT NO INTEREST SHALL BE COLLECTED IF THE DELINQUENCY IS THE RESULT OF AN ERROR BY THE COUNTY ASSESSOR OR COUNTY TREASURER.

~~C. All taxes upon real and personal property which were delinquent on November 6, 1940, shall be exempt from the payment of penalties and accrued interest, if such taxes are paid in full on or before the first Monday in March 1956, but such exemption shall not apply to taxes upon real or personal property which has been sold prior to March 12, 1955 to satisfy delinquent taxes thereon.~~

Approved by the Governor–May 1, 1973

Filed in the Office of the Secretary of State–May 1, 1973

CHAPTER 93

House Bill 2037

AN ACT

MAKING APPROPRIATIONS TO THE ARIZONA BOARD OF REGENTS FOR THE CONSTRUCTION OF, ADDITIONS TO, ALTERATIONS, REMODELING AND EXPANSION OF BUILDINGS AND OTHER FACILITIES, FOR THE ACQUISITION AND PREPARATION OF LANDS, THE PURCHASE AND INSTALLATION OF EQUIPMENT AND FURNISHINGS AND FOR THE GENERAL IMPROVEMENT OF THE GROUNDS AND OTHER PROPERTY OF THE UNIVERSITY OF ARIZONA, ARIZONA STATE UNIVERSITY AND NORTHERN ARIZONA UNIVERSITY.

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

Section 1. **Appropriation; purposes**

There is appropriated to the Arizona board of regents:

A. The sum of six million seven hundred thousand dollars for all or any part of the following purposes and improvements at or for the university of Arizona: new university library; multi-mirror telescope.

B. The sum of six million seven hundred thousand dollars for all or any part of the following purposes and improvements at or for Arizona state university: completion of physical sciences building.

C. The sum of two million six hundred thousand dollars for all or any

part of the following purposes and improvements at or for northern Arizona university: landscaping, roads and repair of roads, parking and fire lanes; athletic improvements; engineering and heating–phase II, new center; water softening equipment; psychology laboratory; laboratory facility–matching federal health science funds.

Sec. 2. **Lapsing of appropriations**

The appropriations made in section 1 shall not lapse until the purposes for which the appropriations are made are accomplished or abandoned, unless the appropriations stand until June 30, 1978, without an expenditure therefrom or encumbrance thereon.

Sec. 3. **Emergency**

To preserve the public peace, health and safety it is necessary that this act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.

Approved by the Governor–May 1, 1973

Filed in the Office of the Secretary of State–May 2, 1973

CHAPTER 94

House Bill 2100

AN ACT

RELATING TO WATER; PROVIDING FOR EVALUATION OF SUBDIVISION WATER SUPPLY BY THE ARIZONA WATER COMMISSION; PRESCRIBING DUTIES OF REAL ESTATE COMMISSIONER RELATING TO WATER COMMISSION REPORTS; REPEALING SECTION 32-2124, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1972, CHAPTER 146, SECTION 63; AMENDING SECTION 32-2181, ARIZONA REVISED STATUTES, AND AMENDING TITLE 45, CHAPTER 2, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 45-513.

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

Section 1. **Repeal**

Section 32-2124, Arizona Revised Statutes, as amended by Laws 1972, chapter 146, section 63, is repealed.

Sec. 2. Section 32-2181, Arizona Revised Statutes, is amended to read:

32-2181. **Notice to commissioner of intention to subdivide lands; fractional interests; exceptions**

A. Before offering subdivided lands for sale or lease, the owner, agent or subdivider shall notify the commissioner in writing of his intention. The notice shall contain:

1. Name and address of owner.

2. Name and address of subdivider.

3. Legal description and area of land.

4. A true statement of the condition of the title to the land, including all encumbrances thereon.

5. The terms and conditions on which it is intended to dispose of the land, together with copies of any real estate sales contract, conveyance, lease, assignment or other instrument intended to be used, and such other information the owner, his agent or subdivider desires to present.

6. A map of the subdivision which has been filed in the office of the county recorder in the county in which the subdivision is located.

7. A brief but comprehensive statement describing the land on and the locality in which the subdivision is located.

8. A statement of the provisions that have been made for legal access and provisions, if any, for health department approved sewage and solid waste collection and disposal and public utilities in the proposed subdivision, including water, electricity, gas and telephone facilities.

9. A statement as to the location of the nearest public common and high schools available for the attendance of school age pupils residing on the subdivision property.

10. A statement of the use or uses for which the proposed subdivision will be offered.

11. A statement of the provisions, if any, limiting the use or occupancy of the parcels in the subdivision.

12. The name and business address of the principal broker selling or leasing, within this state, lots or parcels in the subdivision.

13. A true statement of the approximate amount of indebtedness which is a lien on the subdivision or any part thereof and which was incurred to pay for the construction of any on-site or off-site improvement, or any community or recreational facility.

14. A true statement or reasonable estimate, if applicable, of the amount of any indebtedness which has been or is proposed to be incurred by an existing or proposed special district, entity, taxing area or assessment district, within the boundaries of which, the subdivision, or any part thereof is located, and which is to pay for the construction or installation of any improvement or to furnish community or recreational facilities to such subdivision, and which amounts are to be obtained by ad valorem tax or assessment, or by a special assessment or tax upon the subdivision or any part thereof.

15. A true statement as to the approximate amount of annual taxes, special assessments or fees to be paid by the buyer for the proposed annual maintenance of common facilities in the subdivision.

B. A person or a group of persons acting in concert may not avoid the provisions of this chapter by offering for sale or lease land designated or advertised as a common unit or by a common name in individual offerings. Any such offering as a part of a common promotional plan is subject to the provisions of this article.

C. A creation of four or more fractional interests in improved or unimproved land, lots or parcels of any size shall subject such land to the provisions of this article except when:

1. The fractional interests are the result of a foreclosure sale.

2. The fractional interests are created by a valid order or decree of a court.

3. The fractional interests consists of interest in any oil, gas or mineral lease, permit, claim or right therein and such interests are regulated as securities by the United States or by this state.

4. The fractional interests are registered as securities under the laws of the United States or the laws of this state or are exempt transactions under the provisions of sections 44-1844, 44-1845, or 44-1846.

5. The commissioner by special order exempts offerings or dispositions of any fractional interests from compliance with the provisions of this article upon written petition and upon a showing satisfactory to the commissioner that compliance is not essential to the public interest or for the protection of buyers.

D. IF THE ARIZONA WATER COMMISSION, PURSUANT TO SECTION 45-513, REPORTS AN INADEQUATE ON-SITE SUPPLY OF WATER TO MEET THE NEEDS PROJECTED BY THE DEVELOPER OR IF NO WATER IS AVAILABLE THE STATE REAL ESTATE COMMISSIONER SHALL REQUIRE THAT ALL PROMOTIONAL MATERIAL AND CONTRACTS FOR SALE OF LOTS IN SUBDIVISIONS APPROVED BY THE COMMISSIONER ADEQUATELY DISPLAY THE ARIZONA WATER COMMISSION'S REPORT OR THE DEVELOPER'S BRIEF SUMMARY THEREOF AS APPROVED BY THE COMMISSIONER ON THE PROPOSED WATER SUPPLY FOR THE SUBDIVISION.

~~D.~~ E. The commissioner may require additional information he deems necessary by submitting a questionnaire to the owner, his agent or subdivider.

Sec. 3. Title 45, chapter 2, article 1, Arizona Revised Statutes, is amended by adding Section 45-513 to read:

45-513. **Evaluation of subdivision water supply**

A. THE DEVELOPER OF A PROPOSED SUBDIVISION INCLUDING DRY LOT SUBDIVISIONS, REGARDLESS OF SUBDIVIDED LOT SIZE, PRIOR TO RECORDATION OF THE PLAT, SHALL SUBMIT PLANS FOR THE WATER SUPPLY FOR THE SUBDIVISION AND DEMONSTRATE THE ADEQUACY THEREOF TO MEET THE NEEDS PROJECTED BY THE DEVELOPER TO THE ARIZONA WATER COMMISSION. THE ARIZONA WATER COMMISSION SHALL EVALUATE THE PLANS AND ISSUE A REPORT THEREON. THE ARIZONA WATER COMMISSION MAY DESIGNATE SERVICE AREAS WHERE AN ADEQUATE WATER SUPPLY EXISTS BY REPORTING SUCH DESIGNATION TO THE WATER DEPARTMENT OF THE CITY OR TOWN OR PRIVATE WATER COMPANY AND THE STATE REAL ESTATE COMMISSIONER. A DEVELOPER SHALL NOT BE REQUIRED TO SUBMIT PLANS FOR THE WATER SUPPLY IN SUCH

SERVICE AREAS. THE ARIZONA WATER COMMISSION MAY REVOKE SUCH DESIGNATION WHEN IT FINDS THAT THE WATER SUPPLY MAY BECOME INADEQUATE.

B. THE ARIZONA WATER COMMISSION SHALL EVALUATE THE PROPOSED SOURCE OF WATER FOR THE SUBDIVISION TO DETERMINE ITS ABILITY TO MEET PROPOSED USES FOR A PERIOD OF YEARS COMMENSURATE WITH NORMAL PRACTICES IN OTHER AREAS OF THE STATE AND FORWARD A COPY OF SUCH EVALUATION TO THE STATE REAL ESTATE COMMISSIONER.

C. THE STATE OF ARIZONA AND THE ARIZONA WATER COMMISSION SHALL NOT BE LIABLE FOR ANY REPORT, DESIGNATION OR EVALUATION PREPARED IN GOOD FAITH PURSUANT TO THIS SECTION.

Sec. 4. **Emergency**

To preserve the public peace, health and safety it is necessary that this act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.

Approved by the Governor–May 1, 1973

Filed in the Office of the Secretary of State–May 2, 1973

CHAPTER 95

Senate Bill 1117

AN ACT

RELATING TO TAXATION OF INCOME; PRESCRIBING REQUIREMENTS TO OBTAIN AUTOMATIC EXTENSION OF TIME TO FILE ARIZONA INCOME TAX RETURN BASED UPON EXTENSION OF TIME GRANTED TO FILE FEDERAL RETURN, AND AMENDING SECTION 43-142, ARIZONA REVISED STATUTES.

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

Section 1. Section 43-142, Arizona Revised Statutes, is amended to read:

43-142. **Returns–time and place for filing returns**

(a) **Returns, place and form of filing.** All returns required by this title shall be in such form as the tax commission may from time to time prescribe, and shall be filed with the tax commission. The tax commission shall prepare blank forms for the returns and shall distribute them throughout the state and furnish them upon application. Failure to receive or secure the form does not relieve any taxpayer from making any return required.

(b) **Returns, time of filing**

(1) **General rule.** Returns made on the basis of the calendar year shall be filed on or before the fifteenth day of April following the close of the calendar year. Returns made on the basis of a fiscal year shall be filed on or before the fifteenth day of the fourth month following the close of the fiscal year.

(2) **Returns, extensions for filing.** The tax commission, whenever in its judgment good cause exists, and under such rules and regulations as it shall prescribe, may grant a reasonable extension of time for filing the return or for payment of the tax, or any installment thereof, disclosed by the return, due or to become due within the period of the extension. If a return filed pursuant to an extension granted by the commission is not accompanied by a copy of the extension the taxpayer shall be subject to all the legal penalties, the same as if the extension had not been granted, provided, however, that if the extension has been lost or destroyed, the taxpayer may file affidavit of loss and request a duplicate of the extension. No extension or extensions GRANTED UNDER THIS PARAGRAPH may aggregate more than six months from the due date provided for the filing of returns.

(3) **Members of armed forces, extension of time**

(A) In the case of a taxpayer who is serving as a member of the armed forces of the United States or any auxiliary branch thereof, or the merchant marine, beyond the boundaries of the continental United States, the tax commission shall automatically grant, without application being made therefor, an extension of time, free from interest and penalties, for filing the return, for payment of the tax, for taking any of the steps required by section 43-177(e) and (f), and section 43-184(b) (1), (f) and (g), until one hundred eighty days after his discharge or release from active service therein or until one hundred eighty days after the termination of the present emergency, as declared by the president of the United States by executive order number 2914, dated December 19, 1950, whichever first occurs.

(B) "Continental United States", as used in subparagraph (A), means the forty-eight states of the United States and the District of Columbia.

(C) **Returns, automatic extension of time to file return.** WHEN THE TAXPAYER HAS BEEN GRANTED AN EXTENSION OR EXTENSIONS OF TIME WITHIN WHICH TO FILE HIS FINAL FEDERAL RETURN FOR ANY TAXABLE YEAR, HE SHALL BE DEEMED TO HAVE BEEN GRANTED THE SAME EXTENSION OF TIME UNDER THIS TITLE FOR FILING HIS ARIZONA INCOME TAX RETURN, PROVIDED A COPY OF SUCH FEDERAL EXTENSION OR EXTENSIONS SHALL BE FILED WITH THE STATE TAX COMMISSION WITHIN TEN DAYS OF THE DAY ON WHICH IT IS GRANTED.

Sec. 2. **Effective date**

The provisions of this act shall become effective with the taxable year beginning from and after December 31, 1973.

Approved by the Governor—May 2, 1973

Filed in the Office of the Secretary of State—May 3, 1973

CHAPTER 96

Senate Bill 1154

AN ACT

RELATING TO EDUCATION; AUTHORIZING PURCHASING ASSISTANCE FOR SCHOOL DISTRICTS, AND AMENDING SECTION 41-729, ARIZONA REVISED STATUTES.

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

Section 1. **Purpose**

This act is designed to provide authority to the department of administration, division of finance, purchasing section, to assist school districts to economically purchase supplies, materials, equipment, other than transportation equipment, and contractual services.

Sec. 2. Section 41-729, Arizona Revised Statutes, is amended to read:

41-729. **Purchasing duties and powers**

A. The purchasing section shall have the following duties:

1. Investigate and review the type, cost, quality and quantity of supplies, materials, equipment and contractual services presently used by all budget units of the state and the methods by which such supplies, materials, equipment and contractual services are acquired, delivered, accepted, stored and distributed by all budget units.

2. Prescribe standards of quality, standard specifications and methods for the acquisition, delivery, acceptance, storage, retention and distribution for all supplies, materials, equipment and contractual services of budget units.

3. Maintain a continuing inventory of all state personal property of a capital nature showing classification, situation and use of all such property.

B. The assistant director for finance, through the purchasing section, may:

1. Purchase, rent or otherwise provide for the furnishing of supplies, materials, equipment and contractual services for budget units which do not require warehousing by the division.

2. Authorize any budget unit directly to purchase, rent or otherwise provide for certain specified supplies, materials, equipment or contractual services. The assistant director for finance shall grant such authority to any budget unit which demonstrates the ability to procure such specified supplies, materials, equipment or contractual services at the same or less cost as would be available through the section of purchasing.

3. Require bonds to assure performance by anyone selling, renting or otherwise providing supplies, materials, equipment or contractual services under this article, such bonds to be approved by the attorney general.

4. PROVIDE THE SERVICES PRESCRIBED UNDER SUBSECTION A, PARAGRAPHS 1 AND 2, TO SCHOOL DISTRICTS. PREPARE AND MAINTAIN A CURRENT MANUAL LISTING SUPPLIES, MATERIALS, EQUIPMENT, OTHER THAN CONTRACTUAL SERVICES TYPICALLY PURCHASED BY SCHOOL DISTRICTS. PRESCRIBE A PROCEDURE THROUGH WHICH SCHOOL DISTRICTS MAY JOINTLY SOLICIT BIDS OF MANUAL LISTED ITEMS. OTHERWISE ASSIST SCHOOL DISTRICTS IN THE PURCHASING FUNCTION.

C. The duties and powers of the purchasing section shall be performed to secure the greatest possible economy and efficiency to the state consistent with standards of quality.

D. In this article contractual services shall mean contracts for the maintenance or repair of any state buildings, personal property or fixtures.

Approved by the Governor–May 2, 1973

Filed in the Office of the Secretary of State–May 3, 1973

CHAPTER 97

Senate Bill 1196

AN ACT

RELATING TO PUBLIC OFFICERS AND EMPLOYEES; REPEALING LIMITATION ON EMPLOYMENT BY STATE OF HIGHWAY PATROL SYSTEM BENEFICIARY; REPEALING SECTION 38-776, ARIZONA REVISED STATUTES, AND AMENDING SECTIONS 38-778, 38-842 AND 38-854, ARIZONA REVISED STATUTES.

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

Section 1. **Repeal**

Section 38-776, Arizona Revised Statutes, is repealed.

Sec. 2. Section 38-778, Arizona Revised Statutes, is amended to read:

38-778. **Inapplicability of certain sections**

A. Effective from and after June 30, 1968, sections 38-765 through 38-775 AND 38-777 ~~of this article~~ shall become inoperative and employees employed after June 30, 1968, shall be covered by the provisions of the public safety personnel retirement system which continues and amends this system.

B. All funds accumulated and liabilities for benefits created by authority of sections 38-765 ~~to~~ THROUGH 38-775 AND 38-777, ~~inclusive,~~ through June 30, 1968, shall be transferred to the highway patrol account maintained under the public safety personnel retirement system.

Sec. 3. Section 38-842, Arizona Revised Statutes, is amended to read:

38-842. **Definitions**

In this article, unless the context otherwise requires:

1. "Accidental disability" means a physical or mental condition which, in the judgment of the board, totally and presumably permanently prevents an employee from performing his regularly assigned duties and was incurred in the performance of his duty. A determination of disability shall be based on medical evidence satisfactory to the board.

2. "Accumulated contributions" means, for each member, the sum of:

(a) The amount of his aggregate contributions made to the fund,

(b) The amount, if any, attributable to the employee's contributions prior to his effective date under another public retirement system, other than the federal social security act, and transferred to the fund, and,

(c) Interest credited on such amounts at a rate and in accordance with procedures adopted by the fund manager, which rate and procedures may be changed from time to time by the fund manager.

3. "Actuarial equivalent" means equality in value of the aggregate amounts expected to be received under two different forms of payment, based upon mortality and interest rate assumptions approved from time to time by the fund manager.

4. "Average monthly compensation" means the result obtained by dividing the total compensation paid to an employee during a considered period by the number of months, including fractional months, in which such compensation was received. The considered period shall be the five consecutive calendar years within the last ten completed calendar years of credited service which yield the highest average.

5. "Board" means the retirement board of the employer, the persons appointed to administer the system as it applies to their members in the system.

6. "Compensation" means the remuneration paid to an employee by the employers for personal services which are rendered during the period considered as service, as reported on the employee's federal income tax withholding statement (Form W-2).

7. "Credited service" means the member's total period of service prior to his effective date, plus those compensated periods of his service thereafter for which he made contributions to the fund.

8. "Effective date" means July 1, 1968, except with respect to employers and their covered employees whose contributions to the fund commence thereafter, the effective date of their participation in the system as specified in the applicable joinder agreement.

9. "Eligible child" means the child of a deceased member who is entitled to a child's insurance benefit under the federal social security act or would be so entitled if the member's employer contributed under such federal act, while under age eighteen or during disability thereafter.

10. "Employee" means any person who is a member of a group of public safety personnel regularly assigned to hazardous duty, including groups of municipal policemen, municipal firemen, state highway patrolmen, county sheriffs and deputies, fish and game wardens, penitentiary guards, college campus policemen, and special agents, and excluding persons compensated on a contractual or fee basis.

11. "Employers" means:

(a) Cities contributing to the firemen's relief and pension fund as provided in sections 9-951 to 9-971, inclusive, or statutes amended thereby and antecedent thereto, as of June 30, 1968, on behalf of their full-time paid firemen.

(b) Cities contributing under the state police pension laws as provided in sections 9-911 to 9-934, inclusive, or statutes amended thereby and antecedent thereto, as of June 30, 1968, on behalf of their municipal policemen.

(c) The state highway patrol covered under the Arizona highway patrol retirement laws, sections 38-765 ~~to~~ THROUGH 38-775 AND 38-777. ~~inclusive.~~

(d) The state, or any political subdivision thereof, including but not limited to~~,~~ towns, cities and counties which has elected to participate in

the system on behalf of an eligible group of public safety personnel pursuant to a joinder agreement entered into after July 1, 1968.

12. "Fund" means the public safety personnel retirement fund, the fund established to receive and invest contributions accumulated under the system and from which benefits are paid.

13. "Fund manager" means the fund manager of the system, the persons appointed to invest and operate the fund.

14. "Member" means any employee, excluding persons in stenographic or clerical positions:

(a) Who is either a full-time paid municipal policeman, fireman, or a law enforcement officer employed by the state including the director thereof and all ranks designated by the Arizona law enforcement merit system council, or an employee included in a group designated as eligible employees under a joinder agreement entered into by their employer after July 1, 1968, and

(b) Who, on or after his effective date, is receiving remuneration for personal services rendered to an employer or would be receiving such remuneration except for an authorized leave of absence, and

(c) Whose employment with an employer commenced prior to attainment of age fifty, and

(d) Whose customary employment is for more than twenty hours per week and for more than six months in a calendar year, and

(e) Who has not attained age sixty-five prior to his effective date or who was over age sixty-five with twenty-five years or more service prior to his effective date.

15. "Normal retirement date" means the first day of the calendar month immediately following an employee's completion of twenty years of service, or his sixty-second birthday and his completion of fifteen years of service whichever is later.

16. "Ordinary disability" means a physical or mental condition which, in the judgment of the board, totally and presumably permanently prevents an employee from engaging in any substantial gainful activity. A determination of disability shall be based on medical evidence satisfactory to the board.

17. "Pension" means a series of monthly amounts which are payable to a person who is entitled to receive benefits under the plan.

18. "Retirement" means termination of employment after a member has fulfilled all requirements for a pension. Retirement shall be considered as commencing on the day immediately following a member's last day of employment, or authorized leave of absence, if later.

19. "Service" means the last period of continuous employment of an employee by the employers prior to his retirement of his sixty-fifth birthday, whichever first occurs, except that if such period includes employment during which he would not have qualified as a member had the system then been effective, such as employment as a volunteer fireman, then only twenty-five per cent of such noncovered employment shall be considered as service. Any absence which is authorized by an employer shall not be considered as interrupting continuity of employment, provided the employee returns within the period of authorized absence. Transfers between employers also shall not be considered as interrupting continuity of employment. Any period during which a member is receiving sick leave payments or a temporary disability pension shall be considered as serivce. Any reference in this system to the number of years of service of an employee shall be deemed to include fractional portions of a year.

20. "State" means the state of Arizona, including any department, office, board, commission, agency, or other instrumentality thereof.

21. "System" means the public safety personnel retirement system, created by the provisions of this article.

22. "Temporary disability" means a physical or mental condition which, in the judgment of the board, totally and presumably temporarily prevents an employee from performing his regularly assigned duties, and which was incurred in the performance of such duty. A determination of disability shall be based on medical evidence satisfactory to the board.

Sec. 4. Section 38-854, Arizona Revised Statutes, is amended to read:

38-854. **Guarantees from prior systems**

A. An employee covered under the prior systems set forth in sections 9-912 to 9-934, inclusive, and in sections 9-951 to 9-971, inclusive, or prior statutes amended thereby and antecedent thereto, and covered under such prior systems on June 30, 1968, and who becomes a member of this

system shall nevertheless retain his right to elect, prior to retirement, benefits under this system or to elect benefits under his prior system for which his service and age make him eligible, provided that an employee shall elect in writing at the time benefits are claimed the system under which he elects to have his eligibility for benefits and the amount thereof determined. Such election shall be irrevocable on retirement and shall be filed with the employee's local board.

B. An employee of the state highway patrol who was a member of the prior system set forth in sections 38-765 ~~to~~ THROUGH 38-775 AND 38-777, ~~inclusive,~~ on June 30, 1968 and who became a member on July 1, 1968 and who qualifies for a pension under the system, shall have his pension determined in an actuarial equivalent form of payment such that the system's benefits shall not be less than the amount payable during this period under the preexisting system. Any such employee shall nevertheless retain his rights to elect to receive any benefit for which his service and age make him eligible, including but not limited to the following:

1. The member shall be entitled to a pension if his employment terminates after attainment of age sixty and completion of at least twenty years of service in an amount equal to fifty per cent of his average monthly compensation.

2. The member shall be entitled to a separation benefit in the form of a deferred vested pension if his employment terminates after completion of at least twenty years of service, provided that the member leaves his accumulated contributions on deposit with the fund.

Approved by the Governor–May 2, 1973

Filed in the Office of the Secretary of State–May 3, 1973

CHAPTER 98

Senate Bill 1206

AN ACT

RELATING TO EDUCATION; PROVIDING FOR THE TESTING OF READING ACHIEVEMENT LEVEL OF THIRD GRADE PUPILS IN OCTOBER, REQUIRING THE RESULTS OF TESTS TO BE SENT TO THE SCHOOL DISTRICT AND AMENDING SECTIONS 15-1131 AND 15-1134, ARIZONA REVISED STATUTES.

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

Section 1. Section 15-1131, Arizona Revised Statutes, is amended to read:

15-1131. **Testing pupils in third grade**

~~Beginning with the school year commencing July 1, 1970, A~~ standardized reading achievement test ~~which shall be~~ adopted by the state board of education shall be given annually in the ~~last~~ FIRST week of ~~January~~ OCTOBER to all ~~third grade~~ pupils who are ~~completing~~ ENROLLED IN the third grade. The state board of education shall promulgate rules and regulations governing the methods for the administration of all such uniform tests.

Sec. 2. Section 15-1134, Arizona Revised Statutes, is amended to read:

15-1134. **Tests results**

The results of any uniform tests administered to pupils under this article shall be reported to the state board of education. The results shall include the score of each individual pupil, the score of each classroom, the score of each school and such other information or comparative data as the state board of education may by regulation require. A copy of such results shall be retained in the office of the state superintendent. A COPY OF THE RESULTS FROM EACH DISTRICT SHALL BE SENT TO THE DISTRICT. NO RESULTS SHALL BE OTHERWISE RELEASED UNTIL TEN DAYS AFTER THE REPORT TO EACH DISTRICT. The state superintendent, by utilizing experts in the field of test evaluations, shall ~~actually~~ ANNUALLY assess the effectiveness of reading programs. An annual report shall be submitted to the state board of education, to the legislature, each district board of education in the state and all superintendents. The state board of education shall annually make recommendations to the legislature with respect to such test results and analysis which will enhance the quality of the reading program in the public schools.

Approved by the Governor–May 2, 1973

Filed in the Office of the Secretary of State–May 3, 1973

LAWS OF ARIZONA

CHAPTER 99

Senate Bill 1238

AN ACT

RELATING TO STATE GOVERNMENT; PRESCRIBING POWERS AND DUTIES OF THE INDIAN AFFAIRS COMMISSION, AND AMENDING SECTION 41-542, ARIZONA REVISED STATUTES.

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

Section 1. Section 41-542, Arizona Revised Statutes, is amended to read:

41-542. **Powers and duties; studies and hearings; cooperation between federal, state and local agencies; reports**

A. The commission shall consider and study conditions among Indians residing within the state. The studies shall be made to accumulate, compile and assemble information on any phase of Indian affairs. For such purpose the commission may EMPLOY STAFF PERSONNEL, hold hearings, make investigations, and confer with officials of local, state and federal agencies in order to secure cooperation between the federal, state and local governments in the promotion of the welfare of the Indian people.

B. The commission shall make a written annual report, giving an account of its proceedings, transactions, findings and recommendations to the governor and the legislature, and shall from time to time submit such other reports as may be necessary.

Approved by the Governor–May 2, 1973

Filed in the Office of the Secretary of State–May 3, 1973

LAWS OF ARIZONA

CHAPTER 100

Senate Bill 1260

AN ACT

RELATING TO TAXATION; REPEALING SECTION 42-1131, ARIZONA REVISED STATUTES.

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

Section 1. **Repeal**

Section 42-1131, Arizona Revised Statutes, is repealed.

Approved by the Governor—May 2, 1973

Filed in the Office of the Secretary of State—May 3, 1973

CHAPTER 101

Senate Bill 1329

AN ACT

RELATING TO COUNTIES; CORRECTING PIMA COUNTY BOUNDARY, AND AMENDING SECTION 11-112, ARIZONA REVISED STATUTES.

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

Section 1. Section 11-112, Arizona Revised Statutes, is amended to read:

11-112. **Pima county**

Pima county, the county seat of which is Tucson, is bounded as follows:

Commencing at a point where the meridian line one hundred thirteen degrees twenty minutes west longitude intersects the second standard parallel south, being the southwest corner of Maricopa county; thence east on the second standard parallel south and along the southern boundaries

of Maricopa and Pinal counties to a point where the second standard parallel south intersects the eastern line of range eighteen east, being the southeast corner of Pinal county; thence south on the eastern line of range eighteen east and along the western boundary of Graham and Cochise counties to a point six miles north of the point at which the fourth standard parallel south intersects such boundary line; thence due west forty-two miles to the intersection of the township line, such point being near the Bustamante ranch on Sopori creek; thence due south fourteen miles; thence due west twelve miles to a point; thence due south to ~~where the eastern line of range eighteen east intersects~~ the southern boundary line of Arizona; thence westerly and northerly on the southern boundary line of Arizona to a point where the southern boundary line of Arizona intersects the meridian line one hundred thirteen degrees twenty minutes west longitude, being the southeast corner of Yuma county; thence north along the meridian line one hundred thirteen degrees twenty minutes west longitude to a point where such meridian line intersects the second standard parallel south, the place of beginning.

Approved by the Governor–May 2, 1973

Filed in the Office of the Secretary of State–May 3, 1973

CHAPTER 102

House Bill 2279

AN ACT

RELATING TO COURT AND CIVIL PROCEEDINGS; PROVIDING THAT SUPERIOR COURT SESSIONS MAY BE HELD AT PLACES OTHER THAN THE COUNTY SEAT; PROVIDING FOR A CIVIL ACTION FOR COLLECTION OF N.S.F. CHECK; AMENDING SECTION 12-130, ARIZONA REVISED STATUTES; REPEALING SECTION 12-131 AND 12-132, ARIZONA REVISED STATUTES; AND AMENDING TITLE 12, CHAPTER 6, ARIZONA REVISED STATUTES, BY ADDING A NEW ARTICLE 8, SECTION 12-671.

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

Section 1. Section 12-130, Arizona Revised Statutes, is amended to read:

12-130. **Place of holding court; accommodations**

A. The sessions of the superior court shall be held at the county seat.

B. If a room for holding the court is not provided by the county, together with attendants, fuel, lights and supplies suitable and sufficient for the transaction of business, the court may direct the sheriff to provide them, and the expenses thereof shall be a county charge.

C. ~~Temporary~~ IN ADDITION TO SESSIONS BEING HELD AT THE COUNTY SEAT, sessions of the superior court may be held at places other than the county seat when in the opinion of the judge or judges of such court in any county the public interest so requires, provided facilities are available for such ~~temporary~~ sessions. ~~This subsection shall not be construed as affecting the provisions of sections 12-131 and 12-132 relating to the jurisdiction of the superior court of Pima county at Ajo.~~

Sec. 2. **Repeal**

Section 12-131, Arizona Revised Statutes, is repealed.

Sec. 3. **Repeal**

Section 12-132, Arizona Revised Statutes, is repealed.

Sec. 4. Title 12, chapter 6, Arizona Revised Statutes, is amended by adding article 8, section 12-671, to read:

ARTICLE 8. INSUFFICIENT FUNDS CHECK

12-671. **Drawing check or draft on no account or insufficient account with intent to defraud; civil action; definition of credit; prima facie evidence**

A. A PERSON WHO, FOR HIMSELF OR FOR ANOTHER, WILFULLY WITH INTENT TO DEFRAUD, MAKES, DRAWS, UTTERS OR DELIVERS TO ANOTHER PERSON OR PERSONS A CHECK OR DRAFT ON A BANK OR DEPOSITARY FOR PAYMENT OF MONEY, KNOWING AT THE TIME OF SUCH MAKING, DRAWING, UTTERING OR DELIVERY, THAT HE OR HIS PRINCIPAL DOES NOT HAVE AN ACCOUNT OR DOES NOT HAVE SUFFICIENT FUNDS IN, OR CREDIT WITH, SUCH BANK OR DEPOSITARY TO MEET THE CHECK OR DRAFT IN FULL UPON PRESENTATION, SHALL BE LIABLE TO THE HOLDER OF SUCH CHECK OR DRAFT FOR THE AMOUNT OF

SUCH CHECK OR DRAFT TOGETHER WITH COSTS AND REASONABLE ATTORNEY'S FEES AS ALLOWED BY THE COURT ON THE BASIS OF TIME AND EFFORT EXPENDED BY SUCH ATTORNEY ON BEHALF OF PLAINTIFF.

B. THE WORD "CREDIT" AS USED IN THIS SECTION SHALL BE CONSTRUED TO BE AN EXPRESS AGREEMENT WITH THE BANK OR DEPOSITARY FOR PAYMENT OF THE CHECK OR DRAFT.

C. PROOF THAT AT THE TIME OF PRESENTMENT, THE MAKER, ISSUER OR DRAWER DID NOT HAVE SUFFICIENT FUNDS WITH THE BANK OR DEPOSITARY, AND THAT HE FAILED WITHIN TWELVE DAYS AFTER RECEIVING NOTICE OF NONPAYMENT OR DISHONOR TO PAY THE CHECK OR DRAFT IS PRIMA FACIE EVIDENCE OF INTENT TO DEFRAUD.

D. WHERE A CHECK, DRAFT OR ORDER IS PROTESTED, ON THE GROUND OF INSUFFICIENCY OF FUNDS OR CREDIT, THE NOTICE OF FORMAL PROTEST THEREOF SHALL BE ADMISSIBLE AS PROOF OF PRESENTATION, NONPAYMENT AND PROTEST AND SHALL BE PRIMA FACIE EVIDENCE OF THE INSUFFICIENCY OF FUNDS OR CREDIT WITH THE BANK OR DEPOSITARY, OR PERSON, OR FIRM OR CORPORATION.

E. "NOTICE", AS USED IN THIS SECTION, MEANS NOTICE GIVEN TO THE PERSON ENTITLED THERETO, EITHER IN PERSON, OR IN WRITING. SUCH NOTICE IN WRITING SHALL BE GIVEN BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, AND POSTAGE PREPAID, IN THE UNITED STATES MAIL, TO THE PERSON AT HIS ADDRESS AS IT APPEARS ON SUCH CHECK OR DRAFT.

F. NOTHING IN THIS SECTION SHALL BE APPLICABLE TO ANY CRIMINAL CASE OR AFFECT ELIGIBILITY OR TERMS OF PROBATION.

Approved by the Governor–May 2, 1973

Filed in the Office of the Secretary of State–May 3, 1973

LAWS OF ARIZONA

CHAPTER 103

Senate Bill 1096

AN ACT

RELATING TO PROPERTY; ADOPTING THE UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT; AMENDING TITLE 33, CHAPTER 3, ARIZONA REVISED STATUTES, BY ADDING A NEW ARTICLE 5; AMENDING TITLE 33, ARIZONA REVISED STATUTES, BY ADDING A NEW CHAPTER 10; AND AMENDING SECTION 33-321, ARIZONA REVISED STATUTES.

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

Section 1. Section 33-321, Arizona Revised Statutes, is amended to read:

33-321. **Maintenance of premises**

~~The~~ A tenant ~~of a house or apartment, whether it is furnished or unfurnished,~~ shall exercise diligence to maintain the premises in as good condition as when he took possession, ordinary wear and tear excepted.

Sec. 2. Title 33, chapter 3, Arizona Revised Statutes, is amended by adding a new article 5 to read:

ARTICLE 5. APPLICABILITY OF CHAPTER

33-381. **Limitation**

THIS CHAPTER SHALL APPLY TO ALL LANDLORD-TENANT RELATIONSHIPS EXCEPT FOR LANDLORD-TENANT RELATIONSHIPS ARISING OUT OF THE RENTAL OF DWELLING UNITS WHICH SHALL BE GOVERNED BY CHAPTER 10 OF THIS TITLE.

Sec. 3. Title 33, Arizona Revised Statutes, is amended by adding a new chapter 10, articles 1 through 5, to read:

CHAPTER 10
ARIZONA RESIDENTIAL LANDLORD AND TENANT ACT
ARTICLE 1. GENERAL PROVISIONS

33-1301. **Short title**

THIS CHAPTER SHALL BE KNOWN AND MAY BE CITED AS THE ARIZONA RESIDENTIAL LANDLORD AND TENANT ACT.

33-1302. **Purposes**

UNDERLYING PURPOSES AND POLICIES OF THIS CHAPTER ARE:

1. TO SIMPLIFY, CLARIFY, MODERNIZE AND REVISE THE LAW GOVERNING THE RENTAL OF DWELLING UNITS AND THE RIGHTS AND OBLIGATIONS OF LANDLORD AND TENANT.

2. TO ENCOURAGE LANDLORD AND TENANT TO MAINTAIN AND IMPROVE THE QUALITY OF HOUSING.

33-1303. **Supplementary principles of law applicable**

UNLESS DISPLACED BY THE PROVISIONS OF THIS CHAPTER, THE PRINCIPLES OF LAW AND EQUITY, INCLUDING THE LAW RELATING TO CAPACITY TO CONTRACT, MUTUALITY OF OBLIGATIONS, PRINCIPAL AND AGENT, REAL PROPERTY, PUBLIC HEALTH, SAFETY AND FIRE PREVENTION, ESTOPPEL, FRAUD, MISREPRESENTATION, DURESS, COERCION, MISTAKE, BANKRUPTCY OR OTHER VALIDATING OR INVALIDATING CAUSE SUPPLEMENT ITS PROVISIONS.

33-1304. **Applicability of chapter**

THIS CHAPTER SHALL APPLY TO THE RENTAL OF DWELLING UNITS. ANY CONFLICT BETWEEN THE PROVISIONS OF CHAPTER 3 AND CHAPTER 7 OF THIS TITLE WITH THE PROVISIONS OF THIS CHAPTER SHALL BE GOVERNED BY THE PROVISIONS OF THIS CHAPTER.

33-1305. **Administration of remedies; enforcement**

A. THE REMEDIES PROVIDED BY THIS CHAPTER SHALL BE SO ADMINISTERED THAT THE AGGRIEVED PARTY MAY RECOVER APPROPRIATE DAMAGES. THE AGGRIEVED PARTY HAS A DUTY TO MITIGATE DAMAGES.

B. ANY RIGHT OR OBLIGATION DECLARED BY THIS CHAPTER IS ENFORCEABLE BY ACTION UNLESS THE PROVISION DECLARING IT SPECIFIES A DIFFERENT AND LIMITED EFFECT.

33-1306. **Settlement of disputed claim or right**

A CLAIM OR RIGHT ARISING UNDER THIS CHAPTER OR ON A RENTAL AGREEMENT, IF DISPUTED IN GOOD FAITH, MAY BE SETTLED BY AGREEMENT.

33-1307. **Territorial application**

THIS CHAPTER APPLIES TO, REGULATES, AND DETERMINES RIGHTS, OBLIGATIONS AND REMEDIES UNDER A RENTAL AGREEMENT, WHEREVER MADE, FOR A DWELLING UNIT LOCATED WITHIN THIS STATE.

33-1308. **Exclusions from application of chapter**

UNLESS CREATED TO AVOID THE APPLICATION OF THIS CHAPTER, THE FOLLOWING ARRANGEMENTS ARE NOT COVERED BY THIS CHAPTER:

1. RESIDENCE AT AN INSTITUTION, PUBLIC OR PRIVATE, IF INCIDENTAL TO DETENTION OR THE PROVISION OF MEDICAL, EDUCATIONAL, COUNSELING OR RELIGIOUS SERVICES.

2. OCCUPANCY UNDER A CONTRACT OF SALE OF A DWELLING UNIT OR THE PROPERTY OF WHICH IT IS A PART, IF THE OCCUPANT IS THE PURCHASER OR A PERSON WHO SUCCEEDS TO HIS INTEREST.

3. OCCUPANCY BY A MEMBER OF A FRATERNAL OR SOCIAL ORGANIZATION IN THE PORTION OF A STRUCTURE OPERATED FOR THE BENEFIT OF THE ORGANIZATION.

4. TRANSIENT OCCUPANCY IN A HOTEL, MOTEL OR RECREATIONAL LODGING.

5. OCCUPANCY BY AN EMPLOYEE OF A LANDLORD AS A MANAGER OR CUSTODIAN WHOSE RIGHT TO OCCUPANCY IS CONDITIONAL UPON EMPLOYMENT IN AND ABOUT THE PREMISES.

6. OCCUPANCY BY AN OWNER OF A CONDOMINIUM UNIT OR A HOLDER OF A PROPRIETARY LEASE IN A COOPERATIVE.

7. OCCUPANCY IN OR OPERATION OF PUBLIC HOUSING AS

AUTHORIZED, PROVIDED, OR CONDUCTED UNDER OR PURSUANT TO TITLE 36, CHAPTER 12, OR UNDER OR PURSUANT TO ANY FEDERAL LAW OR REGULATION.

33-1309. **Jurisdiction and service of process**

A. THE APPROPRIATE COURT OF THIS STATE MAY EXERCISE JURISDICTION OVER ANY LANDLORD WITH RESPECT TO ANY CONDUCT IN THIS STATE GOVERNED BY THIS CHAPTER OR WITH RESPECT TO ANY CLAIM ARISING FROM A TRANSACTION SUBJECT TO THIS CHAPTER, IN ADDITION TO ANY OTHER METHOD PROVIDED BY RULE OR BY STATUTE, PERSONAL JURISDICTION OVER A LANDLORD MAY BE ACQUIRED IN A CIVIL ACTION OR PROCEEDING INSTITUTED IN THE APPROPRIATE COURT BY THE SERVICE OF PROCESS IN THE MANNER PROVIDED BY THIS SECTION.

B. IF A LANDLORD IS NOT A RESIDENT OF THIS STATE OR IS A CORPORATION NOT AUTHORIZED TO DO BUSINESS IN THIS STATE AND ENGAGES IN ANY CONDUCT IN THIS STATE GOVERNED BY THIS CHAPTER, OR ENGAGES IN A TRANSACTION SUBJECT TO THIS CHAPTER, HE MAY DESIGNATE AN AGENT UPON WHOM SERVICE OF PROCESS MAY BE MADE IN THIS STATE. THE AGENT SHALL BE A RESIDENT OF THIS STATE OR A CORPORATION AUTHORIZED TO DO BUSINESS IN THIS STATE. THE DESIGNATION SHALL BE IN WRITING AND FILED WITH THE SECRETARY OF STATE. IF NO DESIGNATION IS MADE AND FILED OR IF PROCESS CANNOT BE SERVED IN THIS STATE UPON THE DESIGNATED AGENT, PROCESS MAY BE SERVED UPON THE SECRETARY OF STATE, BUT THE PLAINTIFF OR PETITIONER SHALL FORTHWITH MAIL A COPY OF THE PROCESS AND PLEADING BY REGISTERED OR CERTIFIED MAIL TO THE DEFENDANT OR RESPONDENT AT HIS LAST REASONABLY ASCERTAINED ADDRESS. IN THE EVENT THERE IS NO LAST REASONABLY ASCERTAINABLE ADDRESS AND IF THE DEFENDANT OR RESPONDENT HAS NOT COMPLIED WITH SECTION 33-1322, SUBSECTIONS A AND B, THEN SERVICE UPON THE SECRETARY OF STATE SHALL BE SUFFICIENT SERVICE OF PROCESS WITHOUT THE MAILING OF COPIES TO THE DEFENDANT OR RESPONDENT. SERVICE OF PROCESS SHALL BE DEEMED COMPLETE AND THE TIME SHALL BEGIN TO RUN FOR THE PURPOSES OF THIS SECTION AT THE TIME OF SERVICE UPON THE SECRETARY OF STATE. THE DEFENDANT SHALL APPEAR AND ANSWER WITHIN 30 DAYS AFTER COMPLETION THEREOF IN THE MANNER AND

UNDER THE SAME PENALTY AS IF HE HAD BEEN PERSONALLY SERVED WITH THE SUMMONS. AN AFFIDAVIT OF COMPLIANCE WITH THIS SECTION SHALL BE FILED WITH THE CLERK OF THE COURT ON OR BEFORE THE RETURN DAY OF THE PROCESS, IF ANY, OR WITHIN ANY FURTHER TIME THE COURT ALLOWS. WHERE APPLICABLE, THE AFFIDAVIT SHALL CONTAIN A STATEMENT THAT DEFENDANT OR RESPONDENT HAS NOT COMPLIED WITH SECTION 33-1322, SUBSECTIONS A AND B.

33-1310. **General definitions**

SUBJECT TO ADDITIONAL DEFINITIONS CONTAINED IN SUBSEQUENT ARTICLES OF THIS CHAPTER WHICH APPLY TO SPECIFIC ARTICLES THEREOF, AND UNLESS THE CONTEXT OTHERWISE REQUIRES, IN THIS CHAPTER:

1. "ACTION" INCLUDES RECOUPMENT, COUNTERCLAIM, SETOFF, SUIT IN EQUITY AND ANY OTHER PROCEEDING IN WHICH RIGHTS ARE DETERMINED, INCLUDING AN ACTION FOR POSSESSION.

2. "BUILDING AND HOUSING CODES" INCLUDE ANY LAW, ORDINANCE OR GOVERNMENTAL REGULATION CONCERNING FITNESS FOR HABITATION, OR THE CONSTRUCTION, MAINTENANCE, OPERATION, OCCUPANCY, USE OR APPEARANCE OF ANY PREMISES, OR DWELLING UNIT.

3. "DWELLING UNIT" MEANS A STRUCTURE OR THE PART OF A STRUCTURE THAT IS USED AS A HOME, RESIDENCE, OR SLEEPING PLACE BY ONE PERSON WHO MAINTAINS A HOUSEHOLD OR BY TWO OR MORE PERSONS WHO MAINTAIN A COMMON HOUSEHOLD. "DWELLING UNIT" EXCLUDES REAL PROPERTY USED TO ACCOMMODATE A MOBILE HOME, UNLESS THE MOBILE HOME IS RENTED OR LEASED BY THE LANDLORD.

4. "GOOD FAITH" MEANS HONESTY IN FACT IN THE CONDUCT OR TRANSACTION CONCERNED.

5. "LANDLORD" MEANS THE OWNER, LESSOR OR SUBLESSOR OF THE DWELLING UNIT OR THE BUILDING OF WHICH IT IS A PART, AND IT ALSO MEANS A MANAGER OF THE PREMISES WHO FAILS TO DISCLOSE AS REQUIRED BY SECTION 33-1322.

6. "ORGANIZATION" INCLUDES A CORPORATION, GOVERNMENT, GOVERNMENTAL SUBDIVISION OR AGENCY, BUSINESS

TRUST, ESTATE, TRUST, PARTNERSHIP OR ASSOCIATION, TWO OR MORE PERSONS HAVING A JOINT OR COMMON INTEREST AND ANY OTHER LEGAL OR COMMERCIAL ENTITY WHICH IS A LANDLORD, OWNER, MANAGER OR CONSTRUCTIVE AGENT PURSUANT TO SECTION 33-1322.

7. "OWNER" MEANS ONE OR MORE PERSONS, JOINTLY OR SEVERALLY, IN WHOM IS VESTED ALL OR PART OF THE LEGAL TITLE TO PROPERTY OR ALL OR PART OF THE BENEFICIAL OWNERSHIP AND A RIGHT TO PRESENT USE AND ENJOYMENT OF THE PREMISES. THE TERM INCLUDES A MORTGAGEE IN POSSESSION.

8. "PERSON" MEANS AN INDIVIDUAL OR ORGANIZATION.

9. "PREMISES" MEANS A DWELLING UNIT AND THE STRUCTURE OF WHICH IT IS A PART AND EXISTING FACILITIES AND APPURTENANCES THEREIN, INCLUDING FURNITURE AND UTILITIES WHERE APPLICABLE, AND GROUNDS, AREAS AND EXISTING FACILITIES HELD OUT FOR THE USE OF TENANTS GENERALLY OR WHOSE USE IS PROMISED TO THE TENANT.

10. "RENT" MEANS PAYMENTS TO BE MADE TO THE LANDLORD IN FULL CONSIDERATION FOR THE RENTED PREMISES.

11. "RENTAL AGREEMENT" MEANS ALL AGREEMENTS, WRITTEN, ORAL OR IMPLIED BY LAW, AND VALID RULES AND REGULATIONS ADOPTED UNDER SECTION 33-1342 EMBODYING THE TERMS AND CONDITIONS CONCERNING THE USE AND OCCUPANCY OF A DWELLING UNIT AND PREMISES.

12. "ROOMER" MEANS A PERSON OCCUPYING A DWELLING UNIT THAT LACKS A MAJOR BATHROOM OR KITCHEN FACILITY, IN A STRUCTURE WHERE ONE OR MORE MAJOR FACILITIES ARE USED IN COMMON BY OCCUPANTS OF THE DWELLING UNIT AND OTHER DWELLING UNITS. MAJOR FACILITY IN THE CASE OF A BATHROOM MEANS TOILET, OR EITHER A BATH OR SHOWER, AND IN THE CASE OF A KITCHEN MEANS REFRIGERATOR, STOVE OR SINK.

13. "SECURITY" MEANS MONEY OR PROPERTY GIVEN TO ASSURE PAYMENT OR PERFORMANCE UNDER A RENTAL AGREEMENT. "SECURITY" DOES NOT INCLUDE A REASONABLE CHARGE FOR REDECORATING OR CLEANING.

14. "SINGLE FAMILY RESIDENCE" MEANS A STRUCTURE MAINTAINED AND USED AS A SINGLE DWELLING UNIT. NOTWITHSTANDING THAT A DWELLING UNIT SHARES ONE OR MORE WALLS WITH ANOTHER DWELLING UNIT, IT IS A SINGLE FAMILY RESIDENCE IF IT HAS DIRECT ACCESS TO A STREET OR THOROUGHFARE AND SHARES NEITHER HEATING FACILITIES, HOT WATER EQUIPMENT NOR ANY OTHER ESSENTIAL FACILITY OR SERVICE WITH ANY OTHER DWELLING UNIT.

15. "TENANT" MEANS A PERSON ENTITLED UNDER A RENTAL AGREEMENT TO OCCUPY A DWELLING UNIT TO THE EXCLUSION OF OTHERS.

33-1311. **Obligation of good faith**

EVERY DUTY UNDER THIS CHAPTER AND EVERY ACT WHICH MUST BE PERFORMED AS A CONDITION PRECEDENT TO THE EXERCISE OF A RIGHT OR REMEDY UNDER THIS CHAPTER IMPOSES AN OBLIGATION OF GOOD FAITH IN ITS PERFORMANCE OR ENFORCEMENT.

33-1312. **Unconscionability**

A. IF THE COURT, AS A MATTER OF LAW, FINDS EITHER OF THE FOLLOWING:

1. A RENTAL AGREEMENT OR ANY PROVISION THEREOF WAS UNCONSCIONABLE WHEN MADE, THE COURT MAY REFUSE TO ENFORCE THE AGREEMENT, ENFORCE THE REMAINDER OF THE AGREEMENT WITHOUT THE UNCONSCIONABLE PROVISION, OR LIMIT THE APPLICATION OF ANY UNCONSCIONABLE PROVISION TO AVOID AN UNCONSCIONABLE RESULT.

2. A SETTLEMENT IN WHICH A PARTY WAIVES OR AGREES TO FOREGO A CLAIM OR RIGHT UNDER THIS CHAPTER OR UNDER A RENTAL AGREEMENT WAS UNCONSCIONABLE AT THE TIME IT WAS MADE, THE COURT MAY REFUSE TO ENFORCE THE SETTLEMENT, ENFORCE THE REMAINDER OF THE SETTLEMENT WITHOUT THE UNCONSCIONABLE PROVISION, OR LIMIT THE APPLICATION OF ANY UNCONSCIONABLE PROVISION TO AVOID ANY UNCONSCIONABLE RESULT.

B. IF UNCONSCIONABILITY IS PUT INTO ISSUE BY A PARTY OR BY THE COURT UPON ITS OWN MOTION THE PARTIES SHALL BE

AFFORDED A REASONABLE OPPORTUNITY TO PRESENT EVIDENCE AS TO THE SETTING, PURPOSE AND EFFECT OF THE RENTAL AGREEMENT OR SETTLEMENT TO AID THE COURT IN MAKING THE DETERMINATION.

33-1313. **Notice**

A. A PERSON HAS NOTICE OF A FACT IF HE HAS ACTUAL KNOWLEDGE OF IT, HAS RECEIVED A NOTICE OR NOTIFICATION OF IT OR FROM ALL THE FACTS AND CIRCUMSTANCES KNOWN TO HIM AT THE TIME IN QUESTION HE HAS REASON TO KNOW THAT IT EXISTS. A PERSON "KNOWS" OR "HAS KNOWLEDGE" OF A FACT IF HE HAS ACTUAL KNOWLEDGE OF IT.

B. A PERSON "NOTIFIES" OR "GIVES" A NOTICE OR NOTIFICATION TO ANOTHER BY TAKING STEPS REASONABLY CALCULATED TO INFORM THE OTHER IN ORDINARY COURSE WHETHER OR NOT THE OTHER ACTUALLY COMES TO KNOW OF IT. A PERSON "RECEIVES" A NOTICE OR NOTIFICATION WHEN IT COMES TO HIS ATTENTION, OR IN THE CASE OF THE LANDLORD, IT IS DELIVERED IN HAND OR MAILED BY REGISTERED OR CERTIFIED MAIL TO THE PLACE OF BUSINESS OF THE LANDLORD THROUGH WHICH THE RENTAL AGREEMENT WAS MADE OR AT ANY PLACE HELD OUT BY HIM AS THE PLACE FOR RECEIPT OF THE COMMUNICATION OR DELIVERED TO ANY INDIVIDUAL WHO IS DESIGNATED AS AN AGENT BY SECTION 33-1322 OR, IN THE CASE OF THE TENANT, IT IS DELIVERED IN HAND TO THE TENANT OR MAILED BY REGISTERED OR CERTIFIED MAIL TO HIM AT THE PLACE HELD OUT BY HIM AS THE PLACE FOR RECEIPT OF THE COMMUNICATION OR, IN THE ABSENCE OF SUCH DESIGNATION, TO HIS LAST KNOWN PLACE OF RESIDENCE.

C. "NOTICE," KNOWLEDGE OR A NOTICE OR NOTIFICATION RECEIVED BY AN ORGANIZATION IS EFFECTIVE FOR A PARTICULAR TRANSACTION FROM THE TIME IT IS BROUGHT TO THE ATTENTION OF THE INDIVIDUAL CONDUCTING THE TRANSACTION AND IN ANY EVENT FROM THE TIME IT WOULD HAVE BEEN BROUGHT TO HIS ATTENTION IF THE ORGANIZATION HAD EXERCISED REASONABLE DILIGENCE.

33-1314. **Terms and conditions of rental agreement**

A. THE LANDLORD AND TENANT MAY INCLUDE IN A RENTAL AGREEMENT TERMS AND CONDITIONS NOT PROHIBITED BY THIS

CHAPTER OR OTHER RULE OF LAW INCLUDING RENT, TERM OF THE AGREEMENT AND OTHER PROVISIONS GOVERNING THE RIGHTS AND OBLIGATIONS OF THE PARTIES.

B. IN ABSENCE OF A RENTAL AGREEMENT, THE TENANT SHALL PAY AS RENT THE FAIR RENTAL VALUE FOR THE USE AND OCCUPANCY OF THE DWELLING UNIT.

C. RENT SHALL BE PAYABLE WITHOUT DEMAND OR NOTICE AT THE TIME AND PLACE AGREED UPON BY THE PARTIES. UNLESS OTHERWISE AGREED, RENT IS PAYABLE AT THE DWELLING UNIT AND PERIODIC RENT IS PAYABLE AT THE BEGINNING OF ANY TERM OF ONE MONTH OR LESS AND OTHERWISE IN EQUAL MONTHLY INSTALLMENTS AT THE BEGINNING OF EACH MONTH. UNLESS OTHERWISE AGREED, RENT SHALL BE UNIFORMLY APPORTIONABLE FROM DAY-TO-DAY.

D. UNLESS THE RENTAL AGREEMENT FIXES A DEFINITE TERM, THE TENANCY SHALL BE WEEK-TO-WEEK IN CASE OF A ROOMER WHO PAYS WEEKLY RENT, AND IN ALL OTHER CASES MONTH-TO-MONTH.

33-1315. **Prohibited provisions in rental agreements**

A. A RENTAL AGREEMENT SHALL NOT PROVIDE THAT THE TENANT DOES ANY OF THE FOLLOWING:

1. AGREES TO WAIVE OR TO FOREGO RIGHTS OR REMEDIES UNDER THIS CHAPTER.

2. AGREES TO PAY THE LANDLORD'S ATTORNEY'S FEES, EXCEPT AN AGREEMENT IN WRITING MAY PROVIDE THAT ATTORNEY'S FEES MAY BE AWARDED TO THE PREVAILING PARTY IN THE EVENT OF COURT ACTION.

3. AGREES TO THE EXCULPATION OR LIMITATION OF ANY LIABILITY OF THE LANDLORD ARISING UNDER LAW OR TO INDEMNIFY THE LANDLORD FOR THAT LIABILITY OR THE COSTS CONNECTED THEREWITH.

B. A PROVISION PROHIBITED BY SUBSECTION A INCLUDED IN A RENTAL AGREEMENT IS UNENFORCEABLE. IF A LANDLORD DELIBERATELY USES A RENTAL AGREEMENT CONTAINING PROVISIONS KNOWN BY HIM TO BE PROHIBITED, THE TENANT MAY

RECOVER ACTUAL DAMAGES SUSTAINED BY HIM AND NOT MORE THAN TWO MONTHS' PERIODIC RENT.

33-1316. **Separation of rents and obligations to maintain property forbidden**

A RENTAL AGREEMENT, ASSIGNMENT, CONVEYANCE, TRUST DEED OR SECURITY INSTRUMENT MAY NOT PERMIT THE RECEIPT OF RENT FREE OF THE OBLIGATION TO COMPLY WITH SECTION 33-1324, SUBSECTION A.

33-1317. **Discrimination by landlord or lessor against tenant with children prohibited; penalty**

A PERSON WHO REFUSES TO RENT TO ANY OTHER PERSON A PLACE TO BE USED FOR A DWELLING FOR THE REASON THAT THE OTHER PERSON HAS A CHILD OR CHILDREN, OR WHO ADVERTISES IN CONNECTION WITH THE RENTAL A RESTRICTION AGAINST CHILDREN, EITHER BY THE DISPLAY OF A SIGN, PLACARD, WRITTEN OR PRINTED NOTICE, OR BY PUBLICATION THEREOF IN A NEWSPAPER OF GENERAL CIRCULATION, SHALL BE PUNISHED FOR THE FIRST OFFENSE BY A FINE OF NOT LESS THAN ONE HUNDRED NOR MORE THAN FIVE HUNDRED DOLLARS, AND FOR A SUBSEQUENT CONVICTION BY A FINE OF FIVE HUNDRED DOLLARS, BY IMPRISONMENT FOR THREE MONTHS IN THE COUNTY JAIL, OR BOTH.

ARTICLE 2. LANDLORD OBLIGATIONS

33-1321. **Security deposits**

A. A LANDLORD SHALL NOT DEMAND OR RECEIVE SECURITY, HOWEVER DENOMINATED, INCLUDING, BUT NOT LIMITED TO, PREPAID RENT IN AN AMOUNT OR VALUE IN EXCESS OF ONE AND ONE-HALF MONTH'S RENT.

B. CLEANING AND REDECORATING DEPOSITS, IF NONREFUNDABLE, MUST BE SO STATED IN WRITING BY THE LANDLORD.

C. UPON TERMINATION OF THE TENANCY, PROPERTY OR MONEY HELD BY THE LANDLORD AS PREPAID RENT AND SECURITY MAY BE APPLIED TO THE PAYMENT OF ACCRUED RENT AND THE AMOUNT OF DAMAGES WHICH THE LANDLORD HAS SUFFERED BY REASON OF THE TENANT'S NONCOMPLIANCE

WITH SECTION 33-1341 ALL AS ITEMIZED BY THE LANDLORD IN A WRITTEN NOTICE DELIVERED TO THE TENANT TOGETHER WITH THE AMOUNT DUE WITHIN FOURTEEN DAYS AFTER TERMINATION OF THE TENANCY AND DELIVERY OF POSSESSION AND DEMAND BY THE TENANT.

D. IF THE LANDLORD FAILS TO COMPLY WITH SUBSECTIONS B AND C OF THIS SECTION THE TENANT MAY RECOVER THE PROPERTY AND MONEY DUE HIM TOGETHER WITH DAMAGES IN AN AMOUNT EQUAL TO TWICE THE AMOUNT WRONGFULLY WITHHELD.

E. THIS SECTION DOES NOT PRECLUDE THE LANDLORD OR TENANT FROM RECOVERING OTHER DAMAGES TO WHICH HE MAY BE ENTITLED UNDER THIS CHAPTER.

F. THE HOLDER OF THE LANDLORD'S INTEREST IN THE PREMISES AT THE TIME OF THE TERMINATION OF THE TENANCY IS BOUND BY THIS SECTION.

33-1322. **Disclosure and tender of written rental agreement**

A. THE LANDLORD OR ANY PERSON AUTHORIZED TO ENTER INTO A RENTAL AGREEMENT ON HIS BEHALF SHALL DISCLOSE TO THE TENANT IN WRITING AT OR BEFORE THE COMMENCEMENT OF THE TENANCY THE NAME AND ADDRESS OF EACH OF THE FOLLOWING:

1. THE PERSON AUTHORIZED TO MANAGE THE PREMISES.

2. AN OWNER OF THE PREMISES OR A PERSON AUTHORIZED TO ACT FOR AND ON BEHALF OF THE OWNER FOR THE PURPOSE OF SERVICE OF PROCESS AND FOR THE PURPOSE OF RECEIVING AND RECEIPTING FOR NOTICES AND DEMANDS.

B. THE INFORMATION REQUIRED TO BE FURNISHED BY THIS SECTION SHALL BE KEPT CURRENT AND REFURNISHED TO TENANT UPON TENANT'S REQUEST. THIS SECTION EXTENDS TO AND IS ENFORCEABLE AGAINST ANY SUCCESSOR LANDLORD, OWNER OR MANAGER.

C. A PERSON WHO FAILS TO COMPLY WITH SUBSECTIONS A AND B BECOMES AN AGENT OF EACH PERSON WHO IS A LANDLORD FOR THE FOLLOWING PURPOSES:

1. SERVICE OF PROCESS AND RECEIVING AND RECEIPTING FOR NOTICES AND DEMANDS.

2. PERFORMING THE OBLIGATIONS OF THE LANDLORD UNDER THIS CHAPTER AND UNDER THE RENTAL AGREEMENT AND EXPENDING OR MAKING AVAILABLE FOR THE PURPOSE ALL RENT COLLECTED FROM THE PREMISES.

D. IF THERE IS A WRITTEN RENTAL AGREEMENT, THE LANDLORD MUST TENDER AND DELIVER A SIGNED COPY OF THE RENTAL AGREEMENT TO THE TENANT AND THE TENANT MUST SIGN AND DELIVER TO THE LANDLORD ONE FULLY EXECUTED COPY OF SUCH RENTAL AGREEMENT WITHIN A REASONABLE TIME AFTER THE AGREEMENT IS EXECUTED. A WRITTEN RENTAL AGREEMENT SHALL HAVE ALL BLANK SPACES COMPLETED. NONCOMPLIANCE WITH THIS SUBSECTION SHALL BE DEEMED A MATERIAL NONCOMPLIANCE BY THE LANDLORD OR THE TENANT, AS THE CASE MAY BE, OF THE RENTAL AGREEMENT.

33-1323. **Landlord to supply possession of dwelling unit**

AT THE COMMENCEMENT OF THE TERM THE LANDLORD SHALL DELIVER POSSESSION OF THE PREMISES TO THE TENANT IN COMPLIANCE WITH THE RENTAL AGREEMENT AND SECTION 33-1324. THE LANDLORD MAY BRING AN ACTION FOR POSSESSION AGAINST ANY PERSON WRONGFULLY IN POSSESSION AND MAY RECOVER THE DAMAGES PROVIDED IN SECTION 33-1375, SUBSECTION C.

33-1324. **Landlord to maintain fit premises**

A. THE LANDLORD SHALL:

1. COMPLY WITH THE REQUIREMENTS OF APPLICABLE BUILDING CODES MATERIALLY AFFECTING HEALTH AND SAFETY.

2. MAKE ALL REPAIRS AND DO WHATEVER IS NECESSARY TO PUT AND KEEP THE PREMISES IN A FIT AND HABITABLE CONDITION.

3. KEEP ALL COMMON AREAS OF THE PREMISES IN A CLEAN AND SAFE CONDITION.

4. MAINTAIN IN GOOD AND SAFE WORKING ORDER AND CONDITION ALL ELECTRICAL, PLUMBING, SANITARY, HEATING, VENTILATING, AIR-CONDITIONING AND OTHER FACILITIES AND APPLIANCES, INCLUDING ELEVATORS, SUPPLIED OR REQUIRED TO BE SUPPLIED BY HIM.

5. PROVIDE AND MAINTAIN APPROPRIATE RECEPTACLES AND CONVENIENCES FOR THE REMOVAL OF ASHES, GARBAGE, RUBBISH AND OTHER WASTE INCIDENTAL TO THE OCCUPANCY OF THE DWELLING UNIT AND ARRANGE FOR THEIR REMOVAL.

6. SUPPLY RUNNING WATER AND REASONABLE AMOUNTS OF HOT WATER AT ALL TIMES, REASONABLE HEAT AND REASONABLE AIR-CONDITIONING OR COOLING WHERE SUCH UNITS ARE INSTALLED AND OFFERED, WHEN REQUIRED BY SEASONAL WEATHER CONDITIONS, EXCEPT WHERE THE BUILDING THAT INCLUDES THE DWELLING UNIT IS NOT REQUIRED BY LAW TO BE EQUIPPED FOR THAT PURPOSE OR THE DWELING UNIT IS SO CONSTRUCTED THAT HEAT, AIR-CONDITIONING, COOLING OR HOT WATER IS GENERATED BY AN INSTALLATION WITHIN THE EXCLUSIVE CONTROL OF THE TENANT AND SUPPLIED BY A DIRECT PUBLIC UTILITY CONNECTION.

B. IF THE DUTY IMPOSED BY SUBSECTION A, PARAGRAPH 1, IS GREATER THAN ANY DUTY IMPOSED BY ANY OTHER PARAGRAPH OF THIS SECTION, THE LANDLORD'S DUTY SHALL BE DETERMINED BY REFERENCE TO SUCH PARAGRAPH.

C. THE LANDLORD AND TENANT OF A SINGLE FAMILY RESIDENCE MAY AGREE IN WRITING, SUPPORTED BY ADEQUATE CONSIDERATION, THAT THE TENANT PERFORM THE LANDLORD'S DUTIES SPECIFIED IN SUBSECTION A, PARAGRAPHS 5 AND 6, AND ALSO SPECIFIED REPAIRS, MAINTENANCE TASKS, ALTERATIONS AND REMODELING, BUT ONLY IF THE TRANSACTION IS ENTERED INTO IN GOOD FAITH, NOT FOR THE PURPOSE OF EVADING THE OBLIGATIONS OF THE LANDLORD AND THE WORK IS NOT NECESSARY TO CURE NONCOMPLIANCE WITH SUBSECTION A, PARAGRAPHS 1 AND 2.

D. THE LANDLORD AND TENANT OF ANY DWELLING UNIT OTHER THAN A SINGLE FAMILY RESIDENCE MAY AGREE THAT THE TENANT IS TO PERFORM SPECIFIED REPAIRS, MAINTENANCE TASKS, ALTERATIONS OR REMODELING ONLY IF:

1. THE AGREEMENT OF THE PARTIES IS ENTERED INTO IN GOOD FAITH AND NOT FOR THE PURPOSE OF EVADING THE OBLIGATIONS OF THE LANDLORD AND IS SET FORTH IN A SEPARATE WRITING SIGNED BY THE PARTIES AND SUPPORTED BY ADEQUATE CONSIDERATION.

2. THE WORK IS NOT NECESSARY TO CURE NONCOMPLIANCE WITH SUBSECTION A, PARAGRAPHS 1 AND 2.

3. THE AGREEMENT DOES NOT DIMINISH OR AFFECT THE OBLIGATION OF THE LANDLORD TO OTHER TENANTS IN THE PREMISES.

33-1325. **Limitation of liability**

A. UNLESS OTHERWISE AGREED, A LANDLORD, WHO CONVEYS PREMISES THAT INCLUDE A DWELLING UNIT SUBJECT TO A RENTAL AGREEMENT IN A GOOD FAITH SALE TO A BONA FIDE PURCHASER, IS RELIEVED OF LIABILITY UNDER THE RENTAL AGREEMENT AND THIS CHAPTER AS TO EVENTS OCCURRING SUBSEQUENT TO WRITTEN NOTICE TO THE TENANT OF THE CONVEYANCE. HE REMAINS LIABLE TO THE TENANT FOR ANY PROPERTY AND MONEY TO WHICH THE TENANT IS ENTITLED UNDER SECTION 33-1321.

B. UNLESS OTHERWISE AGREED, A MANAGER OF PREMISES THAT INCLUDE A DWELLING UNIT IS RELIEVED OF LIABILITY UNDER THE RENTAL AGREEMENT AND THIS CHAPTER AS TO EVENTS OCCURRING AFTER WRITTEN NOTICE TO THE TENANT OF THE TERMINATION OF HIS MANAGEMENT.

ARTICLE 3. TENANT OBLIGATIONS

33-1341. **Tenant to maintain dwelling unit**

THE TENANT SHALL:

1. COMPLY WITH ALL OBLIGATIONS PRIMARILY IMPOSED UPON TENANTS BY APPLICABLE PROVISIONS OF BUILDING CODES MATERIALLY AFFECTING HEALTH AND SAFETY.

2. KEEP THAT PART OF THE PREMISES THAT HE OCCUPIES AND USES AS CLEAN AND SAFE AS THE CONDITION OF THE PREMISES PERMIT.

3. DISPOSE FROM HIS DWELLING UNIT ALL ASHES, RUBBISH, GARBAGE AND OTHER WASTE IN A CLEAN AND SAFE MANNER.

4. KEEP ALL PLUMBING FIXTURES IN THE DWELLING UNIT OR USED BY THE TENANT AS CLEAN AS THEIR CONDITION PERMITS.

5. USE IN A REASONABLE MANNER ALL ELECTRICAL, PLUMBING, SANITARY, HEATING, VENTILATING, AIR-CONDITIONING AND OTHER FACILITIES AND APPLIANCES INCLUDING ELEVATORS IN THE PREMISES.

6. NOT DELIBERATELY OR NEGLIGENTLY DESTROY, DEFACE, DAMAGE, IMPAIR OR REMOVE ANY PART OF THE PREMISES OR KNOWINGLY PERMIT ANY PERSON TO DO SO.

7. CONDUCT HIMSELF AND REQUIRE OTHER PERSONS ON THE PREMISES WITH HIS CONSENT TO CONDUCT THEMSELVES IN A MANNER THAT WILL NOT DISTURB HIS NEIGHBORS' PEACEFUL ENJOYMENT OF THE PREMISES.

33-1342. **Rules and regulations**

A. A LANDLORD, FROM TIME TO TIME, MAY ADOPT RULES OR REGULATIONS, HOWEVER DESCRIBED, CONCERNING THE TENANT'S USE AND OCCUPANCY OF THE PREMISES. SUCH RULES OR REGULATIONS ARE ENFORCEABLE AGAINST THE TENANT ONLY IF:

1. THEIR PURPOSE IS TO PROMOTE THE CONVENIENCE, SAFETY OR WELFARE OF THE TENANTS IN THE PREMISES, PRESERVE THE LANDLORD'S PROPERTY FROM ABUSIVE USE OR MAKE A FAIR DISTRIBUTION OF SERVICES AND FACILITIES HELD OUT FOR THE TENANTS GENERALLY.

2. THEY ARE REASONABLY RELATED TO THE PURPOSE FOR WHICH ADOPTED.

3. THEY APPLY TO ALL TENANTS IN THE PREMISES IN A FAIR MANNER.

4. THEY ARE SUFFICIENTLY EXPLICIT IN PROHIBITION, DIRECTION OR LIMITATION OF THE TENANT'S CONDUCT TO FAIRLY INFORM HIM OF WHAT HE MUST OR MUST NOT DO TO COMPLY.

5. THEY ARE NOT FOR THE PURPOSE OF EVADING THE OBLIGATIONS OF THE LANDLORD.

6. THE TENANT HAS NOTICE OF THEM AT THE TIME HE ENTERS INTO THE RENTAL AGREEMENT.

B. A RULE OR REGULATION ADOPTED AFTER THE TENANT ENTERS INTO THE RENTAL AGREEMENT IS ENFORCEABLE AGAINST THE TENANT IF REASONABLE NOTICE OF ITS ADOPTION IS GIVEN TO THE TENANT AND IT DOES NOT WORK A SUBSTANTIAL MODIFICATION OF HIS RENTAL AGREEMENT.

33-1343. **Access**

A. THE TENANT SHALL NOT UNREASONABLY WITHHOLD CONSENT TO THE LANDLORD TO ENTER INTO THE DWELLING UNIT IN ORDER TO INSPECT THE PREMISES, MAKE NECESSARY OR AGREED REPAIRS, DECORATIONS, ALTERATIONS OR IMPROVEMENTS, SUPPLY NECESSARY OR AGREED SERVICES OR EXHIBIT THE DWELLING UNIT TO PROSPECTIVE OR ACTUAL PURCHASERS, MORTGAGEES, TENANTS, WORKMEN OR CONTRACTORS.

B. THE LANDLORD MAY ENTER THE DWELLING UNIT WITHOUT CONSENT OF THE TENANT IN CASE OF EMERGENCY.

C. THE LANDLORD SHALL NOT ABUSE THE RIGHT TO ACCESS OR USE IT TO HARASS THE TENANT. EXCEPT IN CASE OF EMERGENCY OR IF IT IS IMPRACTICABLE TO DO SO, THE LANDLORD SHALL GIVE THE TENANT AT LEAST TWO DAYS' NOTICE OF HIS INTENT TO ENTER AND ENTER ONLY AT REASONABLE TIMES.

D. THE LANDLORD HAS NO OTHER RIGHT OF ACCESS EXCEPT BY COURT ORDER AND AS PERMITTED BY SECTIONS 33-1369 AND 33-1370, OR IF THE TENANT HAS ABANDONED OR SURRENDERED THE PREMISES.

33-1344. **Tenant to use and occupy as a dwelling unit**

UNLESS OTHERWISE AGREED, THE TENANT SHALL OCCUPY HIS DWELLING UNIT ONLY AS A DWELLING UNIT.

ARTICLE 4. REMEDIES

33-1361. **Noncompliance by the landlord**

A. EXCEPT AS PROVIDED IN THIS CHAPTER, IF THERE IS A MATERIAL NONCOMPLIANCE BY THE LANDLORD WITH THE RENTAL AGREEMENT, THE TENANT MAY DELIVER A WRITTEN NOTICE TO THE LANDLORD SPECIFYING THE ACTS AND OMISSIONS CONSTITUTING THE BREACH AND THAT THE RENTAL AGREEMENT WILL TERMINATE UPON A DATE NOT LESS THAN THIRTY DAYS AFTER RECEIPT OF THE NOTICE IF THE BREACH IS NOT REMEDIED IN FOURTEEN DAYS. IF THERE IS A NONCOMPLIANCE BY THE LANDLORD WITH SECTION 33-1324 MATERIALLY AFFECTING HEALTH AND SAFETY, THE TENANT MAY DELIVER A WRITTEN NOTICE TO THE LANDLORD SPECIFYING THE ACTS AND OMISSIONS CONSTITUTING THE BREACH AND THAT THE RENTAL AGREEMENT WILL TERMINATE UPON A DATE NOT LESS THAN TWENTY DAYS AFTER RECEIPT OF THE NOTICE IF THE BREACH IS NOT REMEDIED IN TEN DAYS. THE RENTAL AGREEMENT SHALL TERMINATE AND THE DWELLING UNIT SHALL BE VACATED AS PROVIDED IN THE NOTICE SUBJECT TO THE FOLLOWING:

1. IF THE BREACH IS REMEDIABLE BY REPAIRS OR THE PAYMENT OF DAMAGES OR OTHERWISE AND THE LANDLORD ADEQUATELY REMEDIES THE BREACH PRIOR TO THE DATE SPECIFIED IN THE NOTICE, THE RENTAL AGREEMENT WILL NOT TERMINATE.

2. THE TENANT MAY NOT TERMINATE FOR A CONDITION CAUSED BY THE DELIBERATE OR NEGLIGENT ACT OR OMISSION OF THE TENANT, A MEMBER OF HIS FAMILY OR OTHER PERSON ON THE PREMISES WITH HIS CONSENT.

B. EXCEPT AS PROVIDED IN THIS CHAPTER, THE TENANT MAY RECOVER DAMAGES AND OBTAIN INJUNCTIVE RELIEF FOR ANY NONCOMPLIANCE BY THE LANDLORD WITH THE RENTAL AGREEMENT OR SECTION 33-1324.

C. THE REMEDY PROVIDED IN SUBSECTION B OF THIS SECTION IS IN ADDITION TO ANY RIGHT OF THE TENANT ARISING UNDER SUBSECTION A OF THIS SECTION.

D. IF THE RENTAL AGREEMENT IS TERMINATED, THE LANDLORD SHALL RETURN ALL SECURITY RECOVERABLE BY THE TENANT UNDER SECTION 33-1321.

33-1362. **Failure to deliver possession**

A. IF THE LANDLORD FAILS TO DELIVER PHYSICAL POSSESSION OF THE DWELLING UNIT TO THE TENANT AS PROVIDED IN SECTION 33-1323, RENT ABATES UNTIL POSSESSION IS DELIVERED AND THE TENANT MAY DO EITHER OF THE FOLLOWING:

1. UPON AT LEAST FIVE DAYS' WRITTEN NOTICE TO THE LANDLORD TERMINATE THE RENTAL AGREEMENT AND UPON TERMINATION THE LANDLORD SHALL RETURN ALL PREPAID RENT AND SECURITY.

2. DEMAND PERFORMANCE OF THE RENTAL AGREEMENT BY THE LANDLORD AND, IF THE TENANT ELECTS, MAINTAIN AN ACTION FOR POSSESSION OF THE DWELLING UNIT AGAINST THE LANDLORD OR ANY PERSON WRONGFULLY IN POSSESSION AND RECOVER THE DAMAGES SUSTAINED BY HIM.

B. IF THE LANDLORD FAILS TO DELIVER CONSTRUCTIVE POSSESSION TO THE TENANT BECAUSE OF NONCOMPLIANCE WITH SECTION 33-1324, RENT SHALL NOT ABATE. TENANT MAY PROCEED WITH THE REMEDIES PROVIDED FOR IN SECTION 33-1361.

C. IF A PERSON'S FAILURE TO DELIVER POSSESSION IS WILLFUL AND NOT IN GOOD FAITH, AN AGGRIEVED PERSON MAY RECOVER FROM THAT PERSON AN AMOUNT NOT MORE THAN TWO MONTHS' PERIODIC RENT OR TWICE THE ACTUAL DAMAGES SUSTAINED BY HIM, WHICHEVER IS GREATER.

33-1363. **Self-help for minor defects**

A. IF THE LANDLORD FAILS TO COMPLY WITH SECTION 33-1324, AND THE REASONABLE COST OF COMPLIANCE IS LESS THAN ONE HUNDRED FIFTY DOLLARS, OR AN AMOUNT EQUAL TO ONE-HALF OF THE MONTHLY RENT, WHICHEVER AMOUNT IS GREATER, THE TENANT MAY RECOVER DAMAGES FOR THE BREACH UNDER SECTION 33-1361, SUBSECTION B, OR MAY NOTIFY THE LANDLORD OF HIS INTENTION TO CORRECT THE CONDITION AT THE LANDLORD'S EXPENSE. AFTER BEING NOTIFIED BY THE TENANT IN WRITING, IF THE LANDLORD FAILS TO COMPLY WITHIN TWENTY DAYS OR AS PROMPTLY THEREAFTER AS CONDITIONS REQUIRE IN CASE OF

EMERGENCY, THE TENANT MAY CAUSE THE WORK TO BE DONE BY A LICENSED CONTRACTOR AND, AFTER SUBMITTING TO THE LANDLORD AN ITEMIZED STATEMENT AND A WAIVER OF LIEN, DEDUCT FROM HIS RENT THE ACTUAL AND REASONABLE COST OF THE WORK, NOT EXCEEDING THE AMOUNT SPECIFIED IN THIS SUBSECTION.

B. A TENANT MAY NOT REPAIR AT THE LANDLORD'S EXPENSE IF THE CONDITION WAS CAUSED BY THE DELIBERATE OR NEGLIGENT ACT OR OMISSION OF THE TENANT, A MEMBER OF HIS FAMILY OR OTHER PERSON ON THE PREMISES WITH HIS CONSENT.

33-1364. **Wrongful failure to supply heat, air conditioning, cooling, water, hot water or essential services**

A. IF CONTRARY TO THE RENTAL AGREEMENT OR SECTION 33-1324 THE LANDLORD DELIBERATELY OR NEGLIGENTLY FAILS TO SUPPLY RUNNING WATER, HOT WATER OR HEAT, AIR-CONDITIONING OR COOLING, WHERE SUCH UNITS ARE INSTALLED AND OFFERED, OR ESSENTIAL SERVICES, THE TENANT MAY GIVE REASONABLE NOTICE TO THE LANDLORD SPECIFYING THE BREACH AND MAY DO ONE OF THE FOLLOWING:

1. PROCURE REASONABLE AMOUNTS OF HOT WATER, RUNNING WATER, HEAT AND ESSENTIAL SERVICES DURING THE PERIOD OF THE LANDLORD'S NONCOMPLIANCE AND DEDUCT THEIR ACTUAL REASONABLE COST FROM THE RENT.

2. RECOVER DAMAGES BASED UPON THE DIMINUTION IN THE FAIR RENTAL VALUE OF THE DWELLING UNIT.

3. PROCURE REASONABLE SUBSTITUTE HOUSING DURING THE PERIOD OF THE LANDLORD'S NONCOMPLIANCE, IN WHICH CASE THE TENANT IS EXCUSED FROM PAYING RENT FOR THE PERIOD OF THE LANDLORD'S NONCOMPLIANCE. IN THE EVENT THE PERIODIC COST OF SUCH SUBSTITUTE HOUSING EXCEEDS THE AMOUNT OF THE PERIODIC RENT, UPON DELIVERY BY TENANT OF PROOF OF PAYMENT FOR SUCH SUBSTITUTE HOUSING, TENANT MAY RECOVER FROM LANDLORD SUCH EXCESS COSTS UP TO AN AMOUNT NOT TO EXCEED TWENTY-FIVE PER CENT OF THE PERIODIC RENT WHICH HAS BEEN EXCUSED PURSUANT TO THIS PARAGRAPH.

B. IN ADDITION TO THE REMEDY PROVIDED IN PARAGRAPH 3 OF SUBSECTION A, IN THE EVENT THE LANDLORD'S NONCOMPLIANCE IS DELIBERATE, THE TENANT MAY RECOVER THE ACTUAL AND REASONABLE COST OR FAIR AND REASONABLE VALUE OF THE SUBSTITUTE HOUSING NOT IN EXCESS OF AN AMOUNT EQUAL TO THE PERIODIC RENT.

C. IF THE TENANT PROCEEDS UNDER THIS SECTION, HE MAY NOT PROCEED UNDER SECTION 33-1361 OR SECTION 33-1363 AS TO THAT BREACH, EXCEPT AS TO DAMAGES WHICH OCCUR PRIOR TO THE TENANT PROCEEDING UNDER SUBSECTION A OR B OF THIS SECTION.

D. THE RIGHTS UNDER THIS SECTION DO NOT ARISE UNTIL THE TENANT HAS GIVEN NOTICE TO THE LANDLORD AND SUCH RIGHTS DO NOT INCLUDE THE RIGHT TO REPAIR. SUCH RIGHTS DO NOT ARISE IF THE CONDITION WAS CAUSED BY THE DELIBERATE OR NEGLIGENT ACT OR OMISSION OF THE TENANT, A MEMBER OF HIS FAMILY OR OTHER PERSON ON THE PREMISES WITH HIS CONSENT.

33-1365. **Landlord's noncompliance as defense to action for possession or rent**

A. IN AN ACTION FOR POSSESSION BASED UPON NONPAYMENT OF THE RENT OR IN AN ACTION FOR RENT WHERE THE TENANT IS IN POSSESSION, THE TENANT MAY COUNTERCLAIM FOR ANY AMOUNT WHICH HE MAY RECOVER UNDER THE RENTAL AGREEMENT OR THIS CHAPTER. IN THAT EVENT AFTER NOTICE AND HEARING THE COURT FROM TIME TO TIME MAY ORDER THE TENANT TO PAY INTO COURT ALL OR PART OF THE UNDISPUTED RENT ACCRUED AND ALL PERIODIC RENT THEREAFTER ACCRUING AND SHALL DETERMINE THE AMOUNT DUE TO EACH PARTY. THE PARTY TO WHOM A NET AMOUNT IS OWED SHALL BE PAID FIRST FROM THE MONEY PAID INTO COURT AND THE BALANCE, IF ANY, BY THE OTHER PARTY. HOWEVER, IF NO RENT REMAINS DUE AFTER APPLICATION OF THIS SECTION, OR IF THE TENANT IS ADJUDGED TO HAVE ACTED IN GOOD FAITH AND SATISFIES A JUDGMENT FOR RENT ENTERED FOR THE LANDLORD, JUDGMENT SHALL BE ENTERED FOR THE TENANT IN THE ACTION FOR POSSESSION.

B. IN AN ACTION FOR RENT WHERE THE TENANT IS NOT IN POSSESSION, THE TENANT MAY COUNTERCLAIM AS PROVIDED

IN SUBSECTION A BUT THE TENANT IS NOT REQUIRED TO PAY ANY RENT INTO COURT.

33-1366. **Fire or casualty damage**

A. IF THE DWELLING UNIT OR PREMISES ARE DAMAGED OR DESTROYED BY FIRE OR CASUALTY TO AN EXTENT THAT ENJOYMENT OF THE DWELLING UNIT IS SUBSTANTIALLY IMPAIRED, THE TENANT MAY DO EITHER OF THE FOLLOWING:

1. IMMEDIATELY VACATE THE PREMISES AND NOTIFY THE LANDLORD IN WRITING WITHIN FOURTEEN DAYS THEREAFTER OF HIS INTENTION TO TERMINATE THE RENTAL AGREEMENT, IN WHICH CASE THE RENTAL AGREEMENT TERMINATES AS OF THE DATE OF VACATING.

2. IF CONTINUED OCCUPANCY IS LAWFUL, VACATE ANY PART OF THE DWELLING UNIT RENDERED UNUSABLE BY THE FIRE OR CASUALTY, IN WHICH CASE THE TENANT'S LIABILITY FOR RENT IS REDUCED IN PROPORTION TO THE DIMINUTION IN THE FAIR RENTAL VALUE OF THE DWELLING UNIT.

B. IF THE RENTAL AGREEMENT IS TERMINATED THE LANDLORD SHALL RETURN ALL SECURITY RECOVERABLE UNDER SECTION 33-1321. ACCOUNTING FOR RENT IN THE EVENT OF TERMINATION OR APPORTIONMENT IS TO OCCUR AS OF THE DATE THE TENANT VACATES ALL OR PART OF THE DWELLING UNIT.

33-1367. **Tenant's remedies for landlord's unlawful ouster, exclusion or diminution of services**

IF THE LANDLORD UNLAWFULLY REMOVES OR EXCLUDES THE TENANT FROM THE PREMISES OR WILFULLY DIMINISHES SERVICES TO THE TENANT BY INTERRUPTING OR CAUSING THE INTERRUPTION OF ELECTRIC, GAS, WATER OR OTHER ESSENTIAL SERVICE TO THE TENANT, THE TENANT MAY RECOVER POSSESSION OR TERMINATE THE RENTAL AGREEMENT AND, IN EITHER CASE, RECOVER AN AMOUNT NOT MORE THAN TWO MONTHS' PERIODIC RENT OR TWICE THE ACTUAL DAMAGES SUSTAINED BY HIM, WHICHEVER IS GREATER. IF THE RENTAL AGREEMENT IS TERMINATED THE LANDLORD SHALL RETURN ALL SECURITY RECOVERABLE UNDER SECTION 33-1321.

33-1368. **Noncompliance with rental agreement by tenant; failure to pay rent**

A. EXCEPT AS PROVIDED IN THIS CHAPTER, IF THERE IS A MATERIAL NONCOMPLIANCE BY THE TENANT WITH THE RENTAL AGREEMENT, THE LANDLORD MAY DELIVER A WRITTEN NOTICE TO THE TENANT SPECIFYING THE ACTS AND OMISSIONS CONSTITUTING THE BREACH AND THAT THE RENTAL AGREEMENT WILL TERMINATE UPON A DATE NOT LESS THAN THIRTY DAYS AFTER RECEIPT OF THE NOTICE IF THE BREACH IS NOT REMEDIED IN FOURTEEN DAYS. IF THERE IS A NONCOMPLIANCE BY THE TENANT WITH SECTION 33-1324 MATERIALLY AFFECTING HEALTH AND SAFETY, THE LANDLORD MAY DELIVER A WRITTEN NOTICE TO THE TENANT SPECIFYING THE ACTS AND OMISSIONS CONSTITUTING THE BREACH AND THAT THE RENTAL AGREEMENT WILL TERMINATE UPON A DATE NOT LESS THAN TWENTY DAYS AFTER RECEIPT OF THE NOTICE IF THE BREACH IS NOT REMEDIED IN TEN DAYS. HOWEVER, IF THE BREACH IS REMEDIABLE BY REPAIR OR THE PAYMENT OF DAMAGES OR OTHERWISE, AND THE TENANT ADEQUATELY REMEDIES THE BREACH PRIOR TO THE DATE SPECIFIED IN THE NOTICE, THE RENTAL AGREEMENT WILL NOT TERMINATE.

B. IF RENT IS UNPAID WHEN DUE AND THE TENANT FAILS TO PAY RENT WITHIN SEVEN DAYS AFTER WRITTEN NOTICE BY THE LANDLORD OF NONPAYMENT AND HIS INTENTION TO TERMINATE THE RENTAL AGREEMENT IF THE RENT IS NOT PAID WITHIN THAT PERIOD OF TIME, THE LANDLORD MAY TERMINATE THE RENTAL AGREEMENT. PRIOR TO JUDGMENT IN AN ACTION BROUGHT BY LANDLORD UNDER THIS SUBSECTION, THE TENANT MAY HAVE THE RENTAL AGREEMENT REINSTATED BY TENDERING THE PAST DUE BUT UNPAID PERIODIC RENT, REASONABLE ATTORNEY'S FEES INCURRED BY THE LANDLORD AND COURT COSTS, IF ANY.

C. EXCEPT AS PROVIDED IN THIS CHAPTER, THE LANDLORD MAY RECOVER DAMAGES, OBTAIN INJUNCTIVE RELIEF OR RECOVER POSSESSION OF THE PREMISES PURSUANT TO AN ACTION IN FORCIBLE DETAINER FOR ANY NONCOMPLIANCE BY THE TENANT WITH THE RENTAL AGREEMENT OR SECTION 33-1341.

D. THE REMEDY PROVIDED IN SUBSECTION C IS IN ADDITION TO ANY RIGHT OF THE LANDLORD ARISING UNDER SUBSECTION A.

33-1369. **Failure to maintain**

IF THERE IS NONCOMPLIANCE BY THE TENANT WITH SECTION 33-1341 MATERIALLY AFFECTING HEALTH AND SAFETY THAT CAN BE REMEDIED BY REPAIR, REPLACEMENT OF A DAMAGED ITEM OR CLEANING AND THE TENANT FAILS TO COMPLY AS PROMPTLY AS CONDITIONS REQUIRE IN CASE OF EMERGENCY OR WITHIN FOURTEEN DAYS AFTER WRITTEN NOTICE BY THE LANDLORD SPECIFYING THE BREACH AND REQUESTING THAT THE TENANT REMEDY IT WITHIN THAT PERIOD OF TIME, THE LANDLORD MAY ENTER THE DWELLING UNIT AND CAUSE THE WORK TO BE DONE IN A WORKMANLIKE MANNER AND SUBMIT AN ITEMIZED BILL FOR THE ACTUAL AND REASONABLE COST OR THE FAIR AND REASONABLE VALUE THEREOF AS RENT ON THE NEXT DATE WHEN PERIODIC RENT IS DUE, OR IF THE RENTAL AGREEMENT HAS TERMINATED, FOR IMMEDIATE PAYMENT.

33-1370. **Remedies for abandonment**

IF THE TENANT ABANDONS THE DWELLING UNIT, THE LANDLORD SHALL MAKE REASONABLE EFFORTS TO RENT IT AT A FAIR RENTAL. IF THE LANDLORD RENTS THE DWELLING UNIT FOR A TERM BEGINNING PRIOR TO THE EXPIRATION OF THE RENTAL AGREEMENT, IT IS DEEMED TO BE TERMINATED AS OF THE DATE THE NEW TENANCY BEGINS. IF THE LANDLORD FAILS TO USE REASONABLE EFFORTS TO RENT THE DWELLING UNIT AT A FAIR RENTAL OR IF THE LANDLORD ACCEPTS THE ABANDONMENT AS A SURRENDER, THE RENTAL AGREEMENT IS DEEMED TO BE TERMINATED BY THE LANDLORD AS OF THE DATE THE LANDLORD HAS NOTICE OF THE ABANDONMENT. IF THE TENANCY IS FROM MONTH-TO-MONTH OR WEEK-TO-WEEK, THE TERM OF THE RENTAL AGREEMENT FOR THIS PURPOSE SHALL BE DEEMED TO BE A MONTH OR A WEEK, AS THE CASE MAY BE.

33-1371. **Waiver of landlord's right to terminate**

ACCEPTANCE OF RENT, OR ANY PORTION THEREOF, WITH KNOWLEDGE OF A DEFAULT BY TENANT OR ACCEPTANCE OF PERFORMANCE BY THE TENANT THAT VARIED FROM THE TERMS OF THE RENTAL AGREEMENT OR RULES OR REGULATIONS SUBSEQUENTLY ADOPTED BY THE LANDLORD CONSTITUTES A WAIVER OF HIS RIGHT TO TERMINATE THE RENTAL AGREEMENT FOR THAT BREACH, UNLESS OTHERWISE AGREED AFTER THE BREACH HAS OCCURRED.

33-1372. **Landlord liens; distraint for rent**

A. A LIEN OR SECURITY INTEREST ON BEHALF OF THE LANDLORD IN THE TENANT'S HOUSEHOLD GOODS IS NOT ENFORCEABLE UNLESS PERFECTED BEFORE THE EFFECTIVE DATE OF THIS CHAPTER.

B. DISTRAINT FOR RENT IS ABOLISHED.

33-1373. **Remedy after termination**

IF THE RENTAL AGREEMENT IS TERMINATED, THE LANDLORD MAY HAVE A CLAIM FOR POSSESSION AND FOR RENT AND A SEPARATE CLAIM FOR ACTUAL DAMAGES FOR BREACH OF THE RENTAL AGREEMENT.

33-1374. **Recovery of possession limited**

A LANDLORD MAY NOT RECOVER OR TAKE POSSESSION OF THE DWELLING UNIT BY ACTION OR OTHERWISE, INCLUDING WILLFUL DIMINUTION OF SERVICES TO THE TENANT BY INTERRUPTING OR CAUSING THE INTERRUPTION OF ELECTRIC, GAS, WATER OR OTHER ESSENTIAL SERVICE TO THE TENANT, EXCEPT IN CASE OF ABANDONMENT, SURRENDER OR AS PERMITTED IN THIS CHAPTER.

33-1375. **Periodic tenancy; holdover remedies**

A. THE LANDLORD OR THE TENANT MAY TERMINATE A WEEK-TO-WEEK TENANCY BY A WRITTEN NOTICE GIVEN TO THE OTHER AT LEAST TEN DAYS PRIOR TO THE TERMINATION DATE SPECIFIED IN THE NOTICE.

B. THE LANDLORD OR THE TENANT MAY TERMINATE A MONTH-TO-MONTH TENANCY BY A WRITTEN NOTICE GIVEN TO THE OTHER AT LEAST THIRTY DAYS PRIOR TO THE PERIODIC RENTAL DATE SPECIFIED IN THE NOTICE.

C. IF THE TENANT REMAINS IN POSSESSION WITHOUT THE LANDLORD'S CONSENT AFTER EXPIRATION OF THE TERM OF THE RENTAL AGREEMENT OR ITS TERMINATION, THE LANDLORD MAY BRING AN ACTION FOR POSSESSION AND IF THE TENANT'S HOLDOVER IS WILLFUL AND NOT IN GOOD FAITH THE LANDLORD, IN ADDITION, MAY RECOVER AN AMOUNT EQUAL

TO NOT MORE THAN TWO MONTHS' PERIODIC RENT OR TWICE THE ACTUAL DAMAGES SUSTAINED BY HIM, WHICHEVER IS GREATER. IF THE LANDLORD CONSENTS TO THE TENANT'S CONTINUED OCCUPANCY, SECTION 33-1314, SUBSECTION D, APPLIES.

33-1376. **Landlord and tenant remedies for abuse of access**

A. IF THE TENANT REFUSES TO ALLOW LAWFUL ACCESS, THE LANDLORD MAY OBTAIN INJUNCTIVE RELIEF TO COMPEL ACCESS, OR TERMINATE THE RENTAL AGREEMENT. IN EITHER CASE, THE LANDLORD MAY RECOVER ACTUAL DAMAGES.

B. IF THE LANDLORD MAKES AN UNLAWFUL ENTRY OR A LAWFUL ENTRY IN AN UNREASONABLE MANNER OR MAKES REPEATED DEMANDS FOR ENTRY OTHERWISE LAWFUL BUT WHICH HAVE THE EFFECT OF UNREASONABLY HARASSING THE TENANT, THE TENANT MAY OBTAIN INJUNCTIVE RELIEF TO PREVENT THE RECURRENCE OF THE CONDUCT OR TERMINATE THE RENTAL AGREEMENT. IN EITHER CASE, THE TENANT MAY RECOVER ACTUAL DAMAGES NOT LESS THAN AN AMOUNT EQUAL TO ONE MONTH'S RENT.

ARTICLE 5. RETALIATORY ACTION

33-1381. **Retaliatory conduct prohibited**

A. EXCEPT AS PROVIDED IN THIS SECTION, A LANDLORD MAY NOT RETALIATE BY INCREASING RENT OR DECREASING SERVICES OR BY BRINGING OR THREATENING TO BRING AN ACTION FOR POSSESSION AFTER ANY OF THE FOLLOWING:

1. THE TENANT HAS COMPLAINED TO A GOVERNMENTAL AGENCY CHARGED WITH RESPONSIBILITY FOR ENFORCEMENT OF A BUILDING OR HOUSING CODE OF A VIOLATION APPLICABLE TO THE PREMISES MATERIALLY AFFECTING HEALTH AND SAFETY.

2. THE TENANT HAS COMPLAINED TO THE LANDLORD OF A VIOLATION UNDER SECTION 33-1324.

3. THE TENANT HAS ORGANIZED OR BECOME A MEMBER OF A TENANTS' UNION OR SIMILAR ORGANIZATION.

4. THE TENANT HAS COMPLAINED TO A GOVERNMENTAL AGENCY CHARGED WITH THE RESPONSIBILITY FOR ENFORCEMENT OF THE WAGE-PRICE STABILIZATION ACT.

B. IF THE LANDLORD ACTS IN VIOLATION OF SUBSECTION A OF THIS SECTION, THE TENANT IS ENTITLED TO THE REMEDIES PROVIDED IN SECTION 33-1367 AND HAS A DEFENSE IN ACTION AGAINST HIM FOR POSSESSION. IN AN ACTION BY OR AGAINST THE TENANT, EVIDENCE OF A COMPLAINT WITHIN SIX MONTHS PRIOR TO THE ALLEGED ACT OF RETALIATION CREATES A PRESUMPTION THAT THE LANDLORD'S CONDUCT WAS IN RETALIATION. THE PRESUMPTION DOES NOT ARISE IF THE TENANT MADE THE COMPLAINT AFTER NOTICE OF TERMINATION OF THE RENTAL AGREEMENT. "PRESUMPTION", IN THIS SUBSECTION, MEANS THAT THE TRIER OF FACT MUST FIND THE EXISTENCE OF THE FACT PRESUMED UNLESS AND UNTIL EVIDENCE IS INTRODUCED WHICH WOULD SUPPORT A FINDING OF ITS NONEXISTENCE.

C. NOTWITHSTANDING SUBSECTIONS A AND B OF THIS SECTION, A LANDLORD MAY BRING AN ACTION FOR POSSESSION IF EITHER OF THE FOLLOWING OCCURS:

1. THE VIOLATION OF THE APPLICABLE BUILDING OR HOUSING CODE WAS CAUSED PRIMARILY BY LACK OF REASONABLE CARE BY THE TENANT OR OTHER PERSON IN HIS HOUSEHOLD OR UPON THE PREMISES WITH HIS CONSENT.

2. THE TENANT IS IN DEFAULT IN RENT.

THE MAINTENANCE OF THE ACTION DOES NOT RELEASE THE LANDLORD FROM LIABILITY UNDER SECTION 33-1361, SUBSECTION B.

Sec. 4. **Savings clause**

Transactions entered into before the effective date of this act, and not extended or renewed after that date and the rights, duties and interests flowing from them remain valid and may be terminated, completed, consummated or enforced as required or permitted by any statute or other law amended or repealed by this act as though the repeal or amendment had not occurred.

Approved by the Governor–May 3, 1973

Filed in the Office of the Secretary of State–May 3, 1973

LAWS OF ARIZONA

CHAPTER 104

Senate Bill 1105

AN ACT

RELATING TO MOTOR VEHICLES; PROVIDING FOR PROTECTION AND TRANSPORTATION OF GOVERNOR BY DIRECTOR OF DEPARTMENT OF PUBLIC SAFETY, AND AMENDING SECTION 28-240, ARIZONA REVISED STATUTES.

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

Section 1. Section 28-240, Arizona Revised Statutes, is amended to read:

28-240. **Protection for governor and family**

The ~~superintendent of the Arizona highway patrol~~ DIRECTOR OF THE DEPARTMENT OF PUBLIC SAFETY shall provide transportation, security and protection for the governor and security and protection for the governor's family to the extent and in the manner the DIRECTOR AND THE GOVERNOR DEEM ~~superintendent and the governor deem~~ appropriate and adequate.

Sec. 2. **Emergency**

To preserve the public peace, health and safety it is necessary that this act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.

Approved by the Governor–May 3, 1973

Filed in the Office of the Secretary of State–May 3, 1973

CHAPTER 105

Senate Bill 1189

AN ACT

RELATING TO COURTS; PRESCRIBING PUBLICATION PROCEDURE FOR DISPOSAL OF UNCLAIMED PROPERTY IN CUSTODY OF

OFFICERS OF STATE OR POLITICAL SUBDIVISION, AND AMENDING SECTION 12-944, ARIZONA REVISED STATUTES.

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

Section 1. Section 12-944, Arizona Revised Statutes, is amended to read:

12-944. **Notice of sale; service and publication**

Before any property described in the petition as provided by section 12-943 is sold, if the name and residence of the owner thereof is known, the petitioner shall give at least sixty days notice of the petition to the owner, either personally or by mail, or by leaving a notice at his residence or place of business. If the name and residence of the owner are not known, the petitioner shall cause a notice containing a description of the property to be published ~~for six successive weeks~~ ONCE in a newspaper published in the county. If no newspaper is published in the county, the notice shall be published in a newspaper of general circulation in the county. The ~~last~~ publication of the notice shall be at least eighteen days prior to the date of sale.

Approved by the Governor–May 3, 1973

Filed in the Office of the Secretary of State–May 3, 1973

CHAPTER 106

House Bill 2010

AN ACT

RELATING TO WATERS; PROVIDING FOR FLOODPLAIN MANAGEMENT BY CITIES, TOWNS AND COUNTIES; AUTHORIZING ADOPTION OF RULES AND REGULATIONS THEREFOR; PROHIBITING OBSTRUCTION OF WATERCOURSES; PROVIDING FOR DECLARATION OF PUBLIC NUISANCE; REPEALING TITLE 45, CHAPTER 10, ARTICLE 4, ARIZONA REVISED STATUTES, AND AMENDING TITLE 45, CHAPTER 10, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 4.

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

Section 1. **Purpose**

The purpose of this act is to empower the agencies of the state of Arizona, for lands owned by the state, and to empower, encourage and assist cities, towns and counties of the state, to establish, along watercourses, streams and lakes, appropriate regulations which are part of a floodplain management program to:

1. Minimize flood damages and reduce the height and violence of floods which are caused by obstructions restricting the capacity of the floodways.

2. Prevent unwise encroachment and building development within floodplain areas.

3. Protect the life and property of citizens who have settled in floodplain areas.

4. Enhance property values of abutting floodplain lands.

5. Protect public health.

6. Reduce the financial burden imposed on the community, its governmental units and its citizens if such land is subject to flooding.

7. Enhance wildlife and recreation values where appropriate by preserving riparian vegetation in "green belts" along watercourses and floodplains.

Sec. 2. **Repeal**

Title 45, chapter 10, article 4, Arizona Revised Statutes, is repealed.

Sec. 3. Title 45, chapter 10, Arizona Revised Statutes, is amended by adding a new article 4, sections 45-2341 through 45-2346, to read:

ARTICLE 4. FLOODPLAIN MANAGEMENT

45-2341. **Definitions**

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "AREA OF JURISDICTION" MEANS:

(a) FOR AN INCORPORATED TOWN OR CITY, ALL OF THE LANDS WITHIN THE TOWN OR CITY.

(b) FOR A COUNTY, ALL OF THE UNINCORPORATED AREAS OF THE COUNTY.

2. "DWELLING UNIT" MEANS A PLACE OF RESIDENCE AND MAY BE LOCATED IN A SINGLE OR MULTIPLE-DWELLING BUILDING.

3. "FLOOD" OR "FLOOD WATERS" MEANS A TEMPORARY OVERLOW OF WATER ON LANDS NOT NORMALLY COVERED BY WATER.

4. "FIFTY-YEAR FLOOD" MEANS A FLOOD THAT HAS A TWO PER CENT CHANCE OF OCCURRING, BASED UPON THE CRITERIA ESTABLISHED BY THE ARIZONA WATER COMMISSION.

5. "ONE HUNDRED-YEAR FLOOD" MEANS A FLOOD THAT HAS A ONE PER CENT CHANCE OF OCCURRING, BASED UPON THE CRITERIA ESTABLISHED BY THE ARIZONA WATER COMMISSION.

6. "FLOODPLAIN" MEANS THE RELATIVELY FLAT AREAS OR LOW LANDS ADJOINING THE CHANNEL OF A WATERCOURSE, OR AREAS WHERE DRAINAGE IS OR MAY BE RESTRICTED BY MAN-MADE STRUCTURES WHICH HAVE BEEN OR MAY BE COVERED PARTIALLY OR WHOLLY BY FLOODWATER, BUT SHALL COMPOSE AN AREA NOT LESS THAN THAT AREA CONFINED BY THE FIFTY-YEAR FLOOD AND SHALL NOT EXCEED THAT AREA CONFINED BY THE ONE HUNDRED-YEAR FLOOD.

7. "FLOODPLAIN REGULATIONS" MEANS THE CODES, ORDINANCES AND OTHER REGULATIONS RELATING TO THE USE OF LAND AND CONSTRUCTION WITHIN THE CHANNEL AND FLOODPLAIN AREAS, INCLUDING ZONING ORDINANCES, SUBDIVISION REGULATIONS, BUILDING CODES, HOUSING CODES, SETBACK REQUIREMENTS, OPEN AREA REGULATIONS AND SIMILAR METHODS OF CONTROL AFFECTING THE USE AND DEVELOPMENT OF THE AREAS.

8. "PERSON" MEANS ANY INDIVIDUAL OR HIS AGENT, FIRM, PARTNERSHIP, ASSOCIATION, CORPORATION, OR AGENT OF THE AFOREMENTIONED GROUPS, OR THE STATE OR ANY AGENCY OR POLITICAL SUBDIVISION THEREOF.

9. "FLOODPLAIN BOARD" MEANS THE GOVERNING BODY OF AN INCORPORATED TOWN OR CITY, CHARTER CITY OR COUNTY.

10. "WATERCOURSE" MEANS ANY LAKE, RIVER, CREEK, STREAM, WASH, ARROYO, CHANNEL OR OTHER BODY OF WATER HAVING BANKS AND BED THROUGH WHICH WATERS FLOW AT LEAST PERIODICALLY. THE TERM MAY INCLUDE SPECIFICALLY DESIGNATED AREAS IN WHICH SUBSTANTIAL FLOOD DAMAGE MAY OCCUR.

45-2342. **Flood magnitude criteria; floodplain delineation; regulations**

A. WITHIN SIXTY DAYS AFTER THE EFFECTIVE DATE OF THIS ACT, THE ARIZONA WATER COMMISSION SHALL DEVELOP AND ADOPT CRITERIA FOR ESTABLISHING THE FIFTY AND ONE HUNDRED YEAR FLOODS FOR THE STATE OF ARIZONA.

B. WITHIN ONE HUNDRED EIGHTY DAYS AFTER THE EFFECTIVE DATE OF THIS ACT, THE FLOODPLAIN BOARD, WITHIN ITS AREA OF JURISDICTION SHALL DELINEATE FOR AREAS WHERE DEVELOPMENT IS ONGOING OR IMMINENT, AND THEREAFTER AS DEVELOPMENT BECOMES IMMINENT, FLOODPLAINS CONSISTENT WITH THE CRITERIA DEVELOPED BY THE ARIZONA WATER COMMISSION. THE FLOODPLAINS SO DESIGNATED SHALL BE SUBMITTED TO THE WATER COMMISSION.

C. THE FLOODPLAIN BOARD SHALL ADOPT FLOODPLAIN REGULATIONS WHICH SHALL INCLUDE THE FOLLOWING:

1. REGULATIONS FOR ALL SUBDIVISION OF LAND, CONSTRUCTION OF DWELLING UNITS OR COMMERCIAL OR INDUSTRIAL STRUCTURES OR USES WHICH MAY DIVERT, RETARD OR OBSTRUCT FLOOD WATER AND THREATEN PUBLIC HEALTH, SAFETY OR THE GENERAL WELFARE.

2. REGULATIONS WHICH ESTABLISH MINIMUM FLOOD PROTECTION ELEVATIONS AND FLOOD DAMAGE PREVENTION REQUIREMENTS FOR USES, STRUCTURES AND FACILITIES WHICH ARE VULNERABLE TO FLOOD DAMAGE. REGULATIONS ADOPTED UNDER THIS SECTION ARE TO BE IN ACCORDANCE WITH STATE AND LOCAL LAND USE PLANS AND ORDINANCES, IF ANY.

3. REGULATIONS WHICH PROVIDE FOR COORDINATION BY THE FLOODPLAIN BOARD WITH ALL OTHER INTERESTED AND AFFECTED POLITICAL SUBDIVISIONS AND STATE AGENCIES.

4. REGULATIONS WHICH REQUIRE THAT ANY DWELLING BUILT

WITHIN A FLOODPLAIN SHALL BE CONSTRUCTED SO AS TO PLACE THE MINIMUM FLOOR ELEVATION OF THE DWELLING UNIT ABOVE THE HIGH WATER LINE OF THE ONE HUNDRED YEAR FLOOD.

D. FLOODPLAIN BOARDS MAY ENTER INTO COOPERATIVE AGREEMENTS PURSUANT TO TITLE 11, CHAPTER 7, ARTICLE 3 FOR THE DELINEATION OF FLOODPLAINS AND ADOPTION OF REGULATIONS WITHIN SUCH FLOODPLAIN.

E. FLOODPLAIN REGULATIONS ENACTED PURSUANT TO THIS ARTICLE MAY ONLY BE ADOPTED AFTER A PUBLIC HEARING AT WHICH PARTIES IN INTEREST AND OTHER CITIZENS HAVE AN OPPORTUNITY TO BE HEARD. AT LEAST THIRTY DAYS PRIOR TO THE HEARING, A NOTICE OF THE TIME AND PLACE OF HEARING SHALL BE PUBLISHED IN A NEWSPAPER OF GENERAL CIRCULATION WITHIN THE AREA OF JURISDICTION OF THE FLOODPLAIN BOARD OR IF NO NEWSPAPER OF GENERAL CIRCULATION IS REGULARLY PUBLISHED WITHIN THE AREA OF JURISDICTION, IN A NEWSPAPER OF GENERAL CIRCULATION REGULARLY PUBLISHED NEAREST THE AREA OF JURISDICTION. A NOTICE OF ANY HEARING ACCOMPANIED BY A COPY OF EACH OF THE PROPOSED RULES AND REGULATIONS SHALL BE FURNISHED TO THE ARIZONA WATER COMMISSION AT LEAST THIRTY DAYS PRIOR TO THE DATE OF SUCH HEARING. A COPY OF ANY REGULATION ADOPTED BY A FLOODPLAIN BOARD PURSUANT TO THIS ARTICLE SHALL WITHIN FIVE DAYS THEREAFTER BE FILED WITH THE ARIZONA WATER COMMISSION.

F. ONE HUNDRED EIGHTY DAYS AFTER THE EFFECTIVE DATE OF THIS ARTICLE, AND AT ALL TIMES THEREAFTER, ALL SUBDIVISION OF LAND, CONSTRUCTION OF DWELLING UNITS OR COMMERCIAL OR INDUSTRIAL STRUCTURES OR FUTURE DEVELOPMENT WITHIN DELINEATED FLOODPLAIN AREAS IS PROHIBITED UNLESS:

1. SEVENTY-FIVE PERCENT OF SUCH FLOODPLAIN AREA WITHIN A PLATTED AND APPROVED SUBDIVISION TO BE DEVELOPED AND UTILIZED FOR SUCH UNITS AND STRUCTURES HAS BEEN SO DEVELOPED AND UTILIZED ON THE EFFECTIVE DATE OF THIS ARTICLE; OR

2. PRIOR TO REGULATIONS HAVING BEEN ADOPTED, A SPECIAL PERMIT IS GRANTED BY THE FLOODPLAIN BOARD; OR

3. A SPECIAL PERMIT IS GRANTED BY THE STATE AGENCY HAVING THE PRIMARY LAND MANAGEMENT ADMINISTRATIVE DUTY OVER THE LANDS IF DEVELOPMENT OR CONSTRUCTION IS TO BE ON LANDS OWNED OR HELD IN TRUST BY THE STATE; OR

4. FLOODPLAIN REGULATIONS HAVE BEEN ADOPTED PURSUANT TO THIS ARTICLE FOR SUCH FLOODPLAIN AREA AND ARE IN FULL FORCE AND EFFECT.

G. THE FLOODPLAIN BOARD PRIOR TO ADOPTING REGULATIONS MAY ISSUE A SPECIAL PERMIT AUTHORIZING CONSTRUCTION OR DEVELOPMENT WHEN THE FLOODPLAIN BOARD FINDS THAT CONSTRUCTION OR DEVELOPMENT IS NOT A DANGER TO PERSONS OR PROPERTY.

H. NOTHING IN THIS ARTICLE OR ANY REGULATIONS ADOPTED PURSUANT TO THIS ARTICLE SHALL:

1. AFFECT EXISTING USES OF PROPERTY OR THE RIGHT TO THE CONTINUATION OF THE USE.

2. AFFECT REASONABLE REPAIR OR ALTERATION OF PROPERTY FOR THE PURPOSES FOR WHICH SUCH PROPERTY WAS USED ON THE EFFECTIVE DATE OF THIS ACT OR ANY REGULATIONS AFFECTING SUCH PROPERTY TAKES EFFECT.

3. AFFECT OR APPLY TO FACILITIES CONSTRUCTED OR INSTALLED PURSUANT TO A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY ISSUED UNDER THE AUTHORITY OF TITLE 40, CHAPTER 2, ARTICLE 6.2.

I. WITHIN ONE HUNDRED TWENTY DAYS AFTER COMPLETION OF CONSTRUCTION OF ANY FLOOD CONTROL PROTECTIVE WORKS, THE FLOODPLAIN IN THE AREA BENEFITED BY SUCH WORKS SHALL BE REDEFINED.

45-2343. **Authorization required for construction in watercourses; exemptions**

A. NO PERSON SHALL CONSTRUCT ANY STRUCTURE WHICH WILL DIVERT, RETARD OR OBSTRUCT THE FLOW OF WATERS IN ANY WATERCOURSE WITHOUT SECURING WRITTEN AUTHORIZATION FROM THE FLOODPLAIN BOARD IN WHICH THE WATERCOURSE IS LOCATED.

B. WRITTEN AUTHORIZATION SHALL NOT BE REQUIRED NOR SHALL THE FLOODPLAIN BOARD PROHIBIT:

1. THE CONSTRUCTION OF BRIDGES, CULVERTS, DIKES AND OTHER STRUCTURES NECESSARY TO THE CONSTRUCTION OF PUBLIC HIGHWAYS, ROADS AND STREETS INTERSECTING OR CROSSING A WATERCOURSE.

2. THE CONSTRUCTION OF STORAGE DAMS FOR WATERING LIVESTOCK OR WILDLIFE, STRUCTURES ON BANKS OF A CREEK, STREAM, RIVER, WASH, ARROYO, OR OTHER WATERCOURSES TO PREVENT EROSION OF OR DAMAGE TO ADJOINING LAND, OR DAMS FOR THE CONSERVATION OF FLOOD WATERS AS PERMITTED BY TITLE 45, CHAPTER 3.

3. CONSTRUCTION OF TAILING DAMS AND WASTE DISPOSAL AREAS FOR USE IN CONNECTION WITH MINING AND METALLURGICAL OPERATIONS.

4. ANY FLOOD CONTROL DISTRICT, COUNTY, CITY, TOWN OR OTHER POLITICAL SUBDIVISION FROM EXERCISING POWERS GRANTED TO IT UNDER THIS CHAPTER.

C. IN ADDITION TO OTHER PENALTIES OR REMEDIES OTHERWISE PROVIDED BY LAW, THE STATE OF ARIZONA, ANY POLITICAL SUBDIVISION, OR ANY PERSON WHO MAY BE DAMAGED AS A RESULT OF THE DIVERSION, RETARDATION OR OBSTRUCTION OF A WATERCOURSE SHALL HAVE THE RIGHT TO COMMENCE, MAINTAIN AND PROSECUTE ANY APPROPRIATE ACTION OR PURSUE ANY REMEDY TO ENJOIN, ABATE OR OTHERWISE PREVENT ANY PERSON FROM VIOLATING OR CONTINUING TO VIOLATE ANY PROVISION OF THIS SECTION. IF ANY PERSON IS FOUND TO BE IN VIOLATION OF ANY PROVISION OF THIS SECTION, THE COURT SHALL REQUIRE THE VIOLATOR TO COMPLY WITH THIS SECTION OR REMOVE THE OBSTRUCTION AND RESTORE THE WATERCOURSE TO ITS ORIGINAL STATE.

45-2344. **Declaration of public nuisance; abatement**

EVERY NEW STRUCTURE, BUILDING, FILL, EXCAVATION OR DEVELOPMENT LOCATED OR MAINTAINED, WITHIN ANY FLOODPLAIN IN VIOLATION OF FLOODPLAIN REGULATIONS ESTABLISHED BY THE FLOODPLAIN BOARD AND WITHOUT WRITTEN

AUTHORIZATION FROM SUCH BOARD IS A PUBLIC NUISANCE PER SE AND MAY BE ABATED, PREVENTED OR RESTRAINED BY ACTION OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF.

45-2345. **Unlawful acts; penalty**

A. IT IS UNLAWFUL FOR ANY PERSON TO DIVERT, RETARD OR OBSTRUCT THE FLOW OF WATERS IN ANY WATERCOURSE WHENEVER IT CREATES A HAZARD TO LIFE OR PROPERTY WITHOUT SECURING THE WRITTEN AUTHORIZATION REQUIRED BY SECTION 45-2343.

B. ANY PERSON VIOLATING THE PROVISIONS OF THIS SECTION SHALL BE GUILTY OF A MISDEMEANOR.

45-2346. **Local powers; preemption**

NONE OF THE PROVISIONS OF THIS ARTICLE SHALL BE SO CONSTRUED AS TO INVALIDATE ANY EXISTING RULES OR REGULATIONS OR ORDINANCES ADOPTED PURSUANT TO OTHER PROVISIONS OF LAW OR CHARTER AND PRIOR TO THE EFFECTIVE DATE OF THIS ACT, WHICH PROVISIONS ARE EQUAL TO THE MINIMUM STANDARDS SET FORTH HEREIN.

Approved by the Governor–May 3, 1973

Filed in the Office of the Secretary of State–May 3, 1973

CHAPTER 107

Senate Bill 1071

AN ACT

RELATING TO COUNTIES; PRESCRIBING CIVIL ACTION FEES CHARGEABLE BY SHERIFFS AND CONSTABLES; PRESCRIBING RIGHTS OF PRIVATE PROCESS SERVERS, AND AMENDING SECTION 11-445, ARIZONA REVISED STATUTES.

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

LAWS OF ARIZONA

Section 1. Section 11-445, Arizona Revised Statutes, is amended to read:

11-445. **Fees chargeable in civil actions by sheriffs, constables and private process servers; authority of private process servers**

A. The sheriff shall receive the following fees in civil actions:

1. Serving each TRUE COPY OF THE original summons in a civil suit, three dollars AND FIFTY CENTS.

2. Summoning each witness, ~~two~~ THREE dollars AND FIFTY CENTS.

3. Levying and returning each writ of attachment or claim and delivery, three dollars.

4. Taking and approving each bond and returning it to the proper court when necessary, one dollar.

5. Endorsing the forfeiture of any bond required to be endorsed by him, fifty cents.

6. Levying each execution, three dollars.

7. Returning each execution, fifty cents.

8. Executing and returning each writ of possession or restitution, three dollars.

9. Posting the advertisement for sale under execution, or any order of sale, two dollars.

10. Posting or serving any notice, process, writ, order, pleading or paper required or permitted by law, not otherwise provided for, three dollars AND FIFTY CENTS.

11. Executing a deed to each purchaser of real property under execution or order of sale, two dollars and fifty cents.

12. Executing a bill of sale to each purchaser of personal property under an execution or order of sale, when demanded by purchaser, one dollar and twenty-five cents.

13. For each case tried in the superior court, a jury fee shall be taxed for the sheriff of seventy-five cents.

14. For services in designating a homestead or other exempt property, two dollars and fifty cents.

15. For receiving and paying money on redemption and issuing certificate of redemption, five dollars.

B. For traveling to serve civil process, writs, orders, pleadings or papers, the sheriff shall receive ~~forty-five~~ FIFTY-FIVE cents for each mile actually and necessarily traveled but, in any event, not to exceed ~~thirty-five~~ ONE HUNDRED miles, nor to be less than one dollar. Mileage shall be charged one way only. For service made at the same time and place, regardless of the number of parties or the number of papers so served, only one charge for travel fees shall be made for such service.

C. For collecting money on an execution when it is made by sale, the sheriff and the constable shall receive twenty cents for each one hundred dollars or major portion thereof, but when money is collected by the sheriff without a sale, only one half of such fee shall be allowed.

D. The sheriff shall be allowed for all process issued from the supreme court and served by him, the same fees as are allowed him for similar services upon process issued from the superior court.

E. The constable shall receive the same fees as the sheriff for performing the same services in civil actions, except that mileage shall be computed from the office of the nearest justice of peace to the place of service, with ~~no~~ A minimum charge OF ONE DOLLAR for mileage fees.

F. Private process servers duly appointed or registered pursuant to rules established by the supreme court may serve all process, writs, orders, pleadings or papers required or permitted by law to be served prior to, during, or independently of, a court action, including all such as are required or permitted to be served by a sheriff or constable, except writs or orders requiring the service officer to sell, deliver or take into his custody persons or property, or as may otherwise be limited by rule established by the supreme court. A private process server is an officer of the court. A private process server may charge such fees for his services as may be agreed upon between him and the party engaging him. However, a party adjudged entitled to recover his costs of suit in any civil action shall be awarded in any such judgment or order for the costs of service made by a private process server only the amount actually charged the party by such private process server or the amount which a sheriff or constable

would have been authorized to charge the party for the same service, whichever is less, except that an additional allowance shall be made of fifty cents for the notarization of each affidavit of service made by a private process server.

Approved by the Governor–May 3, 1973

Filed in the Office of the Secretary of State–May 4, 1973

CHAPTER 108

Senate Bill 1085

AN ACT

RELATING TO COUNTIES; PRESCRIBING LIMITATIONS FOR APPROPRIATIONS TO COUNTY FAIR FUNDS IN VARIOUS COUNTIES, AND AMENDING SECTION 11-258, ARIZONA REVISED STATUTES.

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

Section 1. **Purpose**

The purpose of this act is to prescribe maximum limits of county fair appropriations by the boards of supervisors of the various classes of counties.

Sec. 2. Section 11-258, Arizona Revised Statutes, is amended to read:

11-258. **County fair fund; district fairs; operation of fair by corporation; county and state appropriations**

A. The board may appropriate each year from the general fund a sum, ~~not to exceed fifteen thousand dollars,~~ which shall be known as a county fair fund~~.~~ , AS FOLLOWS:

1. IN COUNTIES HAVING A CENSUS OF TWO HUNDRED THOUSAND OR MORE AS DETERMINED BY THE LATEST PRECEDING FEDERAL DECENNIAL CENSUS, NOT MORE THAN ONE HUNDRED THOUSAND DOLLARS.

2. IN COUNTIES HAVING A CENSUS OF MORE THAN TWENTY-FIVE THOUSAND BUT LESS THAN TWO HUNDRED THOUSAND AS DETERMINED BY THE LATEST PRECEDING FEDERAL DECENNIAL CENSUS, NOT MORE THAN TWENTY-FIVE THOUSAND DOLLARS.

3. IN COUNTIES HAVING A CENSUS OF LESS THAN TWENTY-FIVE THOUSAND AS DETERMINED BY THE LATEST PRECEDING FEDERAL DECENNIAL CENSUS, NOT MORE THAN FIFTEEN THOUSAND DOLLARS.

The board may expend the money in aid of a county or district fair, or to make an exhibit of the county's resources at the state fair. A district fair is one at which the boards of two or more counties shall, by resolution entered upon their minutes, invite the people of their respective counties to exhibit the resources of the county.

B. The money shall not be expended in aid of a fair conducted under the auspices of any corporation, unless the stockholders of the corporation shall, by resolution entered upon its minutes, provide that no dividends shall ever be paid upon its stock, and that in the event of the dissolution of the corporation all money appropriated and expended by any county in aid of the fair shall be repaid before any assets of the corporation shall be distributed to its stockholders.

C. To encourage county and district fairs, there shall be paid from the general fund of the state and from the appropriation for the state fair, a sum of not exceeding one thousand dollars in any one year for any one county ~~sufficient to equal the appropriations made by the board of supervisors for a county or district fair~~ HAVING A COUNTY OR DISTRICT FAIR IN SUCH YEAR. A county desiring to claim the benefits of this section shall certify ~~that fact~~ to the ~~state fair commission,~~ ARIZONA COLISEUM AND EXPOSITION CENTER BOARD THE FACT THAT A COUNTY OR DISTRICT FAIR IS BEING HELD IN THE COUNTY DURING THE YEAR together with A STATEMENT OF the amount appropriated by the county for the current year FOR SUCH FAIR, and upon order therefor by the ~~state fair commission the commissioner of~~ ARIZONA COLISEUM AND EXPOSITION CENTER BOARD, THE ASSISTANT DIRECTOR FOR finance shall draw his warrant in favor of the county in the amount appropriated by the county, not exceeding one thousand dollars, on the state treasurer who shall pay the warrant.

Approved by the Governor–May 3, 1973

Filed in the Office of the Secretary of State–May 4, 1973

LAWS OF ARIZONA

CHAPTER 109

Senate Bill 1100

AN ACT

RELATING TO CITIES, TOWNS AND COUNTIES; PROVIDING AUTHORITY TO ADOPT AND ENFORCE STANDARDS FOR SHIELDING AND FILTRATION OF LIGHTS IN AREAS SURROUNDING ASTRONOMY OR METEOROLOGY LABORATORIES, AND AMENDING SECTION 9-276 AND 11-251, ARIZONA REVISED STATUTES.

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

Section 1. **Purpose**

The purpose of this act is to provide authority for cities and counties to regulate lighting in areas near astronomy or meteorology laboratories.

Sec. 2. Section 9-276, Arizona Revised Statutes, is amended to read:

9-276. **Additional powers of cities**

A. In addition to the powers already vested in cities by their respective charters and by general law, cities and their governing bodies may:

1. Lay out and establish, regulate the use, open, vacate, alter, widen, extend, grade, pave, plant trees or otherwise improve streets, alleys, avenues, sidewalks, parks and public grounds.

2. Prevent and remove encroachments or obstructions, provide for lighting and cleaning, regulate the openings for the laying of gas and water pipes and mains on streets, alleys, avenues, sidewalks, parks and public grounds.

3. Build and repair sewers, tunnels and drains.

4. Erect lights, gas or otherwise.

5. Regulate the erection of poles and wires, the laying of street railway tracks, and the operating of street railways in and upon its streets, alleys, public grounds and plazas.

6. Regulate the use of sidewalks and all structures thereunder, and require the owner or occupant of premises to keep the sidewalks in front of or along the premises free from obstruction.

7. Regulate and prevent the throwing of offensive material in and prevent injury to any street, way, alley or public grounds.

8. Construct and keep in repair bridges, viaducts, tunnels, culverts, drains, sewers and cesspools, and regulate their use.

9. Provide for the cleaning and purification of waters, watercourses and canals, and the draining or filling of ponds on private property when necessary to prevent or abate nuisances.

10. Establish markets and market houses, and regulate their use.

11. Regulate the sale of meats, poultry, fish, butter, cheese, lard, fruit, vegetables and other provisions, and provide for and regulate the inspection and the place and manner of selling them, and for the inspection of hay, grain, flour, meal and other provisions.

12. Regulate the construction, repair and use of vaults, cisterns, areas, hydrants, pumps, sewers and gutters.

13. Regulate partition fences and party walls and regulate the construction and location of buildings, walls and fences on the line of a street, way or alley.

14. Prescribe the thickness, strength and manner of constructing stone, brick and other buildings, and construction of fire escapes.

15. Fix and designate by ordinance fire limits within which no buildings having outside wooden walls shall be constructed or repaired so as to increase their value beyond a percentage to be fixed in the ordinance, and, by ordinance, prescribe special fire limits, within the general fire limits, requiring therein building material to be used and additional precautions to be observed in the construction of new buildings, and in the repairing and maintenance of buildings, as may from time to time be designated, for the prevention of fires and the spread thereof, and provide for the enforcement of the ordinance and for the appointment of a building inspector, his authority, his term of office and compensation.

16. Define nuisances and abate them, and impose fines upon persons creating or continuing nuisances.

17. Appoint a board of health, and prescribe its powers and duties.

18. Prohibit an offensive or unwholesome business or establishment within two miles of the limits of the corporation.

19. Compel the owner of any unwholesome or nauseous house or place to clean, abate or remove it, and regulate the location thereof.

20. Extend by condemnation or otherwise any street, alley or highway over or across, or construct a sewer under or through any railroad track, right-of-way or land of a railroad within its corporate limits, but where no just compensation is made to the railroad company, the city shall restore the railroad track, right-of-way or land to its former state, or in a manner so as not to impair its usefulness.

21. Establish and define sewer districts and construct sewers therein.

22. Establish and alter the grade of streets, alleys and sidewalks, and regulate the manner of using the streets and pavements in the city to protect them from injury by vehicles driven thereon. No street or sidewalk grade shall be altered after it has once been established and built unless compensation is made to abutting owners for damages done their property by the change.

23. Make local improvements by special assessments, by special taxation or otherwise, as they shall by ordinance prescribe.

24. ADOPT AND ENFORCE STANDARDS FOR SHIELDING AND FILTRATION OF COMMERCIAL OR PUBLIC OUTDOOR PORTABLE OR PERMAMENT LIGHT FIXTURES IN PROXIMITY TO ASTRONOMICAL OR METEOROLOGICAL LABORATORIES.

B. A domestic corporation or association organized for the purpose of manufacturing gas to supply cities, or its inhabitants, or to supply cities, or its inhabitants, with water, or for the purpose of furnishing cities and the inhabitants with a sewer system, may, by consent of the governing body, erect and establish gas factories, water works and sewer plants, and lay down pipes in the streets, alleys, plazas and ways of a city, subject to such rules and regulations as the city shall by ordinance impose.

Sec. 3. Section 11-251, Arizona Revised Statutes, is amended to read:

11-251. **Powers of board**

The board of supervisors, under such limitations and restrictions as are prescribed by law, may:

1. Supervise the official conduct of all county officers and officers of all districts and other subdivisions of the county charged with assessing, collecting, safekeeping, managing or disbursing the public revenues, see that such officers faithfully perform their duties, direct prosecutions for delinquencies, and, when necessary, require the officers to renew their official bonds, make reports and present their books and accounts for inspection.

2. Divide the counties into such districts or precincts as required by law, change them and create others as convenience requires.

3. Establish, abolish and change election precincts, appoint inspectors and judges of elections, canvass election returns, declare the result and issue certificates thereof.

4. Lay out, maintain, control and manage public roads, ferries and bridges within the county and levy such tax therefor as may be authorized by law.

5. Provide for the care and maintenance of the indigent sick of the county, erect and maintain hospitals therefor and, in their discretion, provide a farm in connection with the county hospital and adopt regulations for working the farm.

6. Provide suitable rooms for county purposes.

7. Purchase, receive by donation or lease real or personal property necessary for the use of the county prison and take care of, manage and control it, but no purchase of real property shall be made unless the value has been previously estimated by three disinterested citizens of the county, appointed by the board for that purpose, and no more than the appraised value shall be paid therefor.

8. Cause to be erected and furnished a courthouse, jail, hospital and such other buildings as necessary, and construct and establish a branch jail, when necessary, at a point distant from the county seat.

9. Sell at public auction at the courthouse door, after thirty days' previous notice given by publication in a newspaper of the county, and convey to the highest bidder, for cash or contract of purchase extending not more than five years from date of sale and upon such terms and conditions and for such consideration as the board shall prescribe, any property belonging to the county which the board deems advantageous for the county to sell, or which the board deems unnecessary for use by the

county, and shall pay the proceeds thereof into the county treasury for use of the county, except that personal property need not be sold but may be used as a trade-in on the purchase of personal property when the board deems this disposition of the personal property to be in the best interests of the county. When the property for sale is real property, the board shall have such property appraised by a practicing attorney, a licensed real estate broker and a qualified employee of a bank or title and trust company dealing in real property transactions. They shall establish a minimum price which shall in no instance be less than ninety per cent of the appraised value. The notice regarding the sale of real property shall be published in the county where the property is situated and may be published in one or more other counties, and shall contain, among other things, the appraised value, the minimum acceptable sale price, and the common and legal description of the real property.

10. Examine and exhibit the accounts of all officers having the care, management, collection or disbursement of money belonging to the county or appropriated by law or otherwise for the use and benefit of the county.

11. Examine, settle and allow all accounts legally chargeable against the county, order warrants to be drawn on the county treasurer therefor and provide for issuing the warrants.

12. Levy such tax annually on the taxable property of the county as may be necessary to defray the general current expenses thereof, including salaries otherwise unprovided for, not exceeding two dollars on every one hundred dollars of value for any one year, and levy such other taxes as are required to be levied by law.

13. Equalize assessments.

14. Direct and control the prosecution and defense of all actions to which the county is a party, and compromise them.

15. Insure the county buildings in the name of and for the benefit of the county.

16. Fill by appointment all vacancies occurring in county or precinct offices.

17. Adopt provisions necessary to preserve the health of the county, and provide for the expenses thereof.

18. Contract for county printing and advertising, and provide books and stationery for county officers.

19. Provide for rebinding county records, or, if necessary, the transcribing of county records.

20. Make and enforce necessary rules and regulations for the government of their body, the preservation of order and transaction of business.

21. Adopt a seal for the board, a description and impression of which shall be filed by the clerk in the office of the county recorder, and the secretary of state.

22. Establish, maintain and conduct, or aid in establishing, maintaining and conducting public aviation fields, purchase, receive by donation or lease any property necessary therefor, lease, at a nominal rental if desired, sell such aviation fields or property to the United States or any department thereof, or sell or lease such aviation fields to a city, exchange lands acquired pursuant to this section for other lands, or act in conjunction with the United States in maintaining, managing and conducting all thereof, and, when any such property or part thereof is not needed for the purposes herein mentioned, it shall be sold by the board and the proceeds paid into the general fund of the county.

23. Acquire and hold property for the use of county fairs, and conduct, take care of and manage them.

24. Authorize the sheriff to offer a reward, not exceeding five hundred dollars in one case, for the apprehension of persons convicted of or charged with crime.

25. Contract for the transportation of insane persons to the state hospital, or direct the sheriff to transport such persons and allow the expenses thereof.

26. Bury deceased indigents and mark their graves with a stone, giving the name, age and date of death.

27. Sell or grant to the United States the title or interest of the county in any toll road or toll train in or partly within a national park, upon such terms and consideration as may be agreed upon by the board and the secretary of the interior of the United States.

28. Enter into agreements for acquiring rights-of-way, construction, reconstruction or maintenance of highways in their respective counties

with the government of the United States, acting through its duly authorized officers or agents pursuant to any act of congress, and any such agreements entered into prior to June 26, 1952 are validated and confirmed.

29. Do and perform all other acts and things necessary to the full discharge of its duties as the legislative authority of the county government.

30. Make and enforce all local, police, sanitary and other regulations not in conflict with general law.

31. Budget for funds for foster home care during the school week for mentally retarded and otherwise handicapped children who reside within the county and attend a school for the handicapped in a city or town within such county.

32. Do and perform all acts necessary to enable the county to participate in the "Economic Opportunity Act of 1964" (P.L. 88-452; 78 Stat. 508, as amended).

33. Provide a plan or plans for their employees which provide tax deferred annuity and deferred compensation plans as authorized pursuant to title 26, sections 401, 403 and 404, United States Code Annotated. Such plans shall allow voluntary participation by all employees of the county. Participating employees shall authorize the board to make reductions in their remuneration as provided in an executed deferred compensation agreement.

34. ADOPT AND ENFORCE STANDARDS FOR SHIELDING AND FILTRATION OF COMMERCIAL OR PUBLIC OUTDOOR PORTABLE OR PERMANENT LIGHT FIXTURES IN PROXIMITY TO ASTRONOMICAL OR METEOROLOGICAL LABORATORIES.

Approved by the Governor–May 3, 1973

Filed in the Office of the Secretary of State–May 4, 1973

LAWS OF ARIZONA

CHAPTER 110

Senate Bill 1133

AN ACT

RELATING TO TRADE AND COMMERCE; PRESCRIBING FRAUDULENT PRACTICES WITH MOTOR VEHICLE ODOMETERS AND PENALTY THEREFOR, AND AMENDING TITLE 44, CHAPTER 9, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 44-1223.

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

Section 1. **Purpose**

The purpose of this act is to provide protection for the motor vehicle consumer against fraudulent practices relating to odometers.

Sec. 2. Title 44, chapter 9, article 2, Arizona Revised Statutes, is amended by adding section 44-1223, to read:

44-1223. **Fraudulent practices relating to motor vehicle odometers; penalty**

A. IT IS UNLAWFUL FOR ANY PERSON TO:

1. ADVERTISE FOR SALE, SELL, USE OR INSTALL ANY DEVICE WHICH CAUSES THE ODOMETER OF A MOTOR VEHICLE TO REGISTER MILEAGE OTHER THAN THE TRUE MILEAGE DRIVEN. FOR THE PURPOSES OF THIS PARAGRAPH THE TRUE MILEAGE DRIVEN IS THAT MILEAGE DRIVEN BY THE VEHICLE AS REGISTERED BY THE ODOMETER WITHIN THE MANUFACTURER'S DESIGNED TOLERANCE.

2. OPERATE, WITH INTENT TO DEFRAUD, A MOTOR VEHICLE ON ANY STREET OR HIGHWAY KNOWING THAT THE ODOMETER OF SUCH VEHICLE IS DISCONNECTED OR NONFUNCTIONAL.

3. REPLACE, DISCONNECT, TURN BACK OR RESET THE ODOMETER OF ANY MOTOR VEHICLE WITH THE INTENT TO REDUCE THE NUMBER OF MILES INDICATED ON THE ODOMETER.

4. SELL OR OFFER TO SELL, WITH INTENT TO DEFRAUD, A

MOTOR VEHICLE ON WHICH THE ODOMETER DOES NOT REGISTER THE TRUE MILEAGE DRIVEN.

B. NOTHING IN THIS SECTION SHALL PREVENT THE SERVICE, REPAIR OR REPLACEMENT OF AN ODOMETER, PROVIDED THE MILEAGE INDICATED THEREON REMAINS THE SAME AS BEFORE THE SERVICE, REPAIR OR REPLACEMENT. WHERE THE ODOMETER IS INCAPABLE OF REGISTERING THE SAME MILEAGE AS BEFORE SUCH SERVICE, REPAIR OR REPLACEMENT, THE ODOMETER SHALL BE ADJUSTED TO READ "ZERO" AND A NOTICE IN WRITING SHALL BE ATTACHED TO THE LEFT DOOR FRAME OF THE VEHICLE BY THE OWNER OR HIS AGENT SPECIFYING THE MILEAGE PRIOR TO REPAIR OR REPLACEMENT OF THE ODOMETER AND THE DATE ON WHICH IT WAS REPAIRED OR REPLACED. ANY REMOVAL OR ALTERATIONS OF SUCH NOTICE SO AFFIXED SHALL BE UNLAWFUL.

C. A PERSON WHO VIOLATES THE PROVISIONS OF THIS SECTION SHALL BE GUILTY OF A MISDEMEANOR.

Approved by the Governor–May 3, 1973

Filed in the Office of the Secretary of State–May 4, 1973

CHAPTER 111

Senate Bill 1155

AN ACT

RELATING TO PUBLIC OFFICERS AND EMPLOYEES; PRESCRIBING FUNDS TO BE PAID INTO JUDGES' RETIREMENT FUND BY CLERKS OF COURTS; PROVIDING FOR REFUNDING CONTRIBUTIONS; AMENDING TITLE 38, CHAPTER 5, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 38-801.01, AND AMENDING SECTION 38-804, ARIZONA REVISED STATUTES.

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

Section 1. Title 38, chapter 5, article 3, Arizona Revised Statutes, is amended by adding section 38-801.01, to read:

38-801.01. **Definition**

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES "WIDOW" INCLUDES WIDOW AND WIDOWER.

Sec. 2. Section 38-804, Arizona Revised Statutes, is amended to read:

38-804. **Retirement fund; termination of services of judge; refund, reinstating retirement status**

A. There shall be a judges' retirement fund which shall be used exclusively for retirement payments as provided in this article, and from which all retirement pay shall be made. The fund shall be composed of the following:

1. Any provision of law to the contrary notwithstanding, twenty-five per cent of all fees collected by the clerk of the superior court in each county, twenty-five per cent of all fees paid in to the clerk of each division of the court of appeals, and twenty-five per cent of all fees paid in to the clerk of the supreme court shall be set aside monthly to the credit of the fund.~~,~~ ~~provided that the total amount of monies set aside from fees collected by the clerk of the superior court to the judges' retirement fund shall not exceed in any fiscal year the amount of such monies received by such fund for the fiscal year ending June 30, 1961.~~

2. The ~~commissioner~~ ASSISTANT DIRECTOR FOR THE DIVISION of finance, after June 17, 1950, shall make a deduction of five AND ONE-HALF per cent from all salary claims upon the state of the judges of the supreme court, the court of appeals, and superior court, and the board of supervisors of each county shall make a deduction of five AND ONE-HALF per cent from all salary claims upon the county of judges of the superior court, but if any judge holding office upon June 18, 1950, files with the ~~commissioner~~ ASSISTANT DIRECTOR FOR THE DIVISION of finance and the board of supervisors written objection to such deduction, none shall be made until after expiration of his term of office.

B. Any judge whose services have terminated prior to having received any retirement payments as provided in this article shall be entitled to receive, and there shall be refunded to him ~~four fifths of~~ all contributions made by him to the retirement fund, upon such judge or his legal representatives filing with the governor on application therefor supported by affidavit establishing the termination of his services and the amount contributed by him. The governor shall thereupon transmit the application to the state treasurer for certification and payment.

C. In the event a judge withdraws the contributions he has made to the retirement fund he then forfeits his retirement service, but he may reinstate his retirement status by paying into the fund the amount he withdrew, without interest.

Approved by the Governor–May 3, 1973

Filed in the Office of the Secretary of State–May 4, 1973

CHAPTER 112

Senate Bill 1194

AN ACT

RELATING TO CITIES AND TOWNS; PROVIDING FOR DATE OF ELECTION FOR INCORPORATION; PROVIDING FOR COUNTY SERVICES TO NEWLY INCORPORATED CITIES AND TOWNS THROUGH END OF CURRENT FISCAL YEAR; AMENDING SECTIONS 9-101 AND 9-131, ARIZONA REVISED STATUTES, AND AMENDING TITLE 9, CHAPTER 1, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 9-104.

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

Section 1. Section 9-101, Arizona Revised Statutes, is amended to read:

9-101. **Incorporation**

A. When two-thirds of the qualified electors residing in a community containing a population of fifteen hundred or more inhabitants petition the board of supervisors, setting forth the metes and bounds of the community, and the name under which the petitioners desire to be incorporated, and praying for the incorporation of the community into a city or town, and the board is satisfied that two-thirds of the qualified electors residing in the community have signed the petition, it shall, by an order entered of record, declare the community incorporated as a city or town.

B. When ten percent of the qualified electors residing in a community containing a population of fifteen hundred or more petition the board of

supervisors in the manner prescribed in subsection A, praying for the calling of an election for the purpose provided in this section, the board shall within sixty days after filing the petition call the election, and the election shall take place on ~~the fourth Tuesday after the next following state general election~~ SUCH DATE AS THE BOARD MAY DESIGNATE BUT NOT MORE THAN ONE HUNDRED TWENTY DAYS AFTER THE FILING OF SUCH PETITION EXCEPT THAT NO SUCH ELECTION SHALL BE CALLED WITHIN TWELVE MONTHS FROM THE DATE OF A PREVIOUS ELECTION FOR INCORPORATION OF SUBSTANTIALLY THE SAME TERRITORY. Only qualified electors of the community, shall vote on this question. If a majority of qualified electors voting thereon vote for incorporation, then the board of supervisors shall, by an order entered of record, declare the community incorporated as a city or town.

C. By whichever proceeding the incorporation of a city or town is accomplished, the order shall designate the name of the city or town, and its metes and bounds, and thereafter the inhabitants within the areas so defined shall be a body politic and corporate by the name designated.

D. For the purposes of this section, the word community shall mean a locality in which a body of people reside in more or less proximity having common interests in such services as public health, public protection, fire protection and water which bind together the people of the area, and where the people are acquainted and mingle in business, social, educational and recreational activities.

E. An area to be incorporated shall not include large areas of uninhabited, rural or farm lands, but it shall be urban in nature.

Sec. 2. Title 9, chapter 1, article 1, Arizona Revised Statutes, is amended by adding section 9-104, to read:

9-104. **County services for newly incorporated city or town**

A. WHEN COUNTY TERRITORY IS INCLUDED WITHIN THE BOUNDARIES OF A NEWLY INCORPORATED CITY OR TOWN, ALL CODES, RULES AND REGULATIONS MADE, ESTABLISHED, ADOPTED OR ENACTED BY SUCH COUNTY, RELATING TO ZONING, BUILDING, PLUMBING, MECHANICAL, ELECTRICAL AND HEALTH AND SANITATION SHALL APPLY WITHIN SUCH NEWLY INCORPORATED CITY OR TOWN AND SHALL BE ENFORCED BY COUNTY OFFICERS FROM AND AFTER THE DATE OF SUCH INCORPORATION UNTIL JULY 1 NEXT FOLLOWING SUCH

INCORPORATION OR UNTIL SUCH TIME PRIOR TO THE EXPIRATION OF SUCH FISCAL YEAR AS THE GOVERNING BODY OF SUCH CITY OR TOWN, BY RESOLUTION OR CONFLICTING ORDINANCE, SUPERSEDES SUCH COUNTY CODE, RULES OR REGULATIONS.

B. ALL COUNTY SERVICES PREVIOUSLY PROVIDED WITHIN SUCH TERRITORY, INCLUDING, BUT NOT LIMITED TO, LAW ENFORCEMENT, PUBLIC SAFETY, MAINTENANCE OF STREETS AND PUBLIC IMPROVEMENTS, DRAINAGE, SEWERS AND SEWAGE DISPOSAL SHALL BE CONTINUED THROUGH COUNTY OFFICERS AND AT COUNTY EXPENSE DURING THE PERIOD FROM AND AFTER THE DATE OF SUCH INCORPORATION UNTIL JULY 1 NEXT FOLLOWING SUCH INCORPORATION OR UNTIL SUCH TIME PRIOR TO THE END OF SUCH FISCAL YEAR AS THE GOVERNING BODY OF SUCH CITY OR TOWN, BY RESOLUTION OR CONFLICTING ORDINANCES, PROVIDES SUCH SERVICES.

C. PROVISIONS OF THIS SECTION SHALL ALSO APPLY TO CITIES AND TOWNS INCORPORATED UNDER ARTICLE 3 OF THIS CHAPTER.

Sec. 3. Section 9-131, Arizona Revised Statutes, is amended to read:

9-131. **Incorporation**

A. When two-thirds of the qualified electors in each county residing in a single community containing a collective population of fifteen hundred or more inhabitants petition their respective boards of supervisors, setting forth the metes and bounds of the community, the name under which the petitioners desire to be incorporated, and praying for the incorporation of the community into a city or town, and the respective boards meeting in a joint session are satisfied that two-thirds of the qualified electors residing in the community in each county have signed the petition, they shall by an order entered of record by each board declare the community incorporated as a city or town.

B. When ten percent of the qualified electors in each county residing in a single community containing a collective population of fifteen hundred or more inhabitants petition their respective boards of supervisors in the manner prescribed by subsection A of this section, praying for the calling of an election for the purpose provided in this section, the respective boards meeting in joint session shall within sixty days after the filing of the petition call the election, and the election shall take place on ~~the fourth Tuesday after the next following state general election~~ SUCH

DATE AS THE BOARD MAY DESIGNATE BUT NOT MORE THAN ONE HUNDRED TWENTY DAYS AFTER THE FILING OF SUCH PETITION EXCEPT THAT NO SUCH ELECTION SHALL BE CALLED WITHIN TWELVE MONTHS FROM THE DATE OF A PREVIOUS ELECTION FOR INCORPORATION OF SUBSTANTIALLY THE SAME TERRITORY. Only qualified electors of the community shall vote on this question. If a majority of qualified electors in each county voting thereon votes for incorporation, then the boards of supervisors again meeting in joint session shall by an order entered of record by each board declare the community incorporated as a city or town.

C. The provisions of section 9-231 shall apply to cities and towns incorporated under this article, except that the first common council shall be appointed by the boards of supervisors of the respective counties meeting in joint session.

D. By whichever proceeding the incorporation of a city or town is accomplished, the order shall designate the name of the city or town, and its metes and bounds, and thereafter the inhabitants within the area so defined shall be a body politic and corporate by the name designated.

E. For the purposes of this section, the word community shall mean a locality in which a body of people reside in more or less proximity having common interests in such services as public health, public protection, fire protection and water which bind together the people of the area, and where the people are acquainted and mingle in business, social, educational and recreational activities.

F. An area to be incorporated shall not include large areas of uninhabited, rural or farm lands, but it shall be urban in nature.

Approved by the Governor–May 3, 1973

Filed in the Office of the Secretary of State–May 4, 1973

LAWS OF ARIZONA

CHAPTER 113

Senate Bill 1212

AN ACT

RELATING TO PUBLIC OFFICERS AND EMPLOYEES; PROVIDING FOR INCREASE IN PAYMENTS TO CERTAIN MEMBERS UNDER STATE RETIREMENT PLAN; PROVIDING FOR CONTINUING APPROPRIATION THEREFOR; PRESCRIBING TEN-YEAR LIMITATION FOR APPROPRIATION; AMENDING SECTION 38-781.28, ARIZONA REVISED STATUTES, AND AMENDING TITLE 38, CHAPTER 5, ARTICLE 2.1, ARIZONA REVISED STATUTES, BY ADDING SECTION 38-781.35.

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

Section 1. **Purpose**

The purpose of this legislation is to provide a ten per cent increase for certain retired members in the state retirement plan.

Sec. 2. Section 38-781.28, Arizona Revised Statutes, is amended to read:

38-781.28. **Retired members**

A. The rate of payments payable to members of the system receiving retirement payments as of the effective date of the plan shall be increased by two per cent compounded for every full calendar year since retirement times the rate of benefit being received from the system including supplemental credits, if any, as of the effective date of this article. The additional benefits provided in this section shall apply only to retired participants receiving benefits who have elected to participate in the plan.

B. In addition to the increase provided for in subsection A, the rate of payments payable to members of the plan receiving normal and early retirement payments as of the effective date of the plan shall be increased by one-twelfth of two per cent compounded for every full calendar month retired after January 1, 1970 through June 30, 1971.

C. IN ADDITION TO THE PAYMENTS PROVIDED FOR IN SUBSECTIONS A AND B, AN ADDITIONAL TEN PER CENT INCREASE OF SUCH PAYMENTS SHALL BECOME EFFECTIVE JULY 1, 1973, FOR SYSTEM RETIRED MEMBERS TRANSFERRED TO THE PLAN AS ELIGIBLE TO RECEIVE THE INCREASE PROVIDED IN SUBSECTION A.

Sec. 3. Title 38, chapter 5, article 2.1, Arizona Revised Statutes, is amended by adding section 38-781.35, to read:

38-781.35. **Continuing appropriation**

THERE IS APPROPRIATED ANNUALLY, EFFECTIVE JULY 1, 1973, TO THE ARIZONA STATE RETIREMENT SYSTEM BOARD FOUR HUNDRED TEN THOUSAND DOLLARS FOR THE PAYMENT OF THE INCREASE PROVIDED FOR BY SECTION 38-781.28, SUBSECTION C, AND SUCH ANNUAL APPROPRIATION SHALL CONTINUE THROUGH JUNE 30, 1983. SUCH ANNUAL APPROPRIATION IS EXEMPT FROM THE PROVISIONS OF SECTION 35-190, RELATING TO LAPSING OF APPROPRIATIONS.

Approved by the Governor–May 3, 1973

Filed in the Office of the Secretary of State–May 4, 1973

CHAPTER 114

Senate Bill 1321

AN ACT

RELATING TO PUBLIC HEALTH AND SAFETY; PRESCRIBING THAT QUALIFIED NURSE-MIDWIFE MAY PRACTICE AS SUCH WITHOUT MIDWIFE LICENSE, AND AMENDING SECTION 36-752, ARIZONA REVISED STATUTES.

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

Section 1. Section 36-752, Arizona Revised Statutes, is amended to read:

36-752. **Attendance at childbirth**

A person attending women in childbirth, habitually or for hire, shall, on and after July 1, 1957, be:

1. A qualified physician;

2. A REGISTERED NURSE CERTIFIED BY THE ARIZONA STATE BOARD OF NURSING AS A QUALIFIED NURSE-MIDWIFE;

~~2.~~ 3. Under the personal direction and supervision of a qualified physician; or,

~~3.~~ 4. A licensed midwife.

Approved by the Governor–May 3, 1973

Filed in the Office of the Secretary of State–May 4, 1973

CHAPTER 115

Senate Bill 1328

AN ACT

RELATING TO TAXATION; AUTHORIZING THE STATE BOARD OF PROPERTY TAX APPEALS TO EMPLOY LEGAL COUNSEL; PROVIDING FOR NOTICE WHEN THE BOARD IS CONSIDERING EQUALIZING THE VALUATION OF ALL OR A SUBSTANTIAL PORTION OF A CLASS OF PROPERTY; AMENDING SECTIONS 42-142 AND 42-144, ARIZONA REVISED STATUTES, AND MAKING AN APPROPRIATION.

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

Section 1. Section 42-142, Arizona Revised Statutes, is amended to read:

42-142. **Employees; board meetings**

A. The board shall appoint a clerk and such other employees as it deems necessary to carry out its duties. NOTWITHSTANDING THE PROVISIONS OF SECTION 41-192, SUBSECTION E, UPON REQUEST OF THE BOARD, THE ATTORNEY GENERAL SHALL DESIGNATE, FOR SUCH TIME AND PURPOSES AS THE BOARD REQUIRES, AN ATTORNEY, ACCEPTABLE TO THE BOARD, WHOSE COMPENSATION SHALL BE FIXED AND PAID BY THE BOARD.

B. The board shall meet annually at the state capitol on the first Monday after July 15 and shall hold hearings and meetings at such other times at the call of the chairman or a majority of the board and otherwise as may be prescribed by the rules of the board as required to carry out its duties. The principal office of the board shall be at the capitol, but the board may sit or hold hearings at any other place within the state. A majority of the board shall constitute a quorum for making orders and decisions or transacting other official business and the board may act even though one position on the board is vacant. One or more members may hold hearings and take testimony to be reported for action by the board when authorized by rule or order of the board. The board shall keep a record of its proceedings.

Sec. 2. Section 42-144, Arizona Revised Statutes, is amended to read:

42-144. **Increase or decrease in individual and classes of property valuation; hearing; notice**

A. The state board of property tax appeals may at any time require any county board of supervisors or the clerk thereof and the department to furnish statements showing the valuation of the property of any person within any county or within the state. The board shall consider and equalize such valuations and after hearing may increase or decrease the valuation of the property of any person, provided that no increase in any valuation shall be made without first giving at least five days' notice, by certified or registered letter to the owner of the property to be affected at his address shown on the then existing tax roll, of its intention to do so and of the time and place of the hearing of the board at which such increase is proposed to be acted upon. The owner of the property so affected may appear at the hearing and be heard in protest of any such proposed increase.

B. THE NOTICE REQUIREMENTS OF SUBSECTION A OF THIS SECTION SHALL NOT APPLY IN SUCH INSTANCES WHERE THE BOARD IS CONSIDERING EQUALIZING THE VALUATION BY INCREASING THE VALUE OF ALL OR A SUBSTANTIAL PORTION OF A CLASS OF PROPERTY. IN SUCH A CASE NOTICE SHALL BE GIVEN EITHER BY:

1. PUBLICATION AT LEAST TEN DAYS PRIOR TO THE DATE OF THE HEARING IN A NEWSPAPER OF GENERAL CIRCULATION LOCATED IN EACH COUNTY WHERE THE PROPERTY TO BE AFFECTED IS LOCATED, AND SUCH NOTICE SHALL INCLUDE THE TIME, DATE, AND LOCATION OF THE HEARING BY THE BOARD,

THE NAME AND ADDRESS OF THE OWNER AND THE PARCEL NUMBER OF THE PROPERTY TO BE AFFECTED AS SHOWN ON THE ROLL AND A STATEMENT INDICATING THAT THE BOARD IS CONSIDERING INCREASING THE VALUATION OF EACH PARCEL LISTED; OR

2. A NOTICE OF THE INTENTION TO EQUALIZE THE VALUATION BY INCREASING THE VALUE OF THE PROPERTY AND OF THE TIME AND PLACE OF THE HEARING OF THE BOARD AT WHICH SUCH INCREASE IS PROPOSED TO BE ACTED UPON, WHICH NOTICE SHALL BE MAILED AT LEAST FIVE DAYS BEFORE THE TIME SET FOR THE HEARING BY CERTIFIED, REGISTERED OR ORDINARY FIRST CLASS MAIL TO THE OWNER OF THE PROPERTY SO AFFECTED AT HIS ADDRESS SHOWN ON THE THEN EXISTING TAX ROLL.

Sec. 3. **Appropriation; purpose; exemption; reversion of funds**

A. In addition to the appropriation made by Laws 1972, chapter 216, section 1, subdivision 14, the sum of one hundred twenty-two thousand thirty dollars is appropriated to the state board of property tax appeals to be immediately available for professional services and additional personal services and for current expenses for the publication, preparation and marking of notices.

B. The appropriation made by this section is exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing appropriations, except that any monies thereof remaining unexpended and unencumbered on June 30, 1974 shall on that date revert to the state general fund.

Failed to pass the House with sufficient vote to enact the emergency clause.

Approved by the Governor–May 3, 1973

Filed in the Office of the Secretary of State–May 4, 1973

LAWS OF ARIZONA

CHAPTER 116

House Bill 2019

AN ACT

RELATING TO BANKING; PRESCRIBING ORGANIZATION AND REGULATION OF BANKS; PRESCRIBING PROCEDURES, POWERS AND DUTIES; REPEALING TITLE 6, CHAPTER 2, ARTICLES 1 THROUGH 6 AND 9 AND 10, ARIZONA REVISED STATUTES; AMENDING TITLE 6, CHAPTER 2, ARIZONA REVISED STATUTES, BY ADDING NEW ARTICLES 1 THROUGH 6 AND 9 THROUGH 13; AMENDING TITLE 6, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 10; AMENDING SECTIONS 6-449, 10-191 AND 38-502, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 2, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-317; AMENDING SECTION 44-352, ARIZONA REVISED STATUTES; AMENDING TITLE 44, CHAPTER 9, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 44-1205 AND 44-1206, AND AMENDING TITLE 44, CHAPTER 11, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 8.

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

Section 1. **Repeal**

Title 6, chapter 2, articles 1 through 6 and 9 and 10, Arizona Revised Statutes, are repealed.

Sec. 2. Title 6, chapter 2, Arizona Revised Statutes, is amended by adding articles 1 through 6 and 9 through 13, to read:

CHAPTER 2
BANK ORGANIZATION AND REGULATION
ARTICLE 1. GENERAL PROVISIONS

6-181. **Declaration of purposes**

THE PURPOSES OF THIS CHAPTER, WHICH SHALL GOVERN JUDICIAL AND ADMINISTRATIVE INTERPRETATION AND APPLICATION OF THE PROVISIONS OF THIS CHAPTER, ARE TO PROVIDE FOR:

1. SAFE AND SOUND CONDUCT OF BANKS.

2. CONSERVATION OF BANK ASSETS.

3. MAINTENANCE OF PUBLIC CONFIDENCE IN BANKS.

4. PROTECTION OF THE INTERESTS OF DEPOSITORS AND FIDUCIARY BENEFICIARIES AND OF THE INTEREST OF THE PUBLIC IN THE SOUNDNESS AND PRESERVATION OF THE BANKING SYSTEM.

5. OPPORTUNITY FOR BANKS TO REMAIN COMPETITIVE WITH EACH OTHER, WITH FINANCIAL INSTITUTIONS EXISTING UNDER OTHER LAWS OF THIS STATE AND WITH BANKING AND FINANCIAL INSTITUTIONS EXISTING UNDER THE LAWS OF OTHER STATES, THE UNITED STATES AND FOREIGN COUNTRIES.

6. OPPORTUNITY FOR BANKS TO SERVE EFFECTIVELY THE CONVENIENCE AND NEEDS OF THEIR DEPOSITORS, BORROWERS AND OTHER CUSTOMERS, TO PARTICIPATE IN AND PROMOTE THE ECONOMIC PROGRESS OF ARIZONA AND THE UNITED STATES AND TO IMPROVE AND EXPAND THEIR SERVICES AND FACILITIES FOR THOSE PURPOSES.

7. OPPORTUNITY FOR MANAGEMENT OF BANKS TO EXERCISE BUSINESS JUDGMENT IN CONDUCTING BANKING AFFAIRS SUBJECT TO THE PROVISIONS OF THIS CHAPTER.

8. SIMPLIFICATION AND MODERNIZATION OF THE LAW GOVERNING BANKING AND GOVERNING THE EXERCISE OF FIDUCIARY AND OTHER REPRESENTATIVE POWERS BY BANKS.

9. IMPLEMENTATION AND EXECUTION OF THE PROVISIONS OF THIS CHAPTER BY THE FULL UTILIZATION OF THE RULE MAKING AND ADMINISTRATIVE DISCRETIONS OF THE SUPERINTENDENT.

6-182. **Transition**

ALL BANKS SHALL BE OPERATED IN ACCORDANCE WITH THE PROVISIONS OF THIS CHAPTER, EXCEPT THAT TRANSACTIONS VALIDLY ENTERED INTO BEFORE THE EFFECTIVE DATE OF THIS CHAPTER AND THE RIGHTS, DUTIES AND INTERESTS FLOWING FROM THEM REMAIN VALID THEREAFTER AND MAY BE

TERMINATED, COMPLETED, CONSUMMATED OR ENFORCED AS REQUIRED OR PERMITTED BY ANY STATUTE AMENDED OR REPEALED BY THE LAW BY WHICH THIS CHAPTER WAS ENACTED AS THOUGH SUCH AMENDMENT OR REPEAL HAD NOT OCCURRED.

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

EXCEPT AS PROHIBITED BY FEDERAL LAW, A NATIONAL BANKING ASSOCIATION WITH ITS PRINCIPAL PLACE OF BUSINESS IN THIS STATE SHALL HAVE ALL THE RIGHTS, POWERS AND PRIVILEGES AND SHALL BE ENTITLED TO THE SAME EXEMPTIONS AND IMMUNITIES AS BANKS HOLDING BANKING PERMITS UNDER THIS CHAPTER.

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

A CORPORATION HOLDING A BANKING PERMIT UNDER THIS CHAPTER MAY:

1. EXCEPT AS PROHIBITED BY LAW, EXERCISE THE POWERS DERIVED FROM ITS EXISTENCE AS AN ARIZONA CORPORATION.

2. EXCEPT AS PROHIBITED BY LAW, EXERCISE ANY POWER AND ENGAGE IN ANY ACTIVITY WHICH IT COULD EXERCISE OR ENGAGE IN IF IT WERE A NATIONAL BANKING ASSOCIATION WITH ITS PRINCIPAL PLACE OF BUSINESS IN THIS STATE.

3. DIRECTLY OR THROUGH A BANK SUBSIDIARY ENGAGE IN ANY LAWFUL ACTIVITY WHICH IS REASONABLY RELATED OR INCIDENTAL TO BANKING. ALL ACTIVITIES IN WHICH ANY BANK WAS LAWFULLY ENGAGED DIRECTLY OR THROUGH A SUBSIDIARY ON DECEMBER 31, 1971, ARE DECLARED TO BE INCIDENTAL AND RELATED TO BANKING FOR THE PURPOSES OF THIS PARAGRAPH.

4. DO THE ACTS NECESSARY TO OBTAIN AND MAINTAIN INSURANCE OF ITS DEPOSITS BY THE FEDERAL DEPOSIT INSURANCE CORPORATION.

5. DO THE ACTS NECESSARY TO ACQUIRE AND HOLD MEMBERSHIP IN THE FEDERAL RESERVE SYSTEM OR THE FEDERAL HOME LOAN BANK.

6-185. **Directors' meetings; review; report of failure of quorum to meet**

A MEETING OF THE BOARD OF DIRECTORS SHALL BE CALLED EACH MONTH WITH A REVIEW OF THE LOANS AND INVESTMENTS AND OTHER MATERIAL ACTIVITIES OF THE BANK OR A REPORT THEREOF PREPARED UNDER THE DIRECTION OF THE BOARD AS A REGULAR ITEM OF BUSINESS. THE BOARD SHALL KEEP MINUTES OF ALL MEETINGS INCLUDING A RECORD OF ATTENDANCE. IF DURING ANY CALENDAR MONTH THERE IS NO MEETING AT WHICH A MAJORITY OF THE MEMBERS ARE PRESENT, THE BANK SHALL NOTIFY THE SUPERINTENDENT IN WRITING OF SUCH FACT.

6-186. **Annual audit and report**

AN AUDIT OF THE AFFAIRS OF THE BANK SHALL BE MADE DURING EACH CALENDAR YEAR BY OR UNDER THE DIRECTION OF THE BOARD OF DIRECTORS. THE INTERVAL BETWEEN THE COMPLETION DATES OF EACH SUCH AUDIT SHALL NOT EXCEED FIFTEEN MONTHS. THE BOARD SHALL, ON RECEIPT OF THE AUDIT REPORT, NOTIFY THE SUPERINTENDENT IN WRITING THAT THE REPORT IS ON FILE IN THE RECORDS OF THE BANK.

6-187. **Authority to declare dividends; limitation**

THE BOARD OF DIRECTORS OF A BANK MAY DECLARE DIVIDENDS AS PERMITTED BY THE GENERAL LAWS GOVERNING ARIZONA CORPORATIONS, EXCEPT THAT DIVIDENDS PAYABLE OTHER THAN IN THE BANK'S OWN STOCK MAY BE PAID OUT OF CAPITAL SURPLUS, AS DEFINED IN SECTION 6-351, ONLY WITH THE APPROVAL OF THE SUPERINTENDENT.

6-188. **Bonds and insurance; coverage**

THE BOARD OF DIRECTORS SHALL REQUIRE PROTECTION AND INDEMNITY FOR THE BANK AGAINST DEFALCATION, FORGERY, THEFT AND OTHER SIMILAR INSURABLE LOSSES, WITH CORPORATE INSURANCE OR SURETY COMPANIES AUTHORIZED TO DO BUSINESS IN THIS STATE. COVERAGE AGAINST DEFALCATION SHALL INCLUDE ALL ACTIVE OFFICERS AND EMPLOYEES OF THE BANK WHETHER OR NOT THEY DRAW SALARY OR COMPENSATION.

6-189. **Capital obligations; approval; convertibility**

A. A CAPITAL OBLIGATION IS AN UNSECURED INDEBTEDNESS OF THE BANK SUBORDINATE TO THE CLAIMS OF DEPOSITORS AND ALL OTHER CREDITORS OF THE BANK REGARDLESS OF WHETHER THE CLAIMS AROSE BEFORE OR AFTER THE ISSUANCE OF THE NOTE OR DEBENTURE REPRESENTING THE CAPITAL OBLIGATION. IN THE EVENT OF LIQUIDATION ALL DEPOSITORS AND OTHER CREDITORS OF THE BANK ARE TO BE PAID IN FULL BEFORE ANY PAYMENT OF PRINCIPAL OR INTEREST IS MADE ON CAPITAL OBLIGATIONS.

B. NO CAPITAL OBLIGATIONS SHALL BE INCURRED WITHOUT THE PRIOR ORDER OF APPROVAL OF THE SUPERINTENDENT. CAPITAL OBLIGATIONS AUTHORIZED BY SUCH ORDER MAY BE RETIRED IN ACCORDANCE WITH THE MANDATORY PAYMENT PROVISIONS OF THE OBLIGATION WITHOUT FURTHER AUTHORIZATION. NO PAYMENT SHALL BE MADE UNDER AN OPTIONAL RIGHT OF PAYMENT RESERVED TO THE BANK WITHOUT THE SEPARATE AUTHORIZATION OF THE SUPERINTENDENT WHICH MAY BE GRANTED IN HIS INITIAL ORDER OF APPROVAL OR BY SUBSEQUENT ORDER.

C. CAPITAL OBLIGATIONS MAY BE CONVERTIBLE INTO SHARES OF ANY CLASS OF STOCK IN ACCORDANCE WITH THEIR TERMS APPROVED BY THE SUPERINTENDENT. NO SHAREHOLDER HAS ANY PREEMPTIVE RIGHT TO PURCHASE CAPITAL OBLIGATIONS OR TO PURCHASE STOCK ISSUED UPON CONVERSION OF CAPITAL OBLIGATIONS UNLESS PROVIDED BY THE ARTICLES OF INCORPORATION OR SPECIFIED IN THE CORPORATE AUTHORITY TO INCUR THE OBLIGATION.

6-190. **Banking offices; standards and term of approval; closing**

A. A BANK MAY ESTABLISH BANKING OFFICES ANYWHERE IN THE WORLD WITH THE AUTHORIZATION OF THE SUPERINTENDENT AND UPON SUCH CONDITIONS AS HE MAY PRESCRIBE. AN APPLICATION FOR A BANKING OFFICE SHALL BE IN WRITING IN SUCH FORM AS THE SUPERINTENDENT PRESCRIBES SUPPORTED BY SUCH INFORMATION, DATA AND RECORDS AS THE SUPERINTENDENT MAY REQUIRE TO MAKE THE FINDINGS NECESSARY FOR APPROVAL.

B. IN GRANTING THE APPLICATION FOR A BANKING OFFICE THE SUPERINTENDENT SHALL BE GUIDED BY THE STANDARDS PRESCRIBED FOR THE ISSUANCE OF A BANKING PERMIT INSOFAR AS SUCH STANDARDS ARE REASONABLY APPLICABLE.

C. THE FAILURE OF A BANK TO OPEN AND OPERATE A BANKING OFFICE WITHIN ONE YEAR AFTER THE SUPERINTENDENT APPROVES THE APPLICATION SHALL AUTOMATICALLY TERMINATE THE APPROVAL EXCEPT THAT THE SUPERINTENDENT, FOR GOOD CAUSE SHOWN IN WRITING MADE BEFORE THE EXPIRATION OF THE ONE YEAR PERIOD, MAY EXTEND FOR ADDITIONAL PERIODS NOT IN EXCESS OF SIX MONTHS EACH THE TIME IN WHICH THE BANKING OFFICE MAY BE OPENED.

D. A BANK MAY PERMANENTLY CLOSE LESS THAN ALL OF ITS BANKING OFFICES ON COMPLIANCE WITH SUCH REQUIREMENTS OF NOTICE AS HAVE BEEN PRESCRIBED BY THE SUPERINTENDENT AND SUCH CLOSING SHALL TERMINATE THE AUTHORITY TO MAINTAIN THE OFFICE WHICH IS CLOSED.

6-191. **Foreign banking offices; additional powers; separate accounts; additional offices; definition**

A. IN ADDITION TO ITS OTHER POWERS, A BANK MAY THROUGH ANY FOREIGN BANKING OFFICE ACT AS FISCAL AGENT OF THE UNITED STATES AND, EXCEPT AS PROHIBITED OR LIMITED BY REGULATIONS OF THE SUPERINTENDENT, EXERCISE SUCH POWERS AS ARE USUAL IN CONNECTION WITH THE BUSINESS OF BANKING IN THE PLACES WHERE SUCH FOREIGN BANKING OFFICE TRANSACTS ITS BUSINESS.

B. THE ACCOUNTS OF EACH FOREIGN BANKING OFFICE SHALL BE MAINTAINED INDEPENDENTLY OF THE ACCOUNTS OF ALL OTHER BANKING OFFICES AND THE PROFIT OR LOSS OF THE OFFICE FOR EACH FISCAL YEAR SHALL BE RECORDED AS A SEPARATE ITEM IN THE GENERAL LEDGER OF THE BANK.

C. A BANK HAVING A FOREIGN BANKING OFFICE MAY, ON THIRTY DAYS' NOTICE TO THE SUPERINTENDENT OR SUCH SHORTER NOTICE AS MAY BE APPROVED BY HIM IN INDIVIDUAL CASES, ESTABLISH SUCH ADDITIONAL BANKING OFFICE OR OFFICES AS SPECIFIED IN THE NOTICE IN THE SAME COUNTRY WITHOUT FILING AN APPLICATION FOR APPROVAL, UNLESS OTHERWISE ORDERED BY THE SUPERINTENDENT.

D. FOR THE PURPOSES OF THIS SECTION, THE TERM "FOREIGN BANKING OFFICE" MEANS A BANKING OFFICE IN A FOREIGN COUNTRY OR IN A DEPENDENCY OR INSULAR POSSESSION OF THE UNITED STATES.

6-192. **Investments in international and foreign banking and financing corporations; limitation; consent; exceptions**

A. NO BANK MAY, WITHOUT THE CONSENT OF THE SUPERINTENDENT, INVEST IN STOCK OR OTHER EVIDENCE OF OWNERSHIP IN ANY OF THE FOLLOWING:

1. CORPORATIONS ORGANIZED UNDER THE LAWS OF THE UNITED STATES OR ANY STATE AND PRINCIPALLY ENGAGED IN INTERNATIONAL OR FOREIGN BANKING OR IN OTHER INTERNATIONAL OR FOREIGN FINANCIAL OPERATIONS, OR IN BANKING OR OTHER FINANCIAL OPERATIONS IN A DEPENDENCY OR INSULAR POSSESSION OF THE UNITED STATES, EITHER DIRECTLY OR THROUGH THE AGENCY, OWNERSHIP OR CONTROL OF LOCAL INSTITUTIONS IN FOREIGN COUNTRIES, OR IN SUCH DEPENDENCIES OR INSULAR POSSESSIONS.

2. BANKS ORGANIZED UNDER THE LAWS OF A FOREIGN COUNTRY OR A DEPENDENCY OR INSULAR POSSESSION OF THE UNITED STATES. NO INVESTMENT SHALL BE MADE IN A FOREIGN BANK IF IT IS ENGAGED DIRECTLY OR INDIRECTLY IN ANY ACTIVITY IN THE UNITED STATES UNLESS THE ACTIVITY IS IN THE JUDGMENT OF THE SUPERINTENDENT INCIDENTAL TO THE INTERNATIONAL OR FOREIGN BUSINESS OF SUCH BANK.

B. THE AGGREGATE AMOUNT INVESTED IN ALL BANKS AND CORPORATIONS DESCRIBED IN SUBSECTION A OF THIS SECTION SHALL NOT EXCEED, AT THE TIME ANY SUCH INVESTMENT IS MADE, TWENTY-FIVE PER CENT OF THE CAPITAL ACCOUNT OF THE BANK AS DEFINED IN SECTION 6-351.

C. THE CONSENT OF THE SUPERINTENDENT FOR ANY INVESTMENT UNDER SUBSECTION A OF THIS SECTION SHALL BE SUBJECT TO SUCH CONDITIONS AS HE PRESCRIBES IN HIS ORDER OF APPROVAL AND THE INVESTMENT SHALL BE SUBJECT TO HIS REGULATIONS.

D. THE PROVISIONS OF SUBSECTIONS A AND B OF THIS SECTION SHALL NOT APPLY TO SHARES OR EVIDENCES OF

OWNERSHIP ACQUIRED BY A BANK IN THE REGULAR COURSE OF SECURING OR COLLECTING A DEBT CONTRACTED IN GOOD FAITH BUT SHARES OR EVIDENCE OF OWNERSHIP ACQUIRED IN COLLECTING A DEBT SHALL BE DISPOSED OF WITHIN A REASONABLE TIME UNLESS OTHERWISE LAWFULLY HELD UNDER SUBSECTIONS A AND B OF THIS SECTION.

ARTICLE 2. BANKING PERMIT

6-201. **Authority to engage in banking business; exception; definition**

A. NO PERSON, EXCEPT A NATIONAL BANKING ASSOCIATION WITH ITS PRINCIPAL PLACE OF BUSINESS IN THIS STATE, SHALL ENGAGE IN THE BANKING BUSINESS IN THIS STATE WITHOUT A BANKING PERMIT.

B. FOR THE PURPOSES OF THIS SECTION, A PERSON ENGAGED IN THE BUSINESS OF RECEIVING MONEY ON DEPOSIT SUBJECT TO PAYMENT BY CHECK OR ANY OTHER FORM OF ORDER OR REQUEST OR ON PRESENTATION OF A CERTIFICATE OF DEPOSIT OR OTHER EVIDENCE OF DEBT IS ENGAGED IN THE BANKING BUSINESS.

C. NOTHING IN THIS SECTION SHALL PROHIBIT A SAVINGS AND LOAN ASSOCIATION QUALIFIED TO DO BUSINESS IN THIS STATE FROM PERFORMING ANY ACTS AUTHORIZED BY CHAPTER 3 OF THIS TITLE, OR A CREDIT UNION QUALIFIED TO DO BUSINESS IN THIS STATE FROM PERFORMING ANY ACT AUTHORIZED BY CHAPTER 4 OF THIS TITLE.

6-202. **Existing banks**

THE AUTHORITY UNDER WHICH AN EXISTING BANK IS ENGAGED IN THE BANKING BUSINESS OR THE BANKING AND TRUST BUSINESS UNDER THE LAWS OF THIS STATE PRIOR TO THE EFFECTIVE DATE OF THIS ARTICLE SHALL CONTINUE IN FULL FORCE AND EFFECT. THE SUPERINTENDENT MAY, AND SHALL UPON REQUEST, ISSUE A BANKING PERMIT TO SUCH BANK TO EVIDENCE SUCH AUTHORITY WITHOUT ANY FURTHER ACT ON THE PART OF THE BANK OR THE PAYMENT OF ANY FEE.

6-203. **Application for banking permit**

AN APPLICATION FOR A BANKING PERMIT OR AMENDMENT TO A BANKING PERMIT SHALL BE IN WRITING, IN SUCH FORM AS THE

SUPERINTENDENT MAY PRESCRIBE, AND SHALL BE SUPPORTED BY SUCH INFORMATION, DATA AND RECORDS AS THE SUPERINTENDENT MAY REQUIRE TO MAKE THE FINDINGS NECESSARY FOR THE ISSUANCE OR AMENDMENT OF THE PERMIT.

6-204. **Issuance of banking permit; trust business; conditional approval; hearing**

A. UPON THE FILING OF AN APPLICATION FOR A BANKING PERMIT THE SUPERINTENDENT SHALL MAKE OR CAUSE TO BE MADE AN INVESTIGATION AND EXAMINATION OF THE FACTS CONCERNING THE APPLICANT. THE SUPERINTENDENT SHALL ISSUE THE PERMIT IF, BUT ONLY IF, HE FINDS:

1. THE APPLICANT IS A CORPORATION ORGANIZED UNDER THE LAWS OF THIS STATE HAVING POWERS AND PURPOSES TO ENGAGE IN THE BANKING BUSINESS.

2. THE DEPOSITS OF THE BANK WILL BE INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION WHEN THE BANK COMMENCES BUSINESS.

3. THE ABILITY AND INTEGRITY OF THE PERSONS INVOLVED IN THE ORGANIZATION AND MANAGEMENT OF THE PROPOSED BANK ARE SUCH AS TO DEMONSTRATE THAT IT WILL BE OPERATED IN A SOUND AND LAWFUL MANNER.

4. THE APPLICANT HAS PAID IN CAPITAL WHICH IS ADEQUATE FOR ITS PROSPECTIVE BUSINESS.

5. THE NEED FOR THE BANK IN THE COMMUNITY OR AREA WHERE THE BANK WILL BE LOCATED IS SUCH AS TO DEMONSTRATE THE FAVORABLE PROSPECT FOR A SOUND BANKING OPERATION.

B. A BANKING PERMIT MAY INITIALLY OR BY AMENDMENT INCLUDE THE AUTHORITY OF A BANK TO ENGAGE IN THE TRUST BUSINESS.

C. THE SUPERINTENDENT MAY APPROVE THE APPLICATION CONDITIONED UPON SPECIFIC REQUIREMENTS BEING MET, BUT A PERMIT SHALL NOT BE ISSUED UNLESS SUCH CONDITIONS HAVE BEEN MET WITHIN THE TIME SPECIFIED IN THE ORDER OR ANY EXTENSION.

D. THE PERMIT MAY BE GRANTED OR DENIED WITHOUT HEARING, BUT THE SUPERINTENDENT MAY, AND SHALL AT THE REQUEST OF THE APPLICANT, FIX A DATE FOR A HEARING ON THE APPLICATION. AT THE HEARING ANY PERSON MAY BE HEARD WITH REFERENCE TO THE FACTS TO BE INVESTIGATED.

6-205. **Term of permit; surrender; revocation**

A. A BANKING PERMIT SHALL BE VALID UNTIL SURRENDERED TO THE SUPERINTENDENT OR REVOKED BY HIM.

B. NO BANKING PERMIT MAY BE SURRENDERED TO THE SUPERINTENDENT UNLESS AND UNTIL SUCH TIME AS THE SUPERINTENDENT FINDS THAT ALL OF THE DEPOSIT LIABILITIES OF THE BANK HAVE BEEN SATISFIED IN FULL OR ASSUMED BY ANOTHER BANK.

C. A BANKING PERMIT SHALL BE REVOKED BY THE SUPERINTENDENT IF THE CORPORATION CEASES TO ENGAGE IN THE BANKING BUSINESS AND THE SUPERINTENDENT FINDS EITHER THAT THE LIQUIDATION OF THE BANK HAS BEEN COMPLETED OR THE DEPOSIT LIABILITIES HAVE BEEN SATISFIED IN FULL OR ASSUMED BY ANOTHER BANK.

ARTICLE 3. MERGER, CONSOLIDATION AND CONVERSION OF NATIONAL AND STATE BANKS

6-211. **Definitions**

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "CONVERTING BANK" MEANS A BANK CONVERTING FROM A NATIONAL TO A STATE BANK, OR THE REVERSE.

2. "MERGER" INCLUDES CONSOLIDATION.

3. "NATIONAL BANK" MEANS A NATIONAL BANKING ASSOCIATION LOCATED IN THIS STATE.

4. "RESULTING BANK" MEANS THE BANK RESULTING FROM A MERGER OR CONVERSION.

5. "STATE BANK" MEANS A CORPORATION HOLDING A BANKING PERMIT UNDER THE LAWS OF THIS STATE.

6-212. **Resulting national bank**

NOTHING IN THE LAW OF THIS STATE SHALL RESTRICT THE RIGHT OF A STATE BANK TO MERGE WITH OR CONVERT INTO A NATIONAL BANK. THE ACTION TO BE TAKEN BY SUCH MERGING OR CONVERTING STATE BANK AND ITS RIGHTS AND LIABILITIES AND THOSE OF ITS STOCKHOLDERS SHALL BE AS PRESCRIBED AT THE TIME OF THE ACTION BY THE LAW OF THE UNITED STATES, BUT THE STATE BANK SHALL GIVE NOTICE TO THE SUPERINTENDENT OF THE ADOPTION BY ITS BOARD OF DIRECTORS OF ANY PLAN OF MERGER OR CONVERSION.

6-213. **Resulting state bank**

A BANK MAY BE MERGED WITH ANY OTHER CORPORATION OR CONVERTED INTO A RESULTING STATE BANK IF THE RESULTING CORPORATION HOLDS A BANKING PERMIT OR THE BANKING PERMIT HAS BEEN ORDERED BY THE SUPERINTENDENT TO BE ISSUED TO THE RESULTING CORPORATION, CONDITIONED UPON THE COMPLETION OF THE MERGER OR CONVERSION.

6-214. **Approval of merger and assumption of deposit liabilities**

NO STATE BANK SHALL BE A PARTY TO A MERGER UNLESS THE RESULTING CORPORATION IS A STATE BANK, OR IS A CORPORATION TO WHICH THE SUPERINTENDENT HAS ORDERED A BANKING PERMIT TO BE ISSUED UPON COMPLETION OF THE MERGER OR IS A NATIONAL BANK. NO CORPORATION SHALL BE MERGED WITH A RESULTING STATE BANK, NOR SHALL ANY STATE BANK ASSUME THE DEPOSIT LIABILITIES OF ANOTHER BANK, WITHOUT THE APPROVAL OF THE SUPERINTENDENT.

6-215. **Retention of nonconforming assets; permission; maximum value**

IF A MERGING OR CONVERTING BANK HAS ASSETS WHICH DO NOT CONFORM TO THE REQUIREMENTS OF LAW FOR A STATE BANK OR IF ASSETS ACQUIRED BY A STATE BANK IN THE TRANSACTION OF ITS ASSUMING DEPOSIT LIABILITIES OF ANOTHER BANK DO NOT CONFORM TO SUCH LEGAL REQUIREMENTS, THE SUPERINTENDENT MAY PERMIT THE RESULTING BANK TO RETAIN SUCH ASSETS FOR A REASONABLE TIME, BUT SHALL FIX THE MAXIMUM VALUE AT WHICH THE ASSETS MAY BE CARRIED BY THE RESULTING OR ASSUMING BANK.

6-216. **Continuation of business and corporate entity**

A RESULTING STATE BANK SHALL BE CONSIDERED THE SAME BUSINESS AND CORPORATE ENTITY AS EACH MERGING BANK OR CONVERTING BANK. ALL RIGHTS OF PROPERTY, FRANCHISES AND INTERESTS OF EACH MERGING BANK OR THE CONVERTING BANK SHALL BE TRANSFERRED TO AND VESTED IN THE RESULTING STATE BANK BY VIRTUE OF SUCH MERGER OR CONVERSION WITHOUT ANY DEED OR OTHER TRANSFER. THE RESULTING STATE BANK, WITHOUT ANY ORDER OR OTHER ACTION ON THE PART OF ANY COURT, SHALL HOLD AND ENJOY ALL RIGHTS OF PROPERTY, FRANCHISES AND INTERESTS, INCLUDING APPOINTMENTS, DESIGNATIONS AND NOMINATIONS, AND ALL OTHER RIGHTS AND INTERESTS AS TRUSTEE, EXECUTOR, ADMINISTRATOR, CONSERVATOR, GUARDIAN, REGISTRAR OF STOCKS AND BONDS, ASSIGNEE, RECEIVER AND IN EVERY OTHER FIDUCIARY CAPACITY, IN THE SAME MANNER AND TO THE SAME EXTENT AS SUCH RIGHTS, FRANCHISES AND INTERESTS WERE HELD OR ENJOYED BY ANY ONE OF THE MERGING BANKS OR THE CONVERTING BANK AT THE TIME OF THE MERGER OR CONVERSION. ANY REFERENCE TO THE MERGING BANK OR CONVERTING BANK IN ANY CONTRACT, WILL OR OTHER DOCUMENT, WHETHER EXECUTED OR EFFECTIVE BEFORE OR AFTER THE MERGER OR CONVERSION, SHALL BE A REFERENCE TO THE RESULTING BANK.

ARTICLE 4. ACCOUNTS

6-231. **Deposit accounts**

A BANK MAY MAINTAIN ALL TYPES OF DEPOSIT ACCOUNTS AND PRESCRIBE SUCH TERMS AND CONDITIONS RELATING TO THE ACCOUNTS AS ARE PERMISSIBLE FOR THE BANK TO MAINTAIN THE INSURANCE ON ITS DEPOSITS BY THE FEDERAL DEPOSIT INSURANCE CORPORATION.

6-232. **Powers of attorney; notice of revocation; payment after notice**

A. A BANK MAY CONTINUE TO RECOGNIZE ANY ACT OF A DEPOSITOR'S AGENT AS AUTHORIZED BY THE DEPOSITOR IN WRITING TO THE BANK UNTIL THE BANK RECEIVES A WRITTEN NOTICE OF REVOCATION SIGNED BY THE INDIVIDUAL DEPOSITOR WHO GRANTED THE AUTHORITY OR, IN THE CASE OF A CORPORATION, PARTNERSHIP OR ASSOCIATION, EVIDENCE SATISFACTORY TO THE BANK OF SUCH REVOCATION.

B. NOTWITHSTANDING THAT A BANK HAS RECEIVED WRITTEN NOTICE OF REVOCATION OF THE AUTHORITY OF SUCH AGENT, IT MAY, UNTIL TEN DAYS AFTER RECEIPT OF SUCH NOTICE, PAY ANY ITEM MADE, DRAWN, ACCEPTED OR INDORSED BY SUCH AGENT PRIOR TO SUCH REVOCATION, PROVIDED THAT SUCH ITEM IS OTHERWISE PROPERLY PAYABLE.

6-233. **Adverse claim to bank deposit; court order required; definitions**

A. NOTICE TO A BANK OF AN ADVERSE CLAIM IS NOT SUFFICIENT TO REQUIRE THE BANK TO REFUSE TO HONOR THE ORDER OF ANY PERSON TO WHOSE CREDIT THE ACCOUNT STANDS OR WHO HAS PRIOR AUTHORITY ON THE BOOKS OF THE BANK TO OPERATE THE ACCOUNT, NOR IS SUCH NOTICE SUFFICIENT TO REQUIRE THE BANK TO RECOGNIZE THE ADVERSE CLAIMANT IN ANY RESPECT, UNLESS THE BANK IS DIRECTED TO DO SO BY A LAWFUL ORDER OF A COURT IN THE UNITED STATES. IN THE ABSENCE OF SUCH COURT ORDER THE BANK MAY REFUSE TO HONOR THE ORDER ON THE ACCOUNT BY ANY PERSON.

B. FOR THE PURPOSES OF THIS SECTION:

1. "ADVERSE CLAIM" MEANS A CLAIM BY ANY PERSON WHO ASSERTS THE RIGHT TO ALL OR PART OF A DEPOSIT ACCOUNT TO THE EXCLUSION OF ANYONE TO WHOSE CREDIT THE ACCOUNT STANDS ON THE RECORDS OF THE BANK. "ADVERSE CLAIM" ALSO INCLUDES CONFLICTING CLAIMS OF ANY PERSONS TO THE RIGHT TO OPERATE AN ACCOUNT.

2. "ADVERSE CLAIMANT" MEANS ANY PERSON ASSERTING AN ADVERSE CLAIM.

6-234. **Deposit of minor; school saving plan**

A. A BANK MAY OPERATE A DEPOSIT ACCOUNT IN THE NAME OF A MINOR OR IN THE NAME OF TWO OR MORE PERSONS, ONE OR MORE OF WHOM ARE MINORS, AND ALL RIGHTS AND LIABILITIES OF THE BANK AND ANY DEPOSITOR ARISING OUT OF SUCH ACCOUNT AND ANY ACT OF THE PARTIES IN RELATION THERETO SHALL BE OF THE SAME LEGAL EFFECT AS IF THE MINOR IS OF FULL LEGAL AGE.

B. SUBJECT TO SUCH REGULATIONS AS THE SUPERINTENDENT MAY PRESCRIBE FOR THE PROTECTION OF DEPOSITORS, A BANK MAY CONTRACT WITH THE PROPER AUTHORITIES OF ANY ELEMENTARY OR SECONDARY SCHOOL, OR OF ANY INSTITUTION CARING FOR MINORS, FOR THE PARTICIPATION BY THE BANK IN ANY SCHOOL OR INSTITUTIONAL THRIFT OR SAVINGS PLAN, AND IT MAY ACCEPT DEPOSITS AT SUCH A SCHOOL OR INSTITUTION, EITHER BY ITS OWN COLLECTOR OR BY ANY REPRESENTATIVE OF THE SCHOOL OR INSTITUTION WHO BECOMES THE AGENT OF THE BANK FOR SUCH PURPOSE.

6-235. **Bank deposits in two or more names; payment to survivor; effect on estate tax**

A. BANK DEPOSITS MAY BE MADE IN THE NAME OF TWO OR MORE PERSONS, INCLUDING MINORS, PAYABLE TO EITHER OR ANY OF THEM, OR PAYABLE TO EITHER OR ANY OF THE SURVIVORS OR THE SOLE SURVIVOR, AND THE DEPOSITS OR ANY PART THEREOF AND ANY INTEREST THEREON, MAY BE PAID TO OR ON ORDER OF ANY OF THE PERSONS WHETHER THE OTHER OR OTHERS ARE LIVING OR NOT. THE RECEIPT, ORDER OR ACQUITTANCE OF THE PERSONS SO PAID IS A VALID AND SUFFICIENT RELEASE AND DISCHARGE TO THE BANK FOR ANY PAYMENTS SO MADE.

B. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO AFFECT THE PROVISIONS OF SECTION 42-1531.

6-236. **Payment of deposits in trust; effect on estate tax**

A. BANK DEPOSITS MAY BE MADE IN THE NAME OF ONE OR MORE PERSONS AS TRUSTEES FOR ONE OR MORE PERSONS DESIGNATED AS BENEFICIARIES. THE ACCOUNT AND ANY BALANCE THEREOF WHICH EXISTS FROM TIME TO TIME SHALL BE HELD AS A TRUST ACCOUNT AND UNLESS OTHERWISE AGREED BETWEEN THE TRUSTEES AND THE BANK:

1. ANY SUCH TRUSTEE DURING HIS LIFETIME MAY CHANGE ANY OF THE DESIGNATED BENEFICIARIES BY A WRITTEN DIRECTION ACCEPTED BY THE BANK.

2. THE DEPOSIT OR ANY PART THEREOF WITH INTEREST MAY BE PAID TO OR ON THE ORDER OF ANY TRUSTEE WHETHER ANY OTHER TRUSTEE OR BENEFICIARY IS LIVING OR NOT. ANY SUCH PAYMENT SHALL CONSTITUTE A LAWFUL REVOCATION OF THE

TRUST AS TO THE AMOUNT WITHDRAWN AND THE RECEIPT ORDER OR ACQUITTANCE OF THE PERSON SO PAID IS A VALID AND SUFFICIENT RELEASE AND DISCHARGE OF THE BANK AS TO THE AMOUNT SO PAID.

3. UPON THE DEATH OF THE LAST SURVIVING TRUSTEE THE DEPOSIT OR ANY PART THEREOF WITH INTEREST MAY BE PAID TO OR ON ORDER OF ANY OF THE PERSONS DESIGNATED AS BENEFICIARIES WHO ARE LIVING AT THE DEATH OF THE LAST SURVIVING TRUSTEE AND THE RECEIPT ORDER OR ACQUITTANCE OF THE PERSON SO PAID IS A VALID AND SUFFICIENT RELEASE AND DISCHARGE OF THE BANK AS TO THE AMOUNT SO PAID.

B. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO AFFECT THE PROVISIONS OF SECTION 42-1531.

6-237. **Payment of deposit to foreign personal representative; effect on estate tax**

A. IF THE DEPOSIT ACCOUNT IS WITH ONE PERSON AND IF WITHIN SIXTY DAYS FROM THE DATE OF DEATH OF SUCH DEPOSITOR, NO PERSONAL REPRESENTATIVE OF SUCH DECEDENT, QUALIFIED IN THIS STATE, HAS DELIVERED A CERTIFIED COPY OF HIS LETTERS TESTAMENTARY OR LETTERS OF ADMINISTRATION TO THE BANK, THE BANK MAY PAY THE BALANCE OF THE ACCOUNT OF THE DECEASED DEPOSITOR TO HIS DOMICILIARY PERSONAL REPRESENTATIVE QUALIFIED IN ANOTHER STATE UPON THE PRESENTATION OF LETTERS TESTAMENTARY OR LETTERS OF ADMINISTRATION CERTIFIED BY THE APPOINTING COURT.

B. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO AFFECT THE PROVISIONS OF SECTION 42-1531.

ARTICLE 5. REGULATION OF CONDUCT OF BUSINESS

6-241. **Banking days; notice; closing**

A. A BANK IS AUTHORIZED TO FIX FROM TIME TO TIME THE DAYS AND HOURS WHEN EACH OF ITS BANKING OFFICES WILL BE OPEN TO THE PUBLIC FOR ITS BANKING BUSINESS. THE DAYS AND HOURS NEED NOT BE THE SAME FOR EACH OFFICE. THE BANK SHALL NOTIFY THE SUPERINTENDENT OF THE DAYS AND

HOURS OF EACH BANKING OFFICE AND OF ANY CHANGE IN THE SCHEDULED DAYS AND HOURS OF EACH OFFICE. THE BANK SHALL GIVE FURTHER NOTICE BY WHATEVER MEANS IT SELECTS AS BEST CALCULATED TO ADVISE THE PUBLIC OF ANY CHANGE.

B. IN AN EMERGENCY OR THREAT OF AN EMERGENCY OR OTHER CIRCUMSTANCES BEYOND THE CONTROL OF THE BANK WHICH WOULD IMPERIL PERSONS OR PROPERTY OR IMPEDE NORMAL OPERATIONS, ALL OR ANY OF ITS BANKING OFFICES MAY BE OR REMAIN CLOSED. NOTICE OF THE CLOSING SHALL BE GIVEN TO THE SUPERINTENDENT AS PROMPTLY AS CONDITIONS WILL PERMIT. THE SUPERINTENDENT MAY ORDER THE REOPENING OF ANY OFFICE ON HIS FINDING THAT CONDITIONS JUSTIFYING THE CLOSING UNDER THIS SUBSECTION DO NOT THEN EXIST.

C. ANY DAY ON WHICH A BANK SHALL PURSUANT TO THIS SECTION BE OR REMAIN CLOSED SHALL WITH RESPECT TO THE BANK BE DEEMED A LEGAL HOLIDAY.

D. ANY OFFICE OF A BANK MAY BE CLOSED UNDER SUBSECTION A OR B, EVEN THOUGH OTHER OFFICES OF THE BANK ARE OPEN, BUT ANY DAY OF SUCH CLOSING SHALL NOT BE A LEGAL HOLIDAY IN RESPECT TO ANY ACTS TO BE PERFORMED BY OR AT THE BANK ON SUCH DAY UNLESS THE ACT IS TO BE PERFORMED ONLY BY OR AT THE OFFICE WHICH IS CLOSED.

E. WHERE PURSUANT TO AGREEMENT OR LAW ANY ACT IS TO BE PERFORMED BY OR AT A BANK ON ANY DAY WHEN SUCH BANK SHALL PURSUANT TO THIS SECTION BE OR REMAIN CLOSED, THE ACT MAY BE PERFORMED ON THE NEXT SUCCEEDING BANKING DAY WITH THE EFFECT AS THOUGH PERFORMED ON THE APPOINTED DAY.

F. NOTHING IN ANY LAW OF THIS STATE SHALL IN ANY MANNER WHATSOEVER AFFECT THE VALIDITY OF OR RENDER VOID OR VOIDABLE THE PAYMENT, SATISFACTION OR ACCEPTANCE OF A CHECK OR OTHER NEGOTIABLE INSTRUMENT OR ANY OTHER TRANSACTION BY A BANK BECAUSE DONE OR PERFORMED ON ANY HOLIDAY OR PARTIAL HOLIDAY OR DURING ANY TIME OTHER THAN REGULAR BANKING HOURS, BUT NOTHING IN THIS SUBSECTION SHALL BE CONSTRUED TO COMPEL A BANK TO PERFORM ANY OF THE ACTS OR TRANSACTIONS AFORESAID EXCEPT AT ITS OWN OPTION.

6-242. **Preservation of bank records; regulations; disposal**

A. EVERY BANK SHALL RETAIN ITS CORPORATE AND BUSINESS RECORDS IN ACCORDANCE WITH REGULATIONS OF THE SUPERINTENDENT. THE REGULATIONS SHALL CLASSIFY THE RECORDS, ESTABLISH PERMISSIBLE METHODS FOR EFFECTIVE AND ECONOMICAL PRESERVATION OF INFORMATION CONTAINED IN THE RECORDS IF THE ORIGINALS ARE DESTROYED PURSUANT TO REGULATION, AND PRESCRIBE THE MINIMUM PERIODS OF TIME EACH RECORD OR PERMITTED SUBSTITUTE SHALL BE PRESERVED.

B. IN ISSUING HIS REGULATIONS UNDER SUBSECTION A, THE SUPERINTENDENT SHALL CONSIDER:

1. ACTIONS AT LAW AND ADMINISTRATIVE PROCEEDINGS IN WHICH THE PRODUCTION OF BANK RECORDS MIGHT BE NECESSARY OR DESIRABLE.

2. STATUTES OF LIMITATION APPLICABLE TO SUCH ACTION OR PROCEEDINGS.

3. THE AVAILABILITY OF INFORMATION CONTAINED IN BANK RECORDS FROM OTHER SOURCES.

4. SUCH OTHER MATTERS AS HE SHALL DEEM PERTINENT IN ORDER THAT HIS REGULATIONS WILL REQUIRE BANKS TO RETAIN RECORDS FOR AS SHORT A PERIOD OF TIME AS IS COMMENSURATE WITH THE INTERESTS OF BANK CUSTOMERS AND SHAREHOLDERS AND OF THE PEOPLE OF THIS STATE IN HAVING BANK RECORDS AVAILABLE.

C. A BANK MAY DISPOSE OF ANY RECORD OR PERMITTED SUBSTITUTE WHICH HAS BEEN RETAINED FOR THE APPLICABLE RECORD PRESCRIBED IN ACCORDANCE WITH THE TERMS OF THIS SECTION, AND SHALL THEREAFTER BE UNDER NO DUTY TO PRODUCE SUCH RECORD IN ANY ACTION OR PROCEEDING.

6-243. **Acquisition of property to satisfy or protect loans**

EXCEPT AS SPECIFICALLY PROHIBITED BY LAW, A BANK MAY TAKE PROPERTY OF ANY KIND TO SECURE OR SATISFY OR PARTIALLY SECURE OR PARTIALLY SATISFY AN OBLIGATION TO THE BANK.

6-244. **Borrowing by bank; treatment as capital**

A BANK MAY BORROW MONEY AND ISSUE EVIDENCE OF INDEBTEDNESS, BUT NO BORROWINGS SHALL BE TREATED AS CAPITAL EXCEPT IN COMPLIANCE WITH SECTION 6-189.

6-245. **Pledge of assets; rediscount; exception to requirement of security**

A. A BANK MAY PLEDGE, MORTGAGE OR OTHERWISE HYPOTHECATE ITS ASSETS:

1. TO QUALIFY THE BANK TO ACT AS A FISCAL AGENT FOR ANY GOVERNMENTAL ENTITY.

2. TO SECURE DEPOSITS WHICH ARE REQUIRED BY LAW TO BE SECURED.

3. TO SECURE BORROWINGS FROM ONE BUSINESS DAY TO THE NEXT FROM ANOTHER BANK.

4. TO SECURE BORROWINGS FROM A FEDERAL RESERVE BANK OR ANY FEDERAL AGENCY.

5. TO SECURE OTHER OBLIGATIONS, EXCLUSIVE OF DEPOSITS, PROVIDED THE AGGREGATE VALUE OF THE ASSETS AS CARRIED ON THE BOOKS OF THE BANK ENCUMBERED FOR PURPOSES OTHER THAN THOSE SPECIFIED IN PARAGRAPHS 1 TO 4 INCLUSIVE OF THIS SUBSECTION SHALL NOT EXCEED THE CAPITAL ACCOUNT OF THE BANK EXCEPT WITH THE APPROVAL OF THE SUPERINTENDENT.

B. THE PROVISIONS OF SUBSECTION A SHALL NOT PROHIBIT OR LIMIT THE SALE OR REDISCOUNT OF COMMERCIAL PAPER OR SECURITIES WITH ENDORSEMENT, GUARANTEE OR AGREEMENT TO REPURCHASE.

C. WHENEVER BY THE LAW OF THIS STATE A BANK IS REQUIRED TO PROVIDE SECURITY FOR DEPOSITS IN THE FORM OF COLLATERAL, SURETY BOND OR ANY OTHER FORM, SUCH SECURITY IS NOT REQUIRED TO THE EXTENT SUCH DEPOSITS ARE INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION.

ARTICLE 6. RESERVES

6-271. **Reserves against deposits; rule; limitations**

BANKS WHICH ARE NOT MEMBERS OF THE FEDERAL RESERVE SYSTEM SHALL MAINTAIN SUCH LEGAL RESERVES AS ARE FROM TIME TO TIME FIXED BY RULE OF THE SUPERINTENDENT, NOT TO EXCEED FOURTEEN PER CENT OF DEMAND DEPOSITS OR SEVEN PER CENT OF TIME AND SAVINGS DEPOSITS.

6-272. **Deposits exempt from reserve requirement**

IN DETERMINING THE LEGAL RESERVES REQUIRED BY THIS ARTICLE A BANK MAY DEDUCT FROM ITS GROSS DEPOSITS SUCH DEPOSITS AS ARE LAWFULLY SECURED AND EACH DEPOSIT BALANCE DUE TO ANOTHER BANK TO THE EXTENT OF A RECIPROCAL DEPOSIT DUE FROM SUCH OTHER BANK.

6-273. **Form of reserves**

LEGAL RESERVES SHALL CONSIST OF:

1. CASH.

2. CASH ITEMS IN PROCESS OF COLLECTION PAYABLE IMMEDIATELY UPON PRESENTATION IN THE UNITED STATES.

3. UNPLEDGED OBLIGATIONS OF THE UNITED STATES MATURING NOT MORE THAN SIX MONTHS FROM THE DATE SUCH OBLIGATION IS USED FOR RESERVE PURPOSES AT PAR.

4. NET DEPOSIT BALANCES WITH EACH QUALIFIED RESERVE DEPOSITORY, EXCLUSIVE OF DEPOSITS NOT PAYABLE ON DEMAND UNLESS EVIDENCED BY A NEGOTIABLE CERTIFICATE OF DEPOSIT MATURING NOT MORE THAN SIX MONTHS FROM THE DATE THE CERTIFICATE IS USED FOR RESERVE PURPOSES.

6-274. **Qualified reserve depositories**

ON APPLICATION OF A BANK FOR APPROVAL OF A RESERVE DEPOSITORY THE SUPERINTENDENT SHALL, IN WRITING, GRANT OR REFUSE ITS DESIGNATION AS A QUALIFIED RESERVE DEPOSITORY FOR THE APPLICANT. THE DESIGNATION MAY BE LIMITED AS TO THE AMOUNT OF DEPOSITS QUALIFYING AS RESERVES AND MAY BE REVOKED AT ANY TIME.

6-275. **Computation of reserves**

COMPLIANCE WITH RESERVE REQUIREMENTS SHALL BE DETERMINED AS OF THE CLOSE OF BUSINESS ON THE FIRST THURSDAY

FOLLOWING THE EFFECTIVE DATE OF THIS ACT AND EVERY ALTERNATE THURSDAY THEREAFTER ON THE BASIS OF THE AVERAGE DAILY RESERVES MAINTAINED DURING THE FOURTEEN DAY PERIOD ENDING ON SUCH THURSDAY AND THE AVERAGE DAILY NET DEPOSIT BALANCES FOR THE FOURTEEN DAY PERIOD ENDING ON THE TUESDAY PREVIOUS TO SUCH THURSDAY.

ARTICLE 9. LOANS

6-351. **Definitions**

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "CAPITAL ACCOUNT" MEANS THE AGGREGATE OF STATED CAPITAL AND SURPLUS PLUS THE OUTSTANDING CAPITAL OBLIGATIONS OF THE BANK.

2. "CAPITAL SURPLUS" MEANS THE ENTIRE SURPLUS OF A CORPORATION OTHER THAN ITS EARNED SURPLUS.

3. "EARNED SURPLUS" MEANS THE PORTION OF THE SURPLUS OF THE BANK EQUAL TO THE BALANCE OF ITS NET PROFITS, INCOME, GAINS AND LOSSES FROM THE DATE OF INCORPORATION, OR FROM THE LATEST DATE WHEN A DEFICIT WAS ELIMINATED BY AN APPLICATION OF ITS CAPITAL SURPLUS OR STATED CAPITAL OR OTHERWISE, AFTER DEDUCTING SUBSEQUENT DISTRIBUTIONS TO SHAREHOLDERS AND TRANSFERS TO STATED CAPITAL AND CAPITAL SURPLUS TO THE EXTENT SUCH DISTRIBUTIONS AND TRANSFERS ARE MADE OUT OF EARNED SURPLUS. "EARNED SURPLUS" SHALL INCLUDE ALSO ANY PORTION OF SURPLUS ALLOCATED TO EARNED SURPLUS IN MERGERS, CONSOLIDATIONS OR ACQUISITIONS OF ALL OR SUBSTANTIALLY ALL OF THE OUTSTANDING SHARES OR OF THE PROPERTY AND ASSETS OF ANOTHER CORPORATION, DOMESTIC OR FOREIGN.

4. "OBLIGATION" MEANS A PRIMARY OR CONTINGENT LIABILITY FOR THE PAYMENT OF MONEY.

5. "PERSON" INCLUDES AN INDIVIDUAL, A CORPORATION, GOVERNMENT OR GOVERNMENTAL SUBDIVISION OR AGENCY, BUSINESS TRUST, ESTATE, TRUST, PARTNERSHIP, JOINT VENTURE OR ASSOCIATION OR ANY OTHER LEGAL OR COMMERCIAL ENTITY.

6. "STATED CAPITAL" MEANS, AT ANY PARTICULAR TIME, THE SUM OF:

(a) THE PAR VALUE OF ALL SHARES OF THE BANK HAVING A PAR VALUE THAT HAVE BEEN ISSUED.

(b) THE AMOUNT OF THE CONSIDERATION RECEIVED BY THE BANK FOR ALL SHARES OF THE BANK WITHOUT PAR VALUE THAT HAVE BEEN ISSUED, EXCEPT SUCH PART OF THE CONSIDERATION THEREFOR AS MAY HAVE BEEN ALLOCATED TO CAPITAL SURPLUS IN A MANNER PERMITTED BY LAW.

(c) SUCH AMOUNTS NOT INCLUDED IN SUBDIVISIONS (a) AND (b) OF THIS PARAGRAPH AS HAVE BEEN TRANSFERRED TO STATED CAPITAL OF THE BANK, WHETHER UPON THE ISSUE OF SHARES AS A SHARE DIVIDEND OR OTHERWISE, MINUS ALL REDUCTIONS FROM SUCH SUM AS HAVE BEEN EFFECTED IN A MANNER PERMITTED BY LAW.

7. "SURPLUS" MEANS THE EXCESS OF THE NET ASSETS OF THE BANK OVER ITS STATED CAPITAL.

6-352. **Limitations of obligations to a bank; exceptions; violations**

A. THE TOTAL OBLIGATIONS OF A PERSON TO A BANK, EXCLUSIVE OF COLLECTION COSTS AND EXPENSES FOR THE PROTECTION OF COLLATERAL ACCRUING SUBSEQUENT TO THE TIME THE OBLIGATION WAS INCURRED, SHALL AT NO TIME EXCEED FIFTEEN PER CENT OF THE CAPITAL ACCOUNT OF THE BANK, BUT SUCH LIMITATION SHALL NOT APPLY TO:

1. OBLIGATIONS INCURRED BY THE ASSIGNMENT, ENDORSEMENT OR GUARANTEE OF THE OBLIGATION OF A THIRD PERSON, INCLUDING AN AGREEMENT TO PURCHASE THE THIRD PERSON'S OBLIGATION OR THE COLLATERAL THEREFOR, IF THE BANK HAS EVALUATED THE FINANCIAL CONDITION AND RESPONSIBILITY OF THE THIRD PERSON AND AS A RESULT OF SUCH EVALUATION ACCEPTS THE OBLIGATION IN RELIANCE PRIMARILY UPON THE THIRD PERSON FOR PAYMENT. IN SUCH CASE THE OBLIGATIONS OF THE THIRD PERSON TO THE BANK SHALL BE THE SOLE APPLICABLE LIMITATION.

2. OBLIGATIONS, WHETHER GENERAL OBLIGATIONS OR PAYABLE FROM REVENUES OR SPECIAL ASSESSMENT, OF THE

UNITED STATES OR ANY AGENCY OR INSTRUMENTALITY THEREOF, A FEDERAL RESERVE BANK, A STATE OF THE UNITED STATES OR A SUBDIVISION, INSTRUMENTALITY OR PUBLIC AUTHORITY ORGANIZED UNDER THE LAWS OF SUCH STATE.

3. OBLIGATIONS TO THE EXTENT THEY ARE SECURED BY THE GUARANTEE, INSURANCE OR OTHER LIKE COMMITMENT OF THE UNITED STATES, AN AGENCY OR INSTRUMENTALITY OF THE UNITED STATES, A FEDERAL RESERVE BANK, A STATE OF THE UNITED STATES OR A SUBDIVISION, INSTRUMENTALITY OR PUBLIC AUTHORITY ORGANIZED UNDER THE LAWS OF SUCH STATE, WHETHER THE COMMITMENT PROVIDES FOR PAYMENT IN CASH OR IN OBLIGATIONS DESCRIBED IN PARAGRAPH 2 OF THIS SUBSECTION.

4. OBLIGATIONS TO THE EXTENT THEY ARE SECURED BY ANY OBLIGATION DESCRIBED IN PARAGRAPHS 2 AND 3 OF THIS SUBSECTION AT THE VALUE THEREOF, NOT EXCEEDING FACE VALUE, AT THE TIME THE OBLIGATION TO THE BANK IS CREATED.

5. OBLIGATIONS TO THE EXTENT THEY ARE SECURED BY DEPOSITS IN THE BANK.

6. OBLIGATIONS WHICH ARE OUTSTANDING IN THE REGULAR PROCESS OF BANK COLLECTION OR CLEARING TRANSACTIONS.

7. OBLIGATIONS OF A QUALIFIED RESERVE DEPOSITORY OF THE BANK, UNLESS THE SUPERINTENDENT HAS BY SPECIFIC ORDER EXCLUDED OR LIMITED THE OBLIGATIONS OF SUCH DEPOSITORY FROM THE EXEMPTION OF THIS SUBPARAGRAPH.

8. ANY OBLIGATION CREATED IN THE SALE BY THE BANK OF ANY OF ITS PROPERTY WHERE THE BANK RETAINS TITLE, LIEN OR SECURITY INTEREST IN THE PROPERTY SOLD TO SECURE THE OBLIGATION.

9. ANY OBLIGATION UNDER THE LEASE BY THE BANK OF ANY PERSONAL PROPERTY ACQUIRED BY THE BANK IN COLLECTING AN OBLIGATION TO IT OR THE LEASE OF ANY OF ITS REAL PROPERTY OR BANKING EQUIPMENT.

10. THAT PORTION OF THE OBLIGATIONS OF A PERSON TO THE BANK WHICH EXCEED THE AGGREGATE FUNDS PAID AND THE

VALUE OF PROPERTY DELIVERED BY THE BANK IN CREATING THE OBLIGATION.

11. ANY OBLIGATION EXEMPT BY RULE OF THE SUPERINTENDENT OR ARISING FROM THE SALE OF ANY ASSETS OF THE BANK IN A TRANSACTION WHICH HAS BEEN APPROVED BY THE SUPERINTENDENT.

B. IF THE BANK PARTICIPATES IN AN OBLIGATION WITH ANOTHER OBLIGEE, THE LIMITATIONS OF THIS SECTION SHALL BE APPLICABLE ONLY TO THE EXTENT OF THE BANK'S PARTICIPATION.

C. IF THE SUPERINTENDENT FINDS THAT A BANK HAS EXCEEDED THE LIMITATIONS OF THIS ARTICLE HE SHALL REQUIRE THE BANK TO DISPOSE OF THE OBLIGATIONS IN THE AMOUNT IN EXCESS OF THE LIMITATIONS WITHIN SUCH REASONABLE TIME AS SHALL BE FIXED BY THE SUPERINTENDENT.

6-353. **Obligations of directors, officers and employees; reports**

A. NO BANK SHALL MAKE ANY LOAN TO ANY OF ITS OWN DIRECTORS, OFFICERS OR EMPLOYEES WHICH SHALL CAUSE THE OUTSTANDING LOANS OF THE BANK TO SUCH PERSON TO EXCEED ONE PER CENT OF THE CAPITAL ACCOUNT OF THE BANK UNLESS THE LOAN IS EXPRESSLY AUTHORIZED BY THE BOARD OF DIRECTORS WITH ANY INTERESTED DIRECTOR TAKING NO PART IN SUCH VOTE. ANY LOAN IN VIOLATION OF THIS SUBSECTION SHALL BE PAYABLE ON DEMAND TO THE EXTENT REQUIRED TO BRING THE LOAN INTO COMPLIANCE WITH THIS SUBSECTION.

B. EACH BANK SHALL INCLUDE WITH BUT NOT AS A PART OF EACH REPORT OF CONDITION TO THE SUPERINTENDENT A REPORT OF THE OBLIGATIONS TO THE BANK OF EACH DIRECTOR AND OFFICER OUTSTANDING AT THE DATE OF THE REPORT OF CONDITION, IF THE AGGREGATE OBLIGATIONS OF SUCH PERSON, EXCLUSIVE OF OBLIGATIONS OUTSTANDING IN THE REGULAR PROCESS OF BANK COLLECTION TRANSACTIONS, EXCEEDS THE LESSER OF FIFTY THOUSAND DOLLARS OR ONE PER CENT OF THE CAPITAL ACCOUNT OF THE BANK.

6-354. **Loans on capital stock or capital obligations of a bank**

NO BANK SHALL TAKE OR HOLD ITS CAPITAL STOCK OR ITS CAPITAL OBLIGATIONS AS SECURITY FOR AN OBLIGATION TO THE BANK UNLESS SUCH SECURITY IS NECESSARY TO PREVENT LOSS ON AN OBLIGATION PREVIOUSLY CONTRACTED.

6-355. **Change loans**

A BONA FIDE CHANGE LOAN OF TEN THOUSAND DOLLARS OR LESS FOR A TERM NOT TO EXCEED FOUR DAYS, WHICH ENTAILS THE SERVICES OF FURNISHING COINS OR CURRENCY IN SPECIFIC AMOUNTS REQUIRED BY THE BORROWER, MAY BE COMPENSATED FOR, AT THE OPTION OF THE BANK, IN LIEU OF INTEREST, BY A SERVICE CHARGE OF NOT MORE THAN FIFTEEN DOLLARS.

ARTICLE 10. PROCEEDINGS FOR CEASE AND DESIST AND OFFICER REMOVAL

6-361. **Cease and desist order; contested case; pendente relief**

A. IF, IN THE OPINION OF THE SUPERINTENDENT ANY BANK IS ENGAGING OR HAS ENGAGED, OR THE SUPERINTENDENT HAS REASONABLE CAUSE TO BELIEVE THAT THE BANK IS ABOUT TO ENGAGE, IN AN UNSAFE OR UNSOUND PRACTICE IN CONDUCTING THE BUSINESS OF SUCH BANK, OR IS VIOLATING OR HAS VIOLATED, OR THE SUPERINTENDENT HAS REASONABLE CAUSE TO BELIEVE THAT THE BANK IS ABOUT TO VIOLATE, A LAW, OR REGULATION, OR ANY WRITTEN AGREEMENT ENTERED INTO WITH THE SUPERINTENDENT, THE SUPERINTENDENT MAY ISSUE AN ORDER REQUIRING THE BANK, ITS DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS TO CEASE AND DESIST FROM SUCH VIOLATION OR PRACTICE, AND FURTHER TO TAKE SUCH AFFIRMATIVE ACTION TO CORRECT THE CONDITIONS RESULTING FROM THE VIOLATION OR PRACTICE AS IS WITHIN THE POWER OF THE BANK. THE ORDER SHALL CONTAIN A STATEMENT OF THE ALLEGED FACTS WHICH FORM THE BASIS OF THE ORDER. THE ORDER SHALL BECOME EFFECTIVE AT THE TIME SPECIFIED THEREIN AFTER SERVICE ON THE BANK AND SHALL REMAIN EFFECTIVE AND ENFORCEABLE, EXCEPT TO SUCH EXTENT AS IT IS STAYED, MODIFIED, TERMINATED, OR SET ASIDE BY THE SUPERINTENDENT, THE HEARING BOARD OR A REVIEWING COURT.

B. THE BANK SERVED WITH A CEASE AND DESIST ORDER MAY AT ANY TIME CONTEST THE ORDER BY SERVING THE

SUPERINTENDENT WITH A RESPONSE AND ALL ISSUES RAISED SHALL BE ADJUDICATED BY THE HEARING BOARD AS A CONTESTED CASE PURSUANT TO TITLE 41, CHAPTER 6, ARTICLE 1. THE HEARING SHALL BE FIXED FOR A DATE NOT EARLIER THAN THIRTY DAYS NOR LATER THAN SIXTY DAYS AFTER SERVICE OF THE RESPONSE UNLESS AN EARLIER OR LATER DATE IS SET BY THE BOARD AT THE REQUEST OF THE BANK.

C. THE BANK AFTER FILING A RESPONSE TO A CEASE AND DESIST ORDER MAY MOVE THAT THE BOARD STAY OR MODIFY THE ORDER PENDING THE COMPLETION OF THE ADMINISTRATIVE PROCEEDINGS UNDER SUBSECTION B OF THIS SECTION OR WITH OR WITHOUT A PRIOR MOTION TO THE BOARD, APPLY TO THE SUPERIOR COURT FOR AN INJUNCTION FOR THE SAME RELIEF.

6-362. **Suspension, removal of prohibition; hearing; notice**

A. IF ANY DIRECTOR OR OFFICER OF A BANK OR OTHER PERSON PARTICIPATING IN THE CONDUCT OF THE AFFAIRS OF THE BANK HAS EVIDENCED HIS PERSONAL DISHONESTY BY ACT, OMISSION OR PRACTICE IN ANY BANKING OR BUSINESS TRANSACTION WHICH DEMONSTRATES HIS UNFITNESS TO CONTINUE IN OFFICE OR PARTICIPATE IN THE CONDUCT OF THE AFFAIRS OF THE BANK AND BY REASON OF HIS DISHONESTY AND UNFITNESS THE BANK HAS SUFFERED OR WILL PROBABLY SUFFER SUBSTANTIAL FINANCIAL LOSS, OR IF SUCH PERSON WILFULLY VIOLATES ANY EFFECTIVE AND OUTSTANDING CEASE AND DESIST ORDER ISSUED AND SERVED UNDER THIS ARTICLE, SUCH FACTS SHALL CONSTITUTE GROUNDS FOR REMOVAL OR SUSPENSION FROM OFFICE, OR PROHIBITION FROM PARTICIPATION IN THE AFFAIRS OF THE BANK.

B. UPON THE CERTIFICATION BY THE SUPERINTENDENT TO THE HEARING BOARD OF FACTS CONSTITUTING THE GROUNDS THEREFOR, THE BOARD MAY ISSUE AND SERVE UPON THE PERSON INVOLVED NAMED AS RESPONDENT, A WRITTEN NOTICE OF ITS INTENTION TO REMOVE HIM FROM OFFICE OR TO PROHIBIT HIM FROM FURTHER PARTICIPATION IN ANY MANNER IN THE CONDUCT OF THE AFFAIRS OF THE BANK. A COPY OF THE NOTICE SHALL ALSO BE SERVED UPON THE BANK. THE NOTICE SHALL CONTAIN A STATEMENT OF THE ALLEGED FACTS AND SHALL FIX A TIME AND PLACE AT WHICH A HEARING WILL BE HELD THEREON. THE HEARING SHALL BE FIXED FOR A DATE

NOT EARLIER THAN THIRTY DAYS NOR LATER THAN SIXTY DAYS AFTER THE DATE OF SERVICE OF THE NOTICE, UNLESS AN EARLIER OR A LATER DATE IS SET BY THE BOARD AT THE REQUEST OF THE RESPONDENT OR SUPERINTENDENT FOR GOOD CAUSE SHOWN. IF THE RESPONDENT WITHOUT EXCUSABLE NEGLECT FAILS TO ANSWER THE CHARGES, OR IF, UPON THE RECORD MADE AT THE HEARING THE BOARD FINDS THAT ANY OF THE CHARGES SPECIFIED IN THE NOTICE HAS BEEN ESTABLISHED AND CONSTITUTES GROUNDS FOR SUSPENSION OR REMOVAL FROM OFFICE OR PROHIBITION FROM PARTICIPATION IN THE CONDUCT OF THE AFFAIRS OF THE BANK, THE BOARD MAY ISSUE THE APPROPRIATE ORDER. THE ORDER BECOMES EFFECTIVE AT THE TIME SPECIFIED THEREIN AFTER SERVICE UPON THE RESPONDENT AND REMAINS EFFECTIVE UNLESS STAYED, MODIFIED, TERMINATED OR SET ASIDE BY ACTION OF THE HEARING BOARD OR A REVIEWING COURT.

6-363. **Temporary prohibition; injunction**

A. IF THE SUPERINTENDENT DETERMINES FROM THE FACTS CERTIFIED TO THE HEARING BOARD UNDER SECTION 6-362 THAT THE CONDUCT OF THE RESPONDENT IS LIKELY TO CAUSE THE BANK TO SUFFER SUBSTANTIAL FINANCIAL LOSS BEFORE AN ORDER CAN BE ISSUED UNDER SECTION 6-362, THE SUPERINTENDENT MAY ISSUE A TEMPORARY ORDER PROHIBITING THE RESPONDENT FROM FURTHER PARTICIPATION IN ANY MANNER IN THE CONDUCT OF THE AFFAIRS OF THE BANK, THE ORDER SHALL CONTAIN A STATEMENT OF THE ALLEGED FACTS WHICH FORM THE BASIS OF THE ORDER AND SHALL BECOME EFFECTIVE UPON SERVICE UPON THE RESPONDENT. A COPY OF THE ORDER SHALL ALSO BE SERVED UPON THE BANK. THE ORDER SHALL EXPIRE BY ITS TERMS WITHIN SUCH TIME AFTER ENTRY, NOT TO EXCEED TWENTY DAYS, AS THE SUPERINTENDENT FIXES, UNLESS THE RESPONDENT CONSENTS TO A LONGER PERIOD OR WITHIN THE TIME FIXED IN THE ORDER IT IS EXTENDED BY SUPPLEMENTAL ORDER ISSUED BY THE HEARING BOARD AND SERVED ON THE RESPONDENT AND THE BANK. ON TWO DAYS NOTICE TO THE SUPERINTENDENT THE RESPONDENT MAY MOVE THAT THE BOARD DISSOLVE OR MODIFY THE ORDER AND THE BOARD SHALL PROCEED TO HEAR AND DETERMINE SUCH MOTION AS EXPEDITIOUSLY AS THE ENDS OF JUSTICE SHALL REQUIRE.

B. THE RESPONDENT SERVED WITH A TEMPORARY ORDER MAY APPLY TO THE SUPERIOR COURT FOR A STAY OF THE

ORDER PENDING THE COMPLETION OF THE ADMINISTRATIVE PROCEEDINGS UNDER SECTION 6-362 AND THE COURT SHALL HAVE JURISDICTION TO STAY THE ORDER WHETHER OR NOT THE RESPONDENT HAS FIRST SOUGHT RELIEF FROM THE HEARING BOARD.

6-364. **Effect of suspension of directors**

IF AT ANY TIME, BECAUSE OF THE SUSPENSION OF ONE OR MORE DIRECTORS PURSUANT TO THIS ARTICLE, THERE SHALL BE ON THE BOARD OF DIRECTORS OF A BANK LESS THAN A QUORUM OF DIRECTORS NOT SO SUSPENDED, ALL POWERS AND FUNCTIONS VESTED IN OR EXERCISABLE BY THE BOARD OF DIRECTORS SHALL VEST IN AND BE EXERCISABLE BY THE DIRECTOR OR DIRECTORS ON THE BOARD NOT SO SUSPENDED, UNTIL SUCH TIME AS THERE SHALL BE A QUORUM OF THE BOARD OF DIRECTORS.

6-365. **Hearing board, membership and proceedings**

A. THERE IS ESTABLISHED A HEARING BOARD IN THE DEPARTMENT FOR THE PURPOSES OF THIS ARTICLE. THE MEMBERSHIP SHALL CONSIST OF THREE PERSONS APPOINTED BY THE SUPERINTENDENT. EACH PERSON AT THE TIME OF HIS APPOINTMENT SHALL BE AN ACTIVE EXECUTIVE OFFICER OF THE HOLDER OF A BANKING PERMIT AND NO TWO OFFICERS OF THE SAME BANK SHALL SERVE AT THE SAME TIME. THE TERM OF EACH MEMBER SHALL BE FOR SIX YEARS, EXCEPT OF THE MEMBERS FIRST APPOINTED ONE SHALL BE DESIGNATED AS HAVING A TERM OF TWO YEARS AND ONE SHALL BE DESIGNATED AS HAVING A TERM OF FOUR YEARS.

B. THE BOARD SHALL MEET FOLLOWING ANY CHANGE IN MEMBERSHIP FOR THE PURPOSES OF ORGANIZATION. SPECIAL MEETINGS MAY BE CALLED BY THE CHAIRMAN OR THE SUPERINTENDENT UPON AT LEAST TWENTY-FOUR HOURS NOTICE.

C. A MAJORITY OF THE BOARD SHALL CONSTITUTE A QUORUM AND ACTION TAKEN BY A MAJORITY OF THOSE PRESENT AT WHICH A QUORUM IS PRESENT SHALL BE THE ACTION OF THE BOARD. IF A QUORUM IS UNAVAILABLE FOR A PENDING PROCEEDING BY REASON OF THE DISQUALIFICATION OF ANY MEMBER, HIS ABSENCE OR INABILITY TO ACT, THE SUPERINTENDENT SHALL APPOINT THE NECESSARY BOARD MEMBERS AD HOC TO PROVIDE THE QUORUM.

D. AN APPOINTIVE MEMBER SHALL NOT HAVE AN INTEREST IN THE DECISION IN ANY PROCEEDING NOR BE DISQUALIFIED FROM PARTICIPATION SOLELY BY REASON OF HIS BANKING KNOWLEDGE, EXPERIENCE OR EMPLOYMENT, EXCEPT IN CEASE AND DESIST PROCEEDINGS AGAINST HIS EMPLOYER OR ANY SUBSIDIARY OR AFFILIATE OF HIS EMPLOYER AND IN REMOVAL PROCEEDINGS AGAINST A DIRECTOR, OFFICER OR PERSON PARTICIPATING IN THE AFFAIRS OF HIS EMPLOYER OR ANY SUBSIDIARY OR AFFILIATE OF HIS EMPLOYER, AND IN EACH SUCH CASE THE BANKING MEMBER SHALL MAKE HIS INTEREST KNOWN IN THE BOARD RECORDS AND SHALL REFRAIN FROM PARTICIPATING IN ANY MANNER IN SUCH PROCEEDINGS.

E. EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE ALL CONTESTED CASES UNDER THIS ARTICLE SHALL BE GOVERNED BY THE PROVISIONS OF TITLE 41, CHAPTER 6, ARTICLE 1. ALL PROCEEDINGS BEFORE THE BOARD SHALL BE SUBJECT TO SECTION 6-129, EXCEPT AS THE RECORD MAY BE ADMISSIBLE FOR ANY PURPOSE IN A JUDICIAL PROCEEDING AUTHORIZED UNDER THIS ARTICLE. WITHIN SIXTY DAYS AFTER THE CASE HAS BEEN SUBMITTED TO IT FOR FINAL DECISION THE BOARD SHALL ISSUE ITS WRITTEN ORDER. JUDICIAL REVIEW OF ANY SUCH ORDER SHALL BE EXCLUSIVELY AS PROVIDED IN SECTION 6-366.

6-366. **Judicial review**

ANY PARTY TO A PROCEEDING UNDER THIS ARTICLE MAY OBTAIN A REVIEW OF ANY ORDER OTHER THAN AN ORDER ISSUED WITH CONSENT OF THE BANK OR OTHER PERSON CONCERNED. THE REVIEW SHALL BE HAD AS PROVIDED IN TITLE 12, CHAPTER 7, ARTICLE 6. THE COMMENCEMENT OF PROCEEDINGS FOR JUDICIAL REVIEW SHALL NOT, UNLESS SPECIFICALLY ORDERED BY THE COURT, OPERATE AS A STAY OF THE ORDER. DURING THE PENDENCY OF THE ACTION FOR REVIEW THE HEARING BOARD MAY NOT MODIFY, TERMINATE OR SET ASIDE THE ORDER EXCEPT WITH PERMISSION OF THE COURT.

6-367. **Attorney fees and expenses**

IN ANY PROCEEDING INSTITUTED UNDER THIS ARTICLE IN WHICH A DIRECTOR OR OFFICER IS A PARTY, THE HEARING BOARD OR COURT MAY ALLOW SUCH PARTY REASONABLE

EXPENSES AND ATTORNEYS' FEES AND SUCH EXPENSES AND FEES SHALL BE PAID BY THE BANK OR FROM ITS ASSETS WITH PRIORITY AS AN EXPENSE OF ADMINISTRATION IN RECEIVERSHIP.

6-368. **Enforcement of notice or order**

THE SUPERINTENDENT MAY APPLY TO THE SUPERIOR COURT FOR THE ENFORCEMENT OF ANY EFFECTIVE AND OUTSTANDING ORDER ISSUED UNDER THIS ARTICLE AND THE COURT SHALL HAVE JURISDICTION TO ORDER AND REQUIRE COMPLIANCE THEREWITH. EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE NO COURT SHALL HAVE JURISDICTION TO AFFECT BY INJUNCTION OR OTHERWISE THE ISSUANCE OR ENFORCEMENT OF ANY ORDER UNDER THIS ARTICLE, OR TO REVIEW, MODIFY, SUSPEND, TERMINATE OR SET ASIDE ANY SUCH ORDER.

6-369. **Service of notice or order**

ANY SERVICE REQUIRED OR AUTHORIZED TO ME MADE UNDER THIS ARTICLE MAY BE MADE BY REGISTERED MAIL OR OTHER MANNER REASONABLY CALCULATED TO GIVE ACTUAL NOTICE.

6-370. **Personal liability of hearing board members; limitation**

NO MEMBER OF THE HEARING BOARD SHALL BE LIABLE IN ANY CIVIL ACTION FOR DAMAGES FOR ANY ACT DONE OR OMITTED TO BE DONE IN GOOD FAITH IN SUCH CAPACITY.

ARTICLE 11. TRUST BUSINESS

6-381. **Authority of bank to engage in the trust business**

A BANK MAY NOT ENGAGE IN THE TRUST BUSINESS UNLESS AUTHORIZED BY ITS BANKING PERMIT. A BANK WHICH ENGAGES IN THE TRUST BUSINESS IS SUBJECT TO THE PROVISIONS OF CHAPTER 8 OF THIS TITLE IN THE ADMINISTRATION OF ITS TRUST ACCOUNTS.

6-382. **Powers of bank as fiduciary**

THE PROHIBITIONS, LIMITATIONS AND RESTRICTIONS ON THE TRANSACTIONS OF A BANK IN DEALING WITH ITS GENERAL

ASSETS SHALL NOT BE APPLICABLE TO A BANK IN THE EXERCISE OF ITS POWERS AS A FIDUCIARY OVER ASSETS HELD IN SUCH CAPACITY OR WITH RESPECT TO OBLIGATIONS INCURRED IN SUCH CAPACITY AGAINST THE CREDIT OF THE TRUST.

6-383. **Identification and segregation of fiduciary assets**

EXCEPT AS MAY BE OTHERWISE PROVIDED BY LAW OR BY THE WRITING CREATING THE TRUST, A BANK HOLDING ANY ASSET AS A FIDUCIARY SHALL SEGREGATE ALL SUCH ASSETS FROM THE GENERAL ASSETS OF THE BANK AND SHALL MAINTAIN SUCH SAFEKEEPING METHODS AND RECORDS THAT THE ASSETS OF EACH TRUST MAY BE READILY IDENTIFIED AND DISTINGUISHED FROM THE ASSETS OF ANY OTHER TRUST. TRUST ASSETS MAY BE HELD IN THE NAME OF NOMINEES OF THE BANK WHETHER THE BANK IS THE SOLE FIDUCIARY OR ACTING WITH OTHERS, BUT THE BANK SHALL BE RESPONSIBLE FOR THE ACTS OF ANY SUCH NOMINEE.

6-384. **Deposit of fiduciary funds**

CASH HELD BY A BANK AS FIDUCIARY MAY BE DEPOSITED TO THE CREDIT OF THE BANK AS SUCH FIDUCIARY ON TIME OR DEMAND ACCOUNT WITH ITSELF OR WITH ANY OTHER BANK THE DEPOSITS OF WHICH ARE INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION. UNLESS OTHERWISE PROVIDED BY THE WRITING CREATING THE TRUST, IF SUCH FUNDS ARE DEPOSITED WITH ITSELF THE BANK SHALL SECURE SUCH DEPOSITS WITH SECURITIES DESCRIBED IN SECTION 6-352, SUBSECTION A, PARAGRAPH 2, OR OTHER SECURITY APPROVED BY THE SUPERINTENDENT FOR THE PURPOSE, IN THE AMOUNT OF THE DEPOSIT, SUBJECT TO SUBSECTION C OF SECTION 6-245.

6-385. **Substitution of corporate fiduciary**

ANY FIDUCIARY CAPACITY OF A TRUST COMPANY OR A BANK AS TRUSTEE, EXECUTOR, ADMINISTRATOR, GUARDIAN, CONSERVATOR, REGISTRAR OF STOCKS AND BONDS, ASSIGNEE, RECEIVER OR ANY OTHER FIDUCIARY CAPACITY MAY BE TRANSFERRED TO AND ASSUMED BY A BANK AUTHORIZED UNDER ITS BANKING PERMIT TO CONDUCT TRUST BUSINESS IN THIS STATE, WITHOUT ANY ORDER OR OTHER ACTION ON THE PART OF ANY COURT OR INTERESTED PERSON, WITH THE APPROVAL OF THE SUPERINTENDENT TO THE EXTENT THE

SUBSTITUTION IS SPECIFIED IN THE ORDER OF APPROVAL. THE SUPERINTENDENT'S ORDER OF APPROVAL SHALL BE CONCLUSIVE EVIDENCE OF THE AUTHORITY OF THE ASSUMING BANK TO HOLD AND ENJOY ALL RIGHTS OF PROPERTY, FRANCHISES AND INTERESTS, INCLUDING APPOINTMENTS, DESIGNATIONS AND NOMINATIONS, AND ALL OTHER RIGHTS AND INTERESTS IN EACH SUCH FIDUCIARY CAPACITY IN THE SAME MANNER AND TO THE SAME EXTENT AS SUCH RIGHTS, FRANCHISES AND INTERESTS WERE HELD OR ENJOYED BY THE BANK OR TRUST COMPANY FOR WHOM THE ASSUMING BANK HAS BEEN SUBSTITUTED. THE SUBSTITUTION OF FIDUCIARY PROVIDED IN THIS SECTION IS TO ASSURE A CONTINUITY OF FIDUCIARY ADMINISTRATION AND IS SUPPLEMENTAL TO OTHER RIGHTS AND POWERS OF SUBSTITUTION WHICH REQUIRE NO APPROVAL BY THE SUPERINTENDENT. SUBSTITUTION BY ORDER OF THE SUPERINTENDENT SHALL NOT AFFECT THE AUTHORITY OF THE COURT HAVING JURISDICTION OVER THE TRUST TO DETERMINE THE RIGHT OF ANY OTHER PERSON TO SUCCEED TO THE FIDUCIARY CAPACITY OF THE ASSUMING BANK.

ARTICLE 12. PROHIBITED PRACTICES; PENALTIES

6-391. **Unauthorized conduct of banking business; false representation; penalty; civil injunction**

A. IT IS UNLAWFUL FOR ANY PERSON TO ENGAGE IN THIS STATE IN THE BANKING BUSINESS AS DEFINED IN SECTION 6-201 OR TO MAKE USE OF THE WORD "BANK" OR ANY OTHER WORDS IN A MANNER REASONABLY CALCULATED TO CONVEY THE IMPRESSION THAT THE PERSON IS ENGAGED IN THE BANKING BUSINESS IN THIS STATE, UNLESS THE ACT IS DONE BY OR ON BEHALF OF A PERSON HAVING AUTHORITY UNDER SECTION 6-201.

B. A PERSON WHO VIOLATES ANY PROVISION OF SUBSECTION A SHALL BE GUILTY OF A MISDEMEANOR.

C. THE SUPERINTENDENT IS ENTITLED TO MAINTAIN AN ACTION TO ENJOIN ANY ACT DECLARED UNLAWFUL IN SUBSECTION A OF THIS SECTION.

6-392. **False or deceptive entries or statements; penalty**

ANY PERSON WHO MAKES ANY FALSE ENTRY OR OMITS A MATERIAL ENTRY IN A RECORD, REPORT OR STATEMENT OF A

BANK WITH INTENT TO INJURE OR DEFRAUD THE BANK OR TO DECEIVE THE SUPERINTENDENT OR ANY AGENT OR EXAMINER APPOINTED BY HIM TO EXAMINE THE AFFAIRS OF THE BANK IS GUILTY OF A FELONY AND UPON CONVICTION SHALL BE FINED NOT MORE THAN FIVE THOUSAND DOLLARS OR IMPRISONED NOT MORE THAN FIVE YEARS, OR BOTH.

6-393. **Circulating or inducing false rumor of insolvency of bank; penalty**

ANY PERSON WHO WILFULLY MAKES, CIRCULATES OR TRANSMITS TO ANOTHER A FALSE STATEMENT OR RUMOR, WRITTEN, PRINTED OR BY WORD OF MOUTH, WHICH IS, DIRECTLY OR BY INFERENCE, DEROGATORY OF THE FINANCIAL CONDITION OR SOLVENCY OF ANY BANK OR BANKS OR PROCURES OR INDUCES ANOTHER TO START, TRANSMIT OR CIRCULATE SUCH STATEMENT OR RUMOR IS GUILTY OF A MISDEMEANOR.

ARTICLE 13. LIQUIDATION AND DISSOLUTION

6-395. **Possession by superintendent and receivership**

IF THE STATUS OF A BANK AS AN INSURED BANK IS TERMINATED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR THE SUPERINTENDENT FINDS THAT A BANK IS IN SUCH AN UNSAFE OR UNSOUND CONDITION THAT IT IS OR WILL BECOME UNABLE TO MEET THE ANTICIPATED DEMANDS OF ITS DEPOSITORS AND THAT THE CONDITION CANNOT BE CORRECTED BY THE PROCEDURES OF ARTICLE 10 OF THIS CHAPTER, THE SUPERINTENDENT MAY IMMEDIATELY TAKE POSSESSION AND CONTROL OF THE BANK AND IN SUCH EVENT SHALL, THROUGH THE ATTORNEY GENERAL, APPLY TO THE SUPERIOR COURT FOR THE APPOINTMENT OF A RECEIVER FOR THE BANK. THE COURT MAY ACT UPON THE APPLICATION FORTHWITH AND WITHOUT NOTICE TO ANY PERSON. IF AT ANY TIME THE COURT FINDS THAT NO GROUND FOR RECEIVERSHIP EXISTS, THE RECEIVERSHIP SHALL BE DISSOLVED AND THE SUPERINTENDENT'S POSSESSION TERMINATED.

6-395.01. **Powers of superintendent in possession**

WHEN THE SUPERINTENDENT HAS TAKEN POSSESSION OF A BANK AND UNTIL THE APPOINTMENT AND QUALIFICATION OF THE RECEIVER, OR THE ADJUDICATION THAT NO GROUND FOR

THE RECEIVERSHIP EXISTS, THE SUPERINTENDENT SHALL BE VESTED WITH THE FULL AND EXCLUSIVE POWER OF MANAGEMENT AND CONTROL. THE SUPERINTENDENT SHALL IMMEDIATELY CLOSE THE BANK FOR THE ACCEPTANCE AND WITHDRAWAL OF DEPOSITS, BUT SHALL OTHERWISE HAVE THE POWER TO CONTINUE OR TO DISCONTINUE THE BUSINESS, TO STOP OR TO LIMIT THE PAYMENT OF ITS OBLIGATIONS, TO EMPLOY ANY NECESSARY ASSISTANTS, TO EXECUTE ANY INSTRUMENT IN THE NAME OF THE BANK, TO COMMENCE, DEFEND AND CONDUCT IN ITS NAME ANY ACTION OR PROCEEDING IN WHICH THE BANK MAY BE A PARTY.

6-395.02 **Federal deposit insurance corporation as receiver**

IF THE COURT GRANTS THE APPLICATION FOR RECEIVERSHIP OF A BANK IT SHALL FIRST TENDER THE APPOINTMENT AS RECEIVER TO THE FEDERAL DEPOSIT INSURANCE CORPORATION, WHICH IS AUTHORIZED TO QUALIFY AND ACT WITHOUT BOND. IF THE CORPORATION ACCEPTS THE APPOINTMENT IT SHALL HAVE ALL OF THE POWERS, PRIVILEGES AND DUTIES AS SUCH RECEIVER PROVIDED BY THE LAWS OF THIS STATE EXCEPT INSOFAR AS SUCH POWERS, PRIVILEGES AND DUTIES ARE IN CONFLICT WITH THE PROVISIONS OF THE FEDERAL DEPOSIT INSURANCE ACT AS AMENDED, WHICH ACT SHALL CONTROL. IF THE CORPORATION DOES NOT ACCEPT THE APPOINTMENT THE SUPERINTENDENT SHALL BE APPOINTED RECEIVER.

6-395.03 **Federal deposit insurance corporation power pending judicial proceedings**

THE FEDERAL DEPOSIT INSURANCE CORPORATION MAY PAY OUT AND ACQUIRE THE INSURED DEPOSIT LIABILITIES OF A BANK NOTWITHSTANDING THE POSSESSION BY THE SUPERINTENDENT OR THE PENDENCY OF RECEIVERSHIP PROCEEDINGS AND FOR SUCH PURPOSES SHALL HAVE THE USE OF THE FACILITIES AND RECORDS OF THE BANK. THE FEDERAL DEPOSIT INSURANCE CORPORATION AND ITS DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES, THE SUPERINTENDENT AND THE RECEIVER AND THE RESPECTIVE AGENTS AND EMPLOYEES OF EACH, SHALL BE FREE FROM LIABILITY TO THE BANK, ITS DIRECTORS, STOCKHOLDERS AND CREDITORS, FOR OR ON ACCOUNT OF ANY ACTION AUTHORIZED BY THIS SECTION.

6-395.04 **Right of subrogation of federal deposit insurance corporation**

THE FEDERAL DEPOSIT INSURANCE CORPORATION SHALL BE SUBROGATED TO THE RIGHTS OF DEPOSITORS UPON PAYMENT OF THEIR CLAIMS TO THE EXTENT REQUIRED BY THE LAW OF THE UNITED STATES AS A CONDITION OF THE AUTHORITY TO INSURE DEPOSITS OR MAKE SUCH PAYMENT.

6-395.05 **Effect of receivership proceedings on liens and limitations**

A. EVERY LIEN AGAINST ANY ASSET OF A BANK OBTAINED BY ATTACHMENT, JUDGMENT, LEVY OR OTHER LEGAL OR EQUITABLE PROCESS OR PROCEEDINGS AFTER THE FILING OF THE APPLICATION FOR THE APPOINTMENT OF A RECEIVER UNDER THIS ARTICLE SHALL BE NULL AND VOID AS TO THE RECEIVER AND TO ANY PURCHASER FROM THE RECEIVER WHERE THE SALE IS ORDERED BY THE COURT TO BE FREE AND CLEAR OF SUCH LIENS.

B. A RECEIVER, UPON HIS APPOINTMENT SHALL BE VESTED BY OPERATION OF LAW WITH THE TITLE TO ALL OF THE ASSETS OF THE BANK AS OF THE TIME OF FILING OF THE APPLICATION FOR THE APPOINTMENT OF THE RECEIVER; AND AS TO ALL ASSETS OF THE BANK, WHETHER OR NOT COMING INTO HIS PHYSICAL POSSESSION, UPON WHICH A CREDITOR OF THE BANK COULD HAVE OBTAINED A LIEN BY LEGAL OR EQUITABLE PROCEEDINGS AT THE TIME OF FILING OF THE APPLICATION FOR THE APPOINTMENT OF THE RECEIVER, THE RECEIVER SHALL BE VESTED AS OF THE TIME OF SUCH FILING WITH ALL OF THE RIGHTS, REMEDIES AND POWERS OF A CREDITOR THEN HOLDING A LIEN THEREON BY SUCH PROCEEDINGS, WHETHER OR NOT SUCH A CREDITOR ACTUALLY EXISTS.

C. UPON THE FILING OF THE APPLICATION FOR THE APPOINTMENT OF A RECEIVER UNDER THIS ARTICLE THERE SHALL BE A POSTPONEMENT FOR A PERIOD OF SIX MONTHS OF THE DATE UPON WHICH ANY PERIOD OF LIMITATIONS FIXED BY STATUTE OR AGREEMENT WOULD OTHERWISE EXPIRE ON A CLAIM OR RIGHT OF ACTION OF THE BANK OR UPON WHICH AN APPEAL MUST BE TAKEN OR A PLEADING OR OTHER DOCUMENT MUST BE FILED BY THE BANK IN ANY PENDING ACTION OR PROCEEDING.

6-395.06 **Rights, power and duties of a receiver**

A. THE RECEIVER SHALL HAVE ALL OF THE RIGHTS AND POWERS WHICH WERE HELD BY THE BANK.

B. THE RECEIVER SHALL, SUBJECT TO THE APPROVAL OF THE COURT:

1. TAKE POSSESSION OF AND PROTECT AND PRESERVE THE ASSETS, BOOKS AND RECORDS OF THE BANK AND COLLECT ALL OBLIGATIONS DUE THE BANK.

2. PROSECUTE, DEFEND OR COMPROMISE ALL ACTIONS INVOLVING CLAIMS BY OR AGAINST THE BANK.

3. PERFORM THE FIDUCIARY DUTIES OF THE BANK UNTIL RELIEVED OF SUCH DUTIES.

4. DEPOSIT AND INVEST THE FUNDS OF THE BANK.

5. PAY ALL EXPENSES OF THE SUPERINTENDENT IN POSSESSION AND OF THE RECEIVERSHIP, WHICH EXPENSES SHALL BE A FIRST CHARGE UPON THE ASSETS OF THE BANK AND SHALL BE FULLY PAID BEFORE FINAL DISTRIBUTION TO CREDITORS OR SHAREHOLDERS.

6. EXERCISE SUCH OTHER POWERS AND DUTIES AS MAY BE PROVIDED BY ORDER OF THE COURT.

C. THE RECEIVER MAY, SUBJECT TO APPROVAL OF THE COURT:

1. SELL, EXCHANGE OR OTHERWISE DISPOSE OF ANY PROPERTY OF THE BANK.

2. BORROW MONEY WITH OR WITHOUT SECURITY FOR THE PURPOSE OF FACILITATING LIQUIDATION, PROTECTING OR PRESERVING THE ASSETS OF THE BANK, EXPEDITING DISTRIBUTION TO DEPOSITORS OR OTHER CREDITORS, PROVIDING FOR EXPENSES OF ADMINISTRATION AND LIQUIDATION AND AIDING IN THE REOPENING OR REORGANIZATION OF THE BANK.

6-395.07 **Notice of liquidation; stay**

THE RECEIVER SHALL GIVE NOTICE OF HIS DETERMINATION TO LIQUIDATE THE BANK TO THE DIRECTORS, STOCKHOLDERS AND

CREDITORS BY SUCH MEANS AS THE COURT MAY PRESCRIBE. ANY OBJECTION TO THE LIQUIDATION SHALL BE FILED WITH THE COURT WITHIN THE TIME PRESCRIBED BY SUCH NOTICE. UNLESS WITHIN TEN DAYS AFTER THE TIME FIXED FOR FILING OBJECTIONS THE COURT ISSUES AN ORDER STAYING THE LIQUIDATION, THE RECEIVER SHALL PROCEED TO LIQUIDATE THE BANK.

6-395.08 **Rejection of contracts and leases on liquidation**

THE RECEIVER MAY AT HIS ELECTION REJECT ANY EXECUTORY CONTRACT TO WHICH THE BANK IS A PARTY OR ANY OBLIGATION OF THE BANK AS A LESSEE OF REAL OR PERSONAL PROPERTY. THE CLAIM OF A LESSOR FOR DAMAGES FOR INJURY RESULTING FROM THE REJECTION OF AN UNEXPIRED LEASE OF REAL PROPERTY OR FOR DAMAGES OR INDEMNITY UNDER A COVENANT IN SUCH LEASE SHALL IN NO EVENT BE ALLOWED IN ANY AMOUNT EXCEEDING THE RENT RESERVED BY THE LEASE, WITHOUT ACCELERATION, FOR SIX MONTHS AFTER THE DATE OF SURRENDER OR REENTRY, PLUS THE AMOUNT OF THE UNPAID RENT ACCRUED TO SUCH DATE.

6-395.09 **Notice to claimants on liquidation**

AS SOON AFTER THE COMMENCEMENT OF LIQUIDATION AS PRACTICABLE THE RECEIVER SHALL CAUSE NOTICE OF THE LIQUIDATION TO BE PUBLISHED IN A NEWSPAPER OF GENERAL CIRCULATION IN EACH COUNTY IN WHICH THE BANK HAS AN OFFICE, ONCE A WEEK FOR EIGHT SUCCESSIVE WEEKS. THE NOTICE SHALL DEMAND THAT ALL PERSONS WHO HAVE CLAIMS AGAINST THE BANK PRESENT THEM TO THE RECEIVER AND MAKE LEGAL PROOF THEREOF, IN ACCORDANCE WITH THE PROCEDURE PRESCRIBED IN THE NOTICE. THE RECEIVER SHALL MAIL A COPY OF THE NOTICE AT THE ADDRESS SHOWN ON THE RECORDS OF THE BANK, TO EACH PERSON WHO APPEARS FROM THE RECORDS TO BE A CREDITOR OF THE BANK, WITH THE ADVICE OF THE NATURE AND AMOUNT OF THE PURPORTED INDEBTEDNESS, PROVIDED THAT THE NOTICE IN RESPECT TO ANY INDEBTEDNESS TO WHICH THE FEDERAL DEPOSIT INSURANCE CORPORATION CLAIMS COMPLETE SUBROGATION NEED BE MADE ONLY TO THE CORPORATION. THE RECEIVER'S ADVICE OF A PURPORTED INDEBTEDNESS SHALL NOT BIND THE RECEIVER ON THE VALIDITY OR THE AMOUNT OF ANY CLAIM BASED THEREON.

6-395.10. **Disposition of unclaimed property**

A. AS SOON AFTER THE COMMENCEMENT OF LIQUIDATION AS PRACTICABLE THE RECEIVER SHALL GIVE NOTICE BY MAIL TO EACH PERSON AT THE ADDRESS SHOWN ON THE RECORDS OF THE BANK WHO APPEARS FROM THE RECORDS TO BE A BAILOR OF PROPERTY HELD BY THE BANK OR A LESSEE OF A SAFETY DEPOSIT REPOSITORY. THE NOTICE SHALL DEMAND THAT THE PROPERTY HELD BY THE BANK AS BAILEE OR LOCATED IN ITS SAFE DEPOSIT REPOSITORIES BE WITHDRAWN BY A DATE CERTAIN AND IF APPROPRIATE, THE NOTICE SHALL DESIGNATE THE NAME OF THE BANK THAT HAS ASSUMED THE OBLIGATIONS OF THE CLOSED BANK AS BAILEE OR REPOSITORY LESSOR AND THE PLACE WHERE THE REPOSITORY OR PROPERTY WILL BE LOCATED AFTER A SPECIFIED DATE.

B. IF THE OBLIGATIONS OF THE CLOSED BANK AS REPOSITORY LESSOR HAVE NOT BEEN ASSUMED BY ANOTHER BANK, THE SAFETY DEPOSIT REPOSITORY, THE CONTENTS OF WHICH HAVE NOT BEEN REMOVED BEFORE THE DATE SPECIFIED IN THE NOTICE UNDER SUBSECTION A, SHALL BE OPENED BY THE RECEIVER IN THE MANNER PROVIDED FOR REPOSITORIES UPON WHICH THE PAYMENT OF RENTAL IS IN DEFAULT. THE UNCLAIMED CONTENTS OF THE REPOSITORIES TOGETHER WITH ALL UNCLAIMED PROPERTY HELD BY THE BANK AS BAILEE SHALL BE DELIVERED BY THE RECEIVER TO THE CLERK OF THE COURT HAVING JURISDICTION OF THE RECEIVERSHIP TO BE DISPOSED OF PURSUANT TO SECTION 44-358 IF NOT THEREAFTER CLAIMED.

6-395.11 **Priority of claim**

THE FOLLOWING CLAIMS SHALL HAVE PRIORITY:

1. PREFERRED CLAIMS UNDER SECTION 44-2623.

2. WAGES AND SALARIES OF OFFICERS AND EMPLOYEES EARNED DURING THE ONE MONTH PERIOD PRECEDING THE SUPERINTENDENT'S POSSESSION.

3. OTHER CLAIMS TO THE EXTENT PROVIDED BY LAW.

6-395.12 **Payment of claims and distribution to stockholders on liquidation**

FROM TIME TO TIME AFTER FULL PROVISION HAS BEEN MADE FOR THE PAYMENT OF DISPUTED CLAIMS AND CLAIMS HAVING PRIORITY, THE RECEIVER, ON APPROVAL BY THE COURT, SHALL

MAKE RATABLE DISTRIBUTION ON ALL CLAIMS THAT HAVE BEEN PROVED TO HIS SATISFACTION OR ADJUDICATED IN A COURT OF COMPETENT JURISDICTION. AFTER ALL CLAIMS HAVE BEEN FINALLY SETTLED AND PAID, THE BALANCE OF THE ASSETS SHALL BE DISTRIBUTED TO THE STOCKHOLDERS OF THE BANK IN PROPORTION TO THE STOCK BY THEM RESPECTIVELY HELD.

6-395.13 **Voluntary liquidation and dissolution**

A BANK MAY VOLUNTARILY DISSOLVE AND WIND UP ITS AFFAIRS AS ANY OTHER CORPORATION UNDER THE PROVISIONS OF TITLE 10, BUT NO PLAN OF LIQUIDATION OR DISSOLUTION SHALL BE SUBMITTED TO THE STOCKHOLDERS UNTIL THE SUPERINTENDENT UPON APPLICATION BY THE BANK FINDS THAT THE BANK HAS ASSETS OF SUCH FORM AND AMOUNT AS TO PERMIT THE SATISFACTION IN FULL OF THE CLAIMS OF ALL DEPOSITORS IN ACCORDANCE WITH THEIR RIGHTS AND THAT THE PLAN CONTAINS PROPER PROVISION FOR SUCH SATISFACTION.

Sec. 3. Title 6, Arizona Revised Statutes, is amended by adding a new chapter 10, article 1, to read:

CHAPTER 10
SAFE DEPOSIT AND SAFEKEEPING
ARTICLE 1. GENERAL PROVISIONS

6-921. **Definitions**

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "LESSEE" MEANS A PERSON CONTRACTING WITH A LESSOR FOR THE USE OF A SAFE DEPOSIT REPOSITORY.

2. "LESSOR" MEANS A CORPORATION OR ASSOCIATION AUTHORIZED UNDER THE LAWS OF THIS STATE OR OF THE UNITED STATES TO DO BUSINESS AS A BANK, TRUST COMPANY, CREDIT UNION OR SAVINGS AND LOAN ASSOCIATION AND MAINTAINING SAFE DEPOSIT REPOSITORIES FOR PUBLIC USE.

3. "SAFE DEPOSIT REPOSITORY" OR "REPOSITORY" MEANS A SAFE DEPOSIT BOX OR OTHER SAFE DEPOSIT RECEPTACLE AND INCLUDES LESSOR'S VAULT SPACE MADE AVAILABLE FOR USE BY THE LESSEE IN COMMON WITH OTHERS FOR THE STORAGE OF PROPERTY OR DOCUMENTS.

6-922. **Legal relationship in use of safe deposit facilities**

A. THE RELATIONSHIP BETWEEN THE LESSOR AND THE LESSEE SHALL BE THAT OF LANDLORD AND TENANT IN THE ABSENCE OF A WRITTEN CONTRACT TO THE CONTRARY, NOTWITHSTANDING THAT THE LESSOR PRESCRIBES THE HOURS OF ENTRY INTO ITS REPOSITORIES, RETAINS AND REQUIRES THE USE OF A PREPARATION OR GUARD KEY AND IN THE CASE OF VAULT STORAGE RESERVES THE RIGHT TO CHANGE THE SPACE OCCUPIED BY LESSEES' PROPERTY OR DOCUMENTS FROM TIME TO TIME. THE RIGHTS, DUTIES, POWERS AND PRIVILEGES OF THE LESSOR IN THE TRANSACTION SHALL BE THAT OF LANDLORD AND FOR ALL PURPOSES THE LESSEE SHALL BE DEEMED BY LAW TO BE IN POSSESSION OF THE REPOSITORY AND THE CONTENTS THEREOF.

B. THE LESSOR SHALL NOT BE CHARGED WITH KNOWLEDGE OF THE CONTENTS OF ANY REPOSITORY. THE LESSOR MAY LIMIT ITS LIABILITY TO THE LESSEE BY PROVISIONS CONTAINED IN A LEASE, EXCEPT THAT THE LESSOR SHALL BE LIABLE FOR THE ACTS OF ITS OFFICERS AND EMPLOYEES FOR FAILURE TO EXERCISE ORDINARY CARE.

6-923. **Change of location of repositories**

A LESSOR MAY, DURING THE TERM OF ANY LEASE, MOVE ITS REPOSITORIES AND THE CONTENTS TO ANOTHER LOCATION UPON GIVING NOTICE TO THE LESSEES IN THE MANNER AND TIME REQUIRED BY SUCH REGULATIONS AS THE SUPERINTENDENT MAY ADOPT.

6-924. **Tenancy in two or more names; effect on estate tax**

A. A TENANCY IN A SAFE DEPOSIT REPOSITORY MAY BE CREATED BY CONTRACT WITH TWO OR MORE PERSONS. INCLUDING MINORS, NAMED AS LESSEES. THE TERMS OF THE CONTRACT MAY PROVIDE THAT ANY ONE OR MORE OF THE LESSEES, OR THE SURVIVOR OR SURVIVORS OF THE LESSEES SHALL HAVE ACCESS AND ENTRY TO THE REPOSITORY AND THE RIGHT TO REMOVE THE CONTENTS FROM THE REPOSITORY WHETHER THE OTHER LESSEE OR LESSEES BE LIVING, INCOMPETENT OR DEAD, AND THE LESSOR SHALL NOT BE LIABLE FOR THE REMOVAL OF ANY CONTENTS.

B. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO AFFECT THE PROVISIONS OF SECTION 42-1530 OR SECTION 42-1531.

6-925. **Lease to a minor**

A LEASE OF A REPOSITORY SHALL NOT BE INVALID OR VOIDABLE BY REASON OF THE MINORITY OF THE LESSEE OR LESSEES AND ALL RIGHTS AND LIABILITIES OF THE LESSOR AND ANY LESSEE ARISING OUT OF SUCH TRANSACTION AND ANY ACT OF THE PARTIES IN RELATION THERETO SHALL BE OF THE SAME LEGAL EFFECT AS IF THE MINOR WERE OF FULL LEGAL AGE.

6-926. **Adverse claims to repository; definitions**

A. NOTICE TO THE LESSOR OF AN ADVERSE CLAIM IS NOT EFFECTUAL TO REQUIRE THE LESSOR TO DENY ACCESS TO ANY PERSON PREVIOUSLY NAMED ON ITS RECORDS AS LESSEE OR AS OFFICER OR AGENT OF ANY LESSEE, NOR IS IT SUFFICIENT TO REQUIRE THE LESSOR TO ALLOW ACCESS TO THE REPOSITORY BY ANY ADVERSE CLAIMANT UNLESS THE LESSOR IS DIRECTED TO DO SO BY THE ORDER OF A COURT; PROVIDED IN THE ABSENCE OF SUCH COURT ORDER THE LESSOR MAY REFUSE TO ALLOW ACCESS TO ANY PERSON.

B. FOR THE PURPOSES OF THIS SECTION:

1. "ADVERSE CLAIM" MEANS A CLAIM BY A PERSON WHO IS NOT A NAMED LESSEE TO THE RIGHT OF ACCESS TO A SAFE DEPOSIT REPOSITORY OR TO ALL OR PART OF THE CONTENTS THEREOF. "ADVERSE CLAIM" ALSO INCLUDES THE CONFLICTING CLAIMS OF AGENTS OR OFFICERS OF THE LESSEE AND THE CLAIM OF ANY OF SEVERAL NAMED LESSEES TO THE EXCLUSIVE RIGHT OF ACCESS TO THE REPOSITORY CONTRARY TO THE TERMS OF THE LEASE.

2. "ADVERSE CLAIMANT" MEANS ANY PERSON ASSERTING AN ADVERSE CLAIM.

6-927. **Lessee's death or incompetency; revocation of power of attorney**

NEITHER THE DEATH NOR INCOMPETENCY OF A LESSEE REVOKES THE AUTHORITY OF A LESSOR TO DEAL WITH AN AGENT WHO HAS BEEN AUTHORIZED IN WRITING BY SUCH LESSEE

UNTIL THE LESSOR HAS ACTUAL KNOWLEDGE OF THE FACT OF DEATH OR OF AN ADJUDICATION OF INCOMPETENCY OF THE LESSEE, NOR IS THE REVOCATION OF AUTHORITY OF SUCH AGENT EFFECTIVE AS TO THE LESSOR UNTIL THE LESSOR RECEIVES WRITTEN NOTICE OF THE REVOCATION SIGNED BY THE INDIVIDUAL LESSEE WHO GRANTED THE AUTHORITY OR, IN THE CASE OF A CORPORATION, PARTNERSHIP OR ASSOCIATION, EVIDENCE SATISFACTORY TO THE LESSOR OF SUCH REVOCATION.

6-928. **Procedure on death of lessee; effect on estate tax**

A. IN THE EVENT ONLY ONE LESSEE IS NAMED IN THE LEASE OF A REPOSITORY AND THE LESSEE DIES, OR ON THE DEATH OF LAST SURVIVING LESSEE UNDER A TENANCY IN TWO OR MORE NAMES, THE REPOSITORY MAY BE OPENED BY TWO EMPLOYEES OF THE LESSOR IN THE PRESENCE OF ANY PERSON WHO PRESENTS HIMSELF AND CLAIMS TO BE INTERESTED IN THE CONTENTS. THE EMPLOYEES MAY REMOVE ANY DOCUMENT WHICH APPEARS TO BE OF A TESTAMENTARY NATURE AND DELIVER IT TO ANY PERSON NAMED IN THE DOCUMENT AS EXECUTOR OR TO A CLERK OF THE SUPERIOR COURT. THE EMPLOYEES MAY ALSO REMOVE ANY POLICIES INSURING THE LIFE OF THE DECEASED LESSEE AND DELIVER THEM TO THE BENEFICIARIES NAMED IN THE POLICIES. ALL OTHER CONTENTS OF THE REPOSITORY SHALL BE RETAINED BY THE LESSOR AND SHALL BE DELIVERED ONLY TO THE PERSON LEGALLY ENTITLED TO THEM.

B. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO AFFECT THE PROVISIONS OF SECTION 42-1530 OR SECTION 42-1531.

6-929. **Lessor's lien; default of lessee; or failure to surrender**

A. THE LESSOR SHALL HAVE A LANDLORD'S LIEN UPON THE CONTENTS OF A REPOSITORY FOR THE RENT.

B. IF THE LESSEE DOES NOT PAY THE RENT WITHIN SIX MONTHS AFTER IT IS DUE, OR FAILS TO SURRENDER POSSESSION OF THE REPOSITORY WITHIN SIX MONTHS FROM THE DATE OF TERMINATION OF THE LEASE, THEN THE LESSOR, AFTER GIVING NOT LESS THAN SIXTY DAYS' WRITTEN NOTICE TO THE LESSEE PERSONALLY OR BY REGISTERED MAIL ADDRESSED TO

THE LATEST ADDRESS SHOWN UPON THE SAFE DEPOSIT RECORDS OF THE LESSOR OF ITS INTENTION TO SELL THE CONTENTS OF THE REPOSITORY FOR THE PAYMENT OF RENT AND EXPENSES, MAY FORCIBLY OPEN THE REPOSITORY AND IN THE PRESENCE OF TWO OF ITS EMPLOYEES REMOVE AND INVENTORY THE CONTENTS AND SEAL THEM IN A PACKAGE WHICH SHALL BE PLACED IN THE GENERAL VAULTS OF LESSOR AT A RENTAL NOT EXCEEDING THE RENTAL PREVIOUSLY CHARGED FOR THE REPOSITORY; PROVIDED, THE EMPLOYEES MAY DELIVER TO A CLERK OF THE SUPERIOR COURT ANY DOCUMENT WHICH APPEARS TO BE OF A TESTAMENTARY NATURE. THE LESSOR SHALL RETAIN THE CONTENTS FOR AT LEAST NINETY DAYS THEREAFTER AND MAY THEN FORECLOSE ITS LIEN UNDER SECTION 33-1023 BUT THE UNCLAIMED SURPLUS FUNDS OR PROPERTY SHALL BE DISPOSED OF UNDER TITLE 44, CHAPTER 3.1.

Sec. 4. Section 6-449, Arizona Revised Statutes, is amended to read:

6-449. **General loan contract provisions**

A. Each loan, and any agreement for securing the same, shall be evidenced by one or more written instruments, consistent with sound lending practices in the locality, and whenever recording of such an agreement is necessary to establish priority over the claim of any third party, the agreement shall be recorded.

B. The loan contract terms shall afford full protection to the association, and shall include, among other things provisions for:

1. The payment of taxes, assessments, other governmental levies, maintenance and repairs, granting the association the right to make payments thereon or for any other item which, if unpaid, would create a lien prior to that of the loan contract.

2. Adequate insurance to cover the usual risks on the property offered as security for the loan, and in such form, coverage and amounts and in such company or companies as the board of directors may approve.

3. The right to repay the loan in whole or in part at any time, but the association may require payment of not more than six months' advance interest on that part of the aggregate amount of all prepayments on a loan in one year which exceeds the amount otherwise payable in such year under the terms of the loan.

C. The loan contract may provide for:

1. An assignment of rents.

2. Additional or future advances to be made at the option of the parties up to a total amount stated in the recorded security instrument.

3. Regular periodical payments to create a separate trust fund in the association to pay when due all taxes, assessments, insurance premiums, ground rents, and other current charges against the real estate security, and the application or crediting of such payments. All such funds so collected shall be promptly deposited in a separate trust bank account.

4. The payment or deduction of a premium charge for property insurance, life insurance or health and accident insurance assigned as collateral, mortgage guaranty insurance as provided in section 6-445, paragraph 6, or insurance of mortgages by the United States or any instrumentality thereof; actual costs of title examination or title insurance, appraisal, credit report, survey, drawing of papers, closing of loan, and other necessary incidental services in such reasonable amounts as are actually charged and as may be fixed by the board of directors, all of which shall be itemized on a loan settlement sheet delivered to the borrower at the time of closing the loan; but no person regularly serving the association shall receive from the association or other source any fee or compensation of any kind in connection with procuring a particular loan from or by such association.

5. A single initial service charge, premium or discount and a charge or penalty for nonpayment when due of agreed payments upon any loan, but no such charges, penalties or discount shall, when added to the interest charge of such loan, over the contractual term of the loan, exceed in the aggregate the applicable interest rate of this state, and no such charge or penalty shall be either compounded or cumulated. All such charges and penalties shall be accounted for as a part of the receipts of the association.

6. Any other covenant or agreement which the association may deem necessary or which is customary in the locality.

7. The charges herein authorized to be made shall be in addition to interest authorized by law and shall not be deemed as included therein, except as prohibited by ~~sections 6-254, 6-255,~~ SECTION 44-1205 and subsection C, paragraph 5, of this section.

D. If any payment required to be made by the borrower to discharge the performance of any obligation under the loan contract is not made, or if

any fund created for such payment is insufficient to discharge the obligation completely, the association may advance the same and add the required amount to the unpaid balance of the loan as of the first day of the month during which such advance was made, and the advance and interest thereon shall be secured by the security instrument.

E. The first payment on any regular installment loan, other than a construction loan, insured loan, or guaranteed loan, shall begin not later than sixty days after the advance of the loan. The first payment on a loan insured or guaranteed shall be upon terms acceptable to the insuring or guaranteeing agency. The first payment on a construction loan shall be not later than twelve months after the date of the first disbursement.

Sec. 5. Section 10-191, Arizona Revised Statutes, is amended to read:

10-191. **Imputed knowledge of director of corporate acts; personal liability; exception; director defined**

A. A director of a corporation or association is deemed to possess such knowledge of the affairs of the corporation or association as to enable him to determine whether any act, proceeding or omission of its directors is a violation of this article or sections ~~6-272, 6-367, 6-352, 6-353,~~ 6-392, 6-393, 13-315, 13-1009, or 40-811, and if present at a meeting of the directors at which any act, proceeding or omission of such directors, in violation of such article or sections occurs, is deemed to have concurred therein unless at the time he causes, or in writing requires, his dissent therefrom to be entered on the minutes of the directors. Although the director is not present, he is deemed to have concurred therein, if the facts constituting such violation appear on the records or minutes of the proceedings of the board, and he remains a director of such corporation or association for six months thereafter, and does not within that time cause, or in writing require, his dissent from such illegality to be entered on the minutes of the directors.

B. The term "director" as used in this article embraces any of the persons having by law the direction or management of the affairs of a corporation or association, by whatever name such persons are described in its charter or are known by law.

Sec. 6. Section 38-502, Arizona Revised Statutes, is amended to read:

38-502. **Definitions**

In this article, unless the context otherwise provides:

1. "Employee" means all persons who are not public officers who are employed on a full, part-time or contract basis by an incorporated city or town, a political subdivision or the state or any of its departments, commissions, agencies, bodies or boards for remuneration.

2. "Political subdivision" means all political subdivisions of the state and county, including all school districts.

3. "Public officer" means all elected and appointed officers of incorporated cities and towns, political subdivisions and the state, including all members of boards and commissions established by charter, ordinance, resolution or statute, but excluding members of the legislature.

4. "Relative" means the spouse, children, siblings and any relative of such persons by blood or marriage in the first degree, according to the rules of the civil law.

5. "Remote interest" means:

(a) That of a nonsalaried officer of a nonprofit corporation.

(b) That of a landlord or tenant of the contracting party.

(c) That of an attorney of a contracting party.

(d) That of a member of a nonprofit cooperative marketing association.

(e) The ownership of less than three per cent of the shares of a corporation for profit, provided the total annual income from dividends, including the value of stock dividends, from the corporation does not exceed five per cent of the total annual income of such officer or employee, and any other payments made to him by the corporation do not exceed five per cent of his total annual income.

(f) That of an officer in being reimbursed for his actual and necessary expenses incurred in the performance of official duty.

(g) That of a recipient of public services generally provided by the incorporated city or town, political subdivision or state department, commission, agency, body or board of which he is an officer or employee, on the same terms and conditions as if he were not an officer or employee.

(h) THAT OF A MEMBER OF THE HEARING BOARD PROVIDED FOR BY SECTION 6-365 OTHER THAN SUCH INTEREST SPECIFIED

IN SUBSECTION D OF SECTION 6-365 WHICH REQUIRES THAT THE MEMBER REFRAIN FROM PARTICIPATING IN THE PROCEEDING.

6. "Substantial interest" means any interest, either direct or indirect, other than a remote interest.

Sec. 7. Title 41, chapter 2, article 2, Arizona Revised Statutes, is amended by adding section 41-317, to read:

41-317. **Competency of bank and corporation notaries**

A. IT IS LAWFUL FOR A NOTARY PUBLIC WHO IS A STOCKHOLDER, DIRECTOR, OFFICER OR EMPLOYEE OF A CORPORATION TO TAKE THE ACKNOWLEDGMENT OR OATH OF ANY PARTY TO ANY WRITTEN INSTRUMENT EXECUTED TO OR BY THE CORPORATION, OR TO ADMINISTER AN OATH TO ANY OTHER STOCKHOLDER, DIRECTOR, OFFICER, EMPLOYEE OR AGENT OF THE CORPORATION, OR TO PROTEST FOR NONACCEPTANCE OR NONPAYMENT OF BILLS OF EXCHANGE, DRAFTS, CHECKS, NOTES AND OTHER NEGOTIABLE INSTRUMENTS WHICH MAY BE OWNED OR HELD FOR COLLECTION BY THE CORPORATION.

B. IT IS UNLAWFUL FOR ANY NOTARY PUBLIC TO TAKE THE ACKNOWLEDGMENT OF AN INSTRUMENT EXECUTED BY OR TO A CORPORATION OF WHICH HE IS A STOCKHOLDER, DIRECTOR, OFFICER OR EMPLOYEE, WHERE THE NOTARY IS A PARTY TO THE INSTRUMENT, EITHER INDIVIDUALLY OR AS A REPRESENTATIVE OF THE CORPORATION, OR TO PROTEST ANY NEGOTIABLE INSTRUMENT OWNED OR HELD FOR COLLECTION BY THE CORPORATION, WHERE THE NOTARY IS INDIVIDUALLY A PARTY TO THE INSTRUMENT.

Sec. 8. Section 44-352, Arizona Revised Statutes, is amended to read:

44-352. **Property held by banking or financial organizations**

The following property held or owing by a banking or financial organization is presumed abandoned:

1. Any demand, savings, or matured time deposit made in this state with a banking organization, together with any interest or dividend thereon, excluding any charges that may lawfully be withheld, unless the owner has, within seven years, increased or decreased the amount of deposit.

2. Any funds paid in this state toward the purchase of shares or other interest in a financial organization in this state and any interest or dividends thereon, excluding any charges that may lawfully be withheld, unless the owner has within seven years:

(a) Increased or decreased the amount of the funds or presented an appropriate record for the crediting of interest or dividends; or

(b) Corresponded in writing with the financial organization concerning the funds; or

(c) Otherwise indicated an interest in the funds or deposit as evidenced by a memorandum on file with the financial organization.

3. Any funds or other personal property, tangible or intangible, removed from a safe deposit box or any other safekeeping repository or agency or collateral deposit box in this state on which the lease or rental period has expired due to nonpayment of rental charges or other reason, or any surplus amounts arising from the sale thereof pursuant to law, that have been unclaimed by the owner for more than ~~seven years~~ ONE YEAR from the date on which the lease or rental period expired.

Sec. 9. Title 44, chapter 9, article 1, Arizona Revised Statutes, is amended by adding sections 44-1205 and 44-1206, to read:

44-1205. **Installment loans; additional charges**

A. IT IS LAWFUL TO MAKE INSTALLMENT LOANS OF THE FOLLOWING CLASSES:

1. IN A PRINCIPAL AMOUNT NOT TO EXCEED FIVE THOUSAND DOLLARS IF THE TOTAL PAYMENT FOR INTEREST OR DISCOUNT IS NOT IN EXCESS OF EIGHT DOLLARS PER ONE HUNDRED DOLLARS PER YEAR ON THE FIRST ONE THOUSAND DOLLARS AND SIX DOLLARS PER ONE HUNDRED DOLLARS PER YEAR ON THE AMOUNT OF THE LOAN IN EXCESS OF ONE THOUSAND DOLLARS, IN EACH EVENT TO BE CALCULATED FROM THE DATE OF THE INDEBTEDNESS TO THE DATE THE LAST INSTALLMENT BECOMES DUE, TO BE ADDED TO THE PRINCIPAL AMOUNT OF THE LOAN AND PAYABLE IN INSTALLMENTS, PROVIDED THE LENDER SHALL BE ENTITLED TO A MINIMUM CHARGE OF TEN DOLLARS FOR THE LOAN. SUBJECT TO THE RIGHT OF THE LENDER TO RETAIN THE MINIMUM CHARGE, IF THE LOAN IS PREPAID IN FULL BEFORE MATURITY BY CASH, RENEWAL OR REFINANCING THE BORROWER SHALL BE REFUNDED OR CREDITED A REBATE

OF INTEREST OR DISCOUNT COMPUTED PURSUANT TO THE RULE OF "78". THE BORROWER'S RIGHT OF REBATE SHALL NOT IMPAIR THE OBLIGATION OF THE BORROWER TO PAY ANY REASONABLE COLLECTION COSTS AND FEES INCURRED BY THE LENDER IN THE EVENT OF DELINQUENCY. WHERE THE AMOUNT OF REFUND OR CREDIT WOULD BE LESS THAN ONE DOLLAR NO REBATE NEED BE MADE.

2. UNDER A REVOLVING LOAN ACCOUNT OF A FINANCIAL INSTITUTION AS DEFINED BY SECTION 6-101, OR RESULTING FROM CHECK LOAN OR LENDER CREDIT CARD TRANSACTIONS, WHICH THE DEBTOR MAY PAY AT ANY TIME BUT HAS THE PRIVILEGE OF PAYING IN INSTALLMENTS, IF THE LOAN FINANCE CHARGE IS NOT PRECOMPUTED BUT IS COMPUTED SOLELY ON THE OUTSTANDING BALANCES OF THE DEBTOR'S ACCOUNT, THE CREDITOR MAY CHARGE A LOAN FINANCE CHARGE NOT TO EXCEED ONE AND ONE-THIRD PER CENT PER MONTH ON THE UNPAID BALANCES OF THE ACCOUNT, CALCULATED AS OF THE REGULAR MONTHLY BILLING DATE OR ON THE ACTUAL DAILY BALANCES OUTSTANDING. IF A LENDER MAKES A LOAN TO A DEBTOR BY PURCHASING OR SATISFYING OBLIGATIONS OF THE DEBTOR PURSUANT TO A LENDER CREDIT CARD OR SIMILAR ARRANGEMENT, AND THE PURCHASE OR SATISFACTION IS MADE AT LESS THAN THE FACE AMOUNT OF THE OBLIGATION, THE DISCOUNT IS NOT A PART OF THE LOAN FINANCE CHARGE. IF AN ARRANGEMENT CONSTITUTES BOTH A REVOLVING LOAN ACCOUNT UNDER THIS PARAGRAPH AND A RETAIL INSTALLMENT TRANSACTION UNDER SECTION 44-6001, IT SHALL BE GOVERNED BY THE PROVISIONS OF THIS PARAGRAPH OR OF SECTION 44-6001, AS THE PARTIES MAY AGREE.

B. THE LENDER SHALL NOT CHARGE OR RECEIVE ANY SUM IN ADDITION TO THE INTEREST, DISCOUNT OR FINANCE CHARGE AUTHORIZED BY SUBSECTION A FOR PREPARING A LOAN APPLICATION, FOR INVESTIGATING THE CREDIT OF AN APPLICANT OR HIS GUARANTOR, FOR APPRAISING ANY PROPERTY OFFERED AS SECURITY, FOR EXAMINING PUBLIC RECORDS OF LIENS OR ENCUMBRANCES OR OTHERWISE FOR SERVICES, EXPENSES, BROKERAGE OR FINES, WHETHER A LOAN IS GRANTED OR NOT, EXCEPT THE LAWFUL FEES ACTUALLY AND NECESSARILY PAID OUT BY THE LENDER TO A PUBLIC OFFICER FOR FILING OR RECORDING IN A PUBLIC OFFICE, FOR ACKNOWLEDGING THE INSTRUMENT SECURING THE LOAN, AND FOR COSTS OF OBTAINING A PRELIMINARY TITLE REPORT OR

TITLE INSURANCE POLICY. IF GREATER AGGREGATE CHARGES ARE COLLECTED OR RECEIVED ON A LOAN THAN THE MAXIMUM CHARGES AUTHORIZED BY THIS SECTION THE LOAN SHALL BE USURIOUS.

44-1206. **Effect of obligations insured or guaranteed by the United States**

NO LAW REQUIRING SECURITY UPON WHICH LOANS MAY BE MADE, PRESCRIBING THE NATURE, AMOUNT OR FORM OF SUCH SECURITY, PRESCRIBING OR LIMITING INTEREST RATES UPON LOANS, OR PRESCRIBING OR LIMITING THE PERIOD FOR WHICH LOANS MAY BE MADE, SHALL APPLY TO LOANS, ADVANCES OF CREDIT, OR PURCHASES OF OBLIGATIONS REPRESENTING LOANS AND ADVANCES OF CREDIT PAYMENT OF WHICH IS INSURED OR GUARANTEED BY THE UNITED STATES OR ANY AGENCY OR INSTRUMENTALITY THEREOF.

Sec. 10. Title 44, chapter 11, Arizona Revised Statutes, is amended by adding article 8, sections 44-1721 through 44-1725, to read:

ARTICLE 8. PREARRANGED FUNERAL PLANS

44-1721. **Prearranged funeral plan agreement defined**

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES, "PREARRANGED FUNERAL PLAN AGREEMENT" MEANS AN AGREEMENT PROVIDING FOR THE FINAL DISPOSITION OF A DEAD HUMAN BODY UNDER WHICH PAYMENTS ARE MADE FOR THE PURCHASE OF PERSONAL PROPERTY OR SERVICES OR BOTH WHICH ARE TO BE DELIVERED OR PERFORMED SUBSEQUENT TO THE DEATH OF THE PERSON FOR WHOSE BENEFIT THE AGREEMENT IS MADE, EXCEPT WHERE OTHERWISE REGULATED BY STATUTE OR STATE AGENCY.

44-1722. **Terms of agreement; trust fund**

A PREARRANGED FUNERAL PLAN AGREEMENT SHALL BY ITS TERMS PROVIDE THAT ALL MONIES PAID UNDER THE AGREEMENT SHALL BE DEPOSITED OR INVESTED IN A SEPARATE TRUST ACCOUNT WITH A BANK OR SAVINGS AND LOAN ASSOCIATION DOING BUSINESS IN THIS STATE, TO BE HELD BY THE FINANCIAL INSTITUTION UNTIL THE DEATH OF THE PERSON FOR WHOSE BENEFIT THE AGREEMENT IS MADE, SUBJECT TO

RELEASE ON DEMAND OF SUCH PERSON DURING HIS LIFETIME, AND UPON HIS DEATH TO BE PAID TO THE PERSON OBLIGATED UNDER THE AGREEMENT TO FURNISH THE SERVICES OR PROPERTY. IF THE PERSONAL PROPERTY OR SERVICES ARE NOT DELIVERED AND PERFORMED AS PROVIDED IN THE AGREEMENT THE TRUST FUND SHALL BE PAID TO A SURVIVING RELATIVE PURSUANT TO SECTION 14-512 UPON THE STATEMENT OF SUCH ADDITIONAL FACT IN THE AFFIDAVIT OF THE RELATIVE.

44-1723. **Deposit of payment**

ANY PERSON RECEIVING PAYMENT UNDER A PREARRANGED FUNERAL PLAN AGREEMENT SHALL WITHIN THREE DAYS OF SUCH RECEIPT PAY THE FUNDS INTO THE TRUST ACCOUNT ESTABLISHED FOR SUCH AGREEMENT.

44-1724. **Disposition of trust fund proceeds**

UPON BEING SATISFIED OF THE DEATH OF THE PERSON FOR WHOSE BENEFIT A PREARRANGED FUNERAL PLAN AGREEMENT WAS MADE THE FINANCIAL INSTITUTION HOLDING THE TRUST ACCOUNT SHALL PAY OVER SUCH FUNDS TO THE PERSON WHO IS OBLIGATED TO FURNISH THE PERSONAL PROPERTY OR SERVICES OR ON RECEIPT OF THE AFFIDAVIT OF A SURVIVING RELATIVE UNDER SECTION 44-1722 TO SUCH SURVIVING RELATIVE AND THE FINANCIAL INSTITUTION SHALL BE RELIEVED OF ANY FURTHER LIABILITY ON ACCOUNT THEREOF.

44-1725. **Violation; penalty**

ANY PERSON WHO SELLS, OFFERS TO SELL OR PROMOTES ANY PREARRANGED FUNERAL PLAN AGREEMENT WHICH DOES NOT COMPLY WITH SECTION 44-1722 OR WHO SHALL VIOLATE ANY PROVISIONS OF THIS ARTICLE SHALL BE GUILTY OF A MISDEMEANOR.

Approved by the Governor–May 3, 1973

Filed in the Office of the Secretary of State–May 4, 1973

LAWS OF ARIZONA

CHAPTER 117

Senate Bill 1152

AN ACT

MAKING A SUPPLEMENTAL APPROPRIATION TO THE ARIZONA WATER COMMISSION TO PROVIDE FUNDS FOR FLOOD CONTROL PURPOSES.

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

Section 1. **Legislative intent**

It is the intent of this legislature to provide flood control projects in the state of Arizona to preserve life and property wherever possible and accomplish this intent in the most economical means possible. In Public Law 90-537, 82 Stat. 885, et. seq., the Congress of the United States provided for the construction of the Central Arizona Project and related facilities. The construction of many of the flood control projects proposed for Central Arizona will either affect or be affected by the Central Arizona Project. Concurrent construction of these projects and the Central Arizona Project will result in substantial savings both for the federal government and local interests. Unless the state provides planning assistance to the federal government the planning and construction of six of the flood control projects will not be completed in time to realize savings of 10 to 20 million dollars.

Sec. 2. **Appropriation; purpose; exemption**

A. In addition to the appropriations made by chapter 198 and chapter 216, subdivision 97, Laws 1972, the sum of one hundred ~~fifty~~ sixty-three thousand five hundred dollars is appropriated to the Arizona Water Commission as the first annual appropriation for an estimated six year program to be used by the Arizona Water Commission to provide planning staff assistance to such agencies of the United States Government as are involved in planning and constructing flood control projects related to and affecting the Central Arizona Project Aqueduct system as provided in the "Colorado River Basin Project Act" (Public Law 90-537, 82 Stat. 885, et. seq.).

B. The appropriation made by this act is exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations.

Sec. 3. **Emergency**

To preserve the public peace, health and safety it is necessary that this act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.

Approved by the Governor–May 3, 1973

Filed in the Office of the Secretary of State–May 4, 1973

CHAPTER 118

Senate Bill 1226

AN ACT

RELATING TO MOTOR VEHICLES; PROVIDING FOR RIGHT-OF-WAY FOR A FUNERAL PROCESSION; PRESCRIBING RIGHTS AND PRIVILEGES FOR DRIVERS OF FUNERAL ESCORT VEHICLES; AUTHORIZING SHERIFFS TO REGISTER FUNERAL ESCORT VEHICLES AND ISSUE IDENTIFICATION STICKERS OR PLATES THEREFOR, AND AMENDING TITLE 28, CHAPTER 6, ARTICLE 9, ARIZONA REVISED STATUTES, BY ADDING SECTION 28-776.

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

Section 1. Title 28, chapter 6, article 9, Arizona Revised Statutes, is amended by adding section 28-776, to read:

28-776. **Funeral procession right-of-way; funeral escort vehicles; lighted headlights and removable emblems; definition**

A. PEDESTRIANS AND THE OPERATORS OF ALL VEHICLES, EXCEPT EMERGENCY VEHICLES, SHALL YIELD THE RIGHT-OF-WAY TO EACH VEHICLE WHICH IS A PART OF A FUNERAL PROCESSION BEING LED BY A FUNERAL ESCORT VEHICLE. THE DRIVER OF THE FUNERAL ESCORT VEHICLE MAY DIRECT THE DRIVERS OF OTHER VEHICLES IN THE PROCESSION TO PROCEED THROUGH ANY INTERSECTION OR TO MAKE TURNS OR OTHER MOVEMENTS AND SUCH OTHER VEHICLES MAY CONTINUE TO

FOLLOW AND MAKE SUCH TURNS OR OTHER MOVEMENTS AS ARE MADE BY OR AS DIRECTED BY THE DRIVER OF THE FUNERAL ESCORT VEHICLE NOTWITHSTANDING ANY TRAFFIC CONTROL DEVICE PRESCRIBED BY STATUTE OR LOCAL ORDINANCE, EXCEPT THAT SUCH OPERATOR SHALL NOT EXCEED THE POSTED SPEED LIMIT AND SHALL EXERCISE REASONABLE AND PRUDENT CARE TO AVOID COLLIDING WITH ANY OTHER VEHICLE OR PEDESTRIAN UPON THE ROADWAY. EACH VEHICLE IN A FUNERAL PROCESSION SHALL HAVE ITS HEADLIGHTS LIGHTED. FUNERAL ESCORT VEHICLES MAY EXCEED THE SPEED LIMIT BY FIFTEEN MILES PER HOUR WHEN OVERTAKING PROCESSIONS TO DIRECT TRAFFIC AT THE NEXT INTERSECTION.

B. A FUNERAL ESCORT VEHICLE SHALL BE EQUIPPED WITH AT LEAST ONE LIGHTED LAMP EXHIBITING RED LIGHT VISIBLE UNDER NORMAL ATMOSPHERIC CONDITIONS FROM A DISTANCE OF FIVE HUNDRED FEET TO THE FRONT OF THE VEHICLE. THE SHERIFF IN EACH COUNTY SHALL REGISTER FUNERAL ESCORT VEHICLES AND ISSUE AN IDENTIFICATION STICKER OR PLATE WHICH SHALL BE AFFIXED TO SUCH VEHICLE SO AS TO IDENTIFY SUCH VEHICLE AS A FUNERAL ESCORT VEHICLE. WHEN ACTING AS A FUNERAL ESCORT, THE DRIVER OF A PROPERLY EQUIPPED AND REGISTERED FUNERAL ESCORT VEHICLE SHALL HAVE ALL OF THE RIGHTS AND PRIVILEGES OF A DRIVER OF AN AUTHORIZED EMERGENCY VEHICLE PROCEEDING TO AN EMERGENCY CALL, AS PROVIDED UNDER SECTION 28-624.

C. FOR THE PURPOSES OF THIS SECTION, "FUNERAL PROCESSION" MEANS TWO OR MORE VEHICLES ACCOMPANYING THE BODY OF A DECEASED PERSON, INCLUDING A FUNERAL ESCORT VEHICLE REGISTERED BY THE SHERIFF.

Approved by the Governor–May 3, 1973

Filed in the Office of the Secretary of State–May 4, 1973

LAWS OF ARIZONA

CHAPTER 119

Senate Bill 1259

AN ACT

RELATING TO INSURANCE; PROHIBITING A MEMBER INSURER OF THE ARIZONA INSURANCE GUARANTY ASSOCIATION FROM SUBROGATION OR RECOVERY AGAINST INSURED OF INSOLVENT INSURER, AND AMENDING SECTION 20-668, ARIZONA REVISED STATUTES.

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

Section 1. Section 20-668, Arizona Revised Statutes, is amended to read:

20-668. **Nonduplication of recovery; exhausting all other applicable coverages; rights of association and member insurers**

A. Any person having a claim against his insurer under any provision in his insurance policy which is also a covered claim shall be required to exhaust first his right under such policy. Any amount payable on a covered claim under this article shall be reduced by the amount of such recovery under the claimant's insurance policy. A MEMBER INSURER OR ANY OTHER INSURER, WHICH PAYS UNDER ITS OWN POLICY, SHALL HAVE NO RIGHT OF SUBROGATION OR RECOVERY AGAINST THE INSURED OF AN INSOLVENT INSURER.

B. Any person having a claim which may be recovered under more than one insurance guaranty association or its equivalent or who is insured under more than one policy, shall seek recovery first from the association of the place of residence of the insured except that if it is a first-party claim for damage to property with a permanent location, from the association of the location of the property, or shall first exhaust coverage under such other policy. Any recovery under this article shall be reduced by the amount of the recovery from any other insurance guaranty association or its equivalent or under another policy. COVERED CLAIMS BY SUBSCRIBERS OF AN INSOLVENT RECIPROCAL INSURER SHALL NOT BE PAID UNTIL ALL SUBSCRIBERS HAVE BEEN ASSESSED IN ACCORDANCE WITH THE PROVISIONS OF SECTION 20-786.

C. A policy issued by the insolvent insurer shall not be deemed to be "excess" or "concurrent" coverage unless the policy provisions so provide.

The claimant shall be required to exhaust his rights under other applicable coverage or coverages. Any amount payable on a covered claim shall be reduced by the amount of such recovery under other applicable insurance.

D. If damages against uninsured motorists are recoverable by the claimant from his own insurer, such damages recoverable shall be a credit against a covered claim payable under this article, providing that the full amount of such uninsured motorist coverage has been exhausted. Such claimant shall have no claim against the insured of the insolvent carrier or the association if the full amount of uninsured motorist coverage was not recovered by such claimant. A member insurer shall have no right of subrogation against the insured of the insolvent carrier or against the association for any amount paid by such insurer under uninsured motorist coverage. A member insurer may file a claim for such subrogation payments under uninsured motorist coverage against the ancillary or domiciliary receiver of the insolvent insurer.

E. The association shall receive the proceeds of any amounts recoverable on reinsurance contracts or treaties entered into by the insolvent insurer which cover any of the liabilities incurred by the insolvent insurer in the category or categories involved, provided such proceeds shall be limited to payments upon or loss adjustment expenses or defense costs actually incurred by the association on account of claims covered in such contracts or treaties. The director of insurance, as receiver or ancillary receiver, shall receive the proceeds of any reinsurance recoverable to the extent of payments on claims, loss adjustment expenses or defense costs made prior to the order of liquidation.

Approved by the Governor–May 4, 1973

Filed in the Office of the Secretary of State–May 4, 1973

CHAPTER 120

Senate Bill 1294

AN ACT

RELATING TO PUBLIC OFFICERS AND EMPLOYEES; PROVIDING FOR ADDITIONAL BENEFITS FOR FIREMEN RETIRED PRIOR TO JULY 1, 1968; PRESCRIBING PROCEDURES; AMENDING

SECTION 38-841, ARIZONA REVISED STATUTES, AND AMENDING TITLE 38, CHAPTER 5, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTION 38-856.

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

Section 1. Section 38-841, Arizona Revised Statutes, is amended to read:

38-841. **Purpose**

A. Prior to the establishment of the public safety personnel retirement system, municipal firemen and policemen, employees of the Arizona highway patrol, and other public safety personnel in the state of Arizona were covered under various local, municipal, and state retirement programs. These heterogeneous programs provided for wide and significant differentials in employee contribution rates, benefit eligibility provisions, types of benefit protection, and benefit formulas.

B. In order to provide a uniform, consistent and equitable statewide program for public safety personnel who are regularly assigned hazardous duty in the employ of the state of Arizona or a political subdivision thereof, this retirement system was created effective as of July 1, 1968, as an amendment to and continuation of three prior systems. Groups of employees covered under the three prior systems as of June 30, 1968, and the assets and liabilities accumulated thereunder for such employees, are transferred with prior service credits to this retirement system as of the effective date, and both they and their employers shall be required to make stipulated contributions to support the system's benefit structure on a sound actuarial basis. Future employees in such groups shall commence participation in, and contributions to, the system immediately upon commencement of covered employment.

C. The provisions of this system shall not be construed to authorize the granting of any retirement benefits to persons who are retired as of the effective date of this article, except as described in sections 38-849 ~~and~~, 38-853 AND 38-856 of this article.

D. Additional eligible groups of public safety personnel will participate in the sytem pursuant to election by their employer for such coverage under an appropriate joinder agreement.

Sec. 2. Title 38, chapter 5, article 4, Arizona Revised Statutes, is amended by adding section 38-856, to read:

38-856. **Previously retired firemen; widow or dependent; hardship pension; income statement; income limits; annual review**

A. ANY FULL-TIME PAID MUNICIPAL FIREMAN RETIRED PRIOR TO JULY 1, 1968, OR A SURVIVING SPOUSE OR DEPENDENT OF SUCH FIREMAN, MAY PETITION THE LOCAL BOARD OF HIS LAST MUNICIPAL EMPLOYER FOR A HARDSHIP PENSION ADJUSTMENT.

B. SUCH PETITION SHALL CONTAIN A STATEMENT OF INCOME FROM ALL SOURCES, INCLUDING CURRENT BENEFITS AND SOCIAL SECURITY PAYMENTS. IF THE TOTAL OF SUCH INCOME IS LESS THAN THREE HUNDRED DOLLARS PER MONTH, THE LOCAL BOARD MAY AUTHORIZE AN ADDITIONAL PENSION ADJUSTMENT, IN SUCH AMOUNT AS THE LOCAL BOARD MAY DEEM NECESSARY, BUT NOT TO EXCEED AN AMOUNT SUCH THAT THE PETITIONER'S TOTAL INCOME FROM THE PENSION FUND AND OTHER SOURCES EXCEEDS THREE HUNDRED DOLLARS PER MONTH.

C. ADDITIONAL STATEMENTS OF INCOME AND REVIEW BY THE LOCAL BOARD OF ELIGIBILITY FOR SUCH ADDITIONAL PENSION ADJUSTMENT SHALL BE REQUIRED AT LEAST ONCE EACH YEAR.

D. ANY ADDITIONAL COSTS INCURRED PURSUANT TO THIS SECTION SHALL BE BORNE BY THE FIREMAN'S LAST MUNICIPAL EMPLOYER.

Approved by the Governor–May 4, 1973

Filed in the Office of the Secretary of State–May 4, 1973

CHAPTER 121

Senate Bill 1330

AN ACT

MAKING AN APPROPRIATION TO THE ARIZONA LEGISLATURE.

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

Section 1. **Appropriation; purpose**

The sum of two hundred fifty thousand dollars is appropriated to the state senate and the sum of one hundred eighteen thousand dollars is appropriated to the state house of representatives to become immediately available for the payment of the current and contingent expenses thereof.

Sec. 2. **Exemption**

The sums appropriated under the terms of section 1 are exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations.

Sec. 3. **Emergency**

To preserve the public peace, health and safety it is necessary that this act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.

Approved by the Governor–May 4, 1973

Filed in the Office of the Secretary of State–May 4, 1973

CHAPTER 122

Senate Bill 1313

AN ACT

RELATING TO PUBLIC HEALTH; PROHIBITING SMOKING IN CERTAIN PUBLIC AREAS, AND AMENDING TITLE 36, CHAPTER 6, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 36-601.01.

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

Section 1. Title 36, chapter 6, article 1, Arizona Revised Statutes, is amended by adding section 36-601.01, to read:

36-601.01. **Smoking in certain public areas; violation; penalty**

A. SMOKING TOBACCO IN ANY FORM IS A PUBLIC NUISANCE AND DANGEROUS TO PUBLIC HEALTH IF DONE IN ANY

ELEVATOR, INDOOR THEATER, LIBRARY, ART MUSEUM, CONCERT HALL OR BUS WHICH IS USED BY OR OPEN TO THE PUBLIC.

B. A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR PUNISHABLE BY A FINE OF NOT LESS THAN TEN DOLLARS NOR MORE THAN ONE HUNDRED DOLLARS.

C. THIS SECTION DOES NOT PROHIBIT SMOKING IN THE AREAS LISTED IN SUBSECTION A IF THE SMOKING IS CONFINED TO AREAS DESIGNATED AS SMOKING AREAS.

Approved by the Governor—May 4, 1973

Filed in the Office of the Secretary of State—May 4, 1973

CHAPTER 123

Senate Bill 1019

AN ACT

RELATING TO TAXATION AND TAXATION OF INCOME; ESTABLISHING THE DEPARTMENT OF REVENUE; TRANSFERRING THE POWERS AND DUTIES OF THE DEPARTMENT OF PROPERTY VALUATION AND THE ESTATE TAX COMMISSIONER AND CERTAIN FUNCTIONS OF THE STATE TAX COMMISSION TO THE DEPARTMENT; PRESCRIBING TAX APPEAL PROCEDURES; AMENDING SECTIONS 3-129, 5-401, 5-402, 10-367, 12-882 AND 12-885 THROUGH 12-889, ARIZONA REVISED STATUTES; REPEALING SECTION 35-193, ARIZONA REVISED STATUTES; AS AMENDED BY LAWS 1972, CHAPTER 212, SECTION 1; AMENDING SECTION 35-193, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1972, CHAPTER 141, SECTION 52; AMENDING SECTIONS 35-501, 35-502 AND 42-107, ARIZONA REVISED STATUTES; REPEALING SECTION 42-109, ARIZONA REVISED STATUTES; AMENDING TITLE 42, CHAPTER 1, ARIZONA REVISED STATUTES, BY ADDING ARTICLES 1.1 AND 1.2; REPEALING SECTIONS 42-121 AND 42-122, ARIZONA REVISED STATUTES; AMENDING SECTION 42-123, ARIZONA REVISED STATUTES; REPEALING SECTION 42-125, ARIZONA REVISED STATUTES; AMENDING SECTION

42-126, ARIZONA REVISED STATUTES; REPEALING SECTION 42-129, ARIZONA REVISED STATUTES; AMENDING SECTIONS 42-141 AND 42-142, ARIZONA REVISED STATUTES; AMENDING TITLE 42, CHAPTER 1, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 42-142.01 THROUGH 42-142.03; AMENDING SECTIONS 42-144, 42-145, 42-146, 42-151, 42-152, 42-201, 42-224, 42-245, 42-245.02, 42-248, 42-272, 42-382, 42-405, 42-606 AND 42-632, ARIZONA REVISED STATUTES, AMENDING SECTION 42-641, AS AMENDED BY LAWS 1973, CHAPTER 33, SECTION 1; AMENDING SECTIONS 42-644, 42-701, 42-704, 42-705, 42-721 THROUGH 42-726, 42-741, 42-745, 42-745.01, 42-746, 42-747, 42-761, 42-791, 42-792, 42-795, 42-901, 42-1201, 42-1202, 42-1203, 42-1205 AND 42-1206, ARIZONA REVISED STATUTES; AMENDING SECTION 42-1207, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1973, CHAPTER 8, SECTION 1; AMENDING SECTIONS 42-1207.01 AND 42-1210, ARIZONA REVISED STATUTES; AMENDING SECTION 42-1211, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1973, CHAPTER 8, SECTION 2; AMENDING SECTIONS 42-1212, 42-1212.01, 42-1213 THROUGH 42-1217 AND 42-1301 THROUGH 42-1304, ARIZONA REVISED STATUTES; REPEALING SECTIONS 42-1305 AND 42-1306, ARIZONA REVISED STATUTES; AMENDING SECTIONS 42-1307, 42-1308, 42-1309, 42-1316, 42-1317, 42-1318, 42-1321, 42-1322, 42-1323, 42-1326, 42-1327 AND 42-1330 THROUGH 42-1338, ARIZONA REVISED STATUTES; AMENDING TITLE 42, CHAPTER 8, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 42-1338.01; AMENDING SECTIONS 42-1339 AND 42-1340, ARIZONA REVISED STATUTES; AMENDING SECTION 42-1341, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1972, CHAPTER 142, SECTION 59; AMENDING SECTIONS 42-1341.01, 42-1342 THROUGH 42-1346, 42-1361, 42-1362, 42-1371, 42-1372 AND 42-1401, ARIZONA REVISED STATUTES; REPEALING SECTIONS 42-1403 THROUGH 42-1405, ARIZONA REVISED STATUTES; AMENDING SECTIONS 42-1406, 42-1407, 42-1408, 42-1411 THROUGH 42-1415, ARIZONA REVISED STATUTES; AMENDING TITLE 42, CHAPTER 8, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 42-1415.01; AMENDING SECTIONS 42-1417, 42-1418, 42-1421, 42-1422, 42-1423, 42-1451 AND 42-1501, ARIZONA REVISED STATUTES; REPEALING SECTIONS 42-1504 AND 42-1505, ARIZONA REVISED STATUTES; AMENDING SECTION 42-1519, ARIZONA REVISED STATUTES; AMENDING TITLE 42, CHAPTER 9, ARTICLE 1, ARIZONA

REVISED STATUTES, BY ADDING SECTION 42-1519.01; REPEALING SECTION 42-1520, ARIZONA REVISED STATUTES; AMENDING TITLE 42, CHAPTER 9, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 42-1520; AMENDING SECTION 43-101, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1973, CHAPTER 7, SECTION 4; AMENDING SECTIONS 43-175 AND 43-177, ARIZONA REVISED STATUTES; AMENDING SECTION 43-184, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1973, CHAPTER 7, SECTION 24; AMENDING SECTION 43-186, ARIZONA REVISED STATUTES; AMENDING SECTIONS 44-351, 44-361 THROUGH 44-365, 44-365.01, 44-366 THROUGH 44-375, 45-2202 AND 45-2204, ARIZONA REVISED STATUTES; REPEALING SECTION 45-2206, ARIZONA REVISED STATUTES, AND AMENDING TITLE 45, CHAPTER 9, ARTICLE 8, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 45-2206.

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

Section 1. **Legislative intent**

This act establishes the department of revenue and:

1. Transfers to the department the powers and duties of the department of property valuation and the estate tax commissioner.

2. Transfers certain functions of the state tax commission to the department.

3. Provides for a state board of tax appeals which assumes the functions of the state board of property tax appeals and also acts as an appellate board for other taxes.

Sec. 2. Section 3-129, Arizona Revised Statutes, is amended to read:

3-129. **Farm data collection**

A. The ~~state tax commission~~ DEPARTMENT OF REVENUE shall direct the tax assessor of each county, at the time of making the annual assessment of property, to ascertain:

1. The acreage of each farm crop then growing or grown the previous year in the county or assessment district.

2. The numbers of each class of ~~live stock~~ LIVESTOCK.

3. Other data relating to agricultural resources of the state required by the United States department of agriculture as specified in forms and instructions furnished by the department.

B. The statistics shall be forwarded to the department of agriculture not later than thirty days after completion of the annual assessment.

Sec. 3. Section 5-401, Arizona Revised Statutes, is amended to read:

5-401. **Definitions**

In this chapter, unless the context otherwise requires:

1. "Charitable organization" means any organization, not for pecuniary profit, which is operated for the relief of poverty, distress or other condition of public concern within this state, and which has been so engaged for two years prior to making application for a license under this article.

2. "Chartered branch or lodge or chapter of a national or state organization" means any branch or lodge or chapter of a national or state qualified organization.

3. "Equipment" means the receptacle and numbered objects drawn from it, the master board upon which such objects are placed as drawn, the cards or sheets bearing numbers or other designations to be covered and the objects used to cover them, the board or signs, however operated, used to announce or display the numbers or designations as they are drawn, public address system, and all other articles essential to the operation, conduct and playing of bingo.

4. "Fraternal organization" means any organization within this state, except college and high school fraternities, not for pecuniary profit, which is a branch or lodge or chapter of a national or state organization and exists for the common business, brotherhood, or other interests of its members and which has so existed for two years prior to making application for a license under this article.

5. "Gross receipts" means receipts from the sale of shares, tickets or rights in any manner connected with participation in a game of bingo or the right to participate therein, including any admission fee or charge, the sale of equipment or supplies, and all other miscellaneous receipts.

6. "Lawful purposes" means educational, charitable, patriotic or religious purposes which benefit an indefinite number of persons under the

influence of education or religion, by relieving their bodies from disease, suffering, or constraint, by assisting them in establishing themselves in life, or by erecting or maintaining public buildings or works, or otherwise lessening the burden of government. Such terms do not include the erection, acquisition, improvement, maintenance or repair of property, real, personal or mixed, unless such property is and shall be used exclusively for one or more of the purposes stated in this section.

7. "Lawful use" means the devotion of the entire net proceeds of a game of bingo exclusively to a lawful purpose or to lawful purposes.

8. "Licensee" means any qualified organization to which a license has been issued by the licensing authority.

9. "Licensing authority" means the ~~state tax commission~~ DEPARTMENT OF REVENUE.

10. "Local governing body" means the governing body of a city or town or the board of supervisors of the county for locations outside a city or town.

11. "Member" means an individual who has qualified for membership in a qualified organization pursuant to its bylaws, articles of incorporation, charter, rules or other written statement.

12. "Net proceeds" means the receipts less such expenses, charges, fees and deductions as are specifically authorized under this article.

13. "Occasion" means a single gathering or session at which a series of successive bingo games is played not to exceed thirty-five in number.

14. "Person" means a natural person, firm, association, corporation or other legal entity.

15. "Premises" means any room, hall, enclosure or outdoor area used for the purpose of playing a game of bingo.

16. "Qualified organization" means any bona fide charitable, fraternal, religious, social, as defined in section 43-147, subsection (a), paragraph 7, veterans' or volunteer firemen's organization or any chartered branch or lodge or chapter of such an organization which operates without profit to its members and which has been in existence continuously for a period of two years immediately prior to the making of an application for a license under this article.

17. "Religious organization" means any organization, church, body of communicants or group, not for pecuniary profit, gathered in common membership for regular worship and religious observances and which organization has been so gathered or united for two years prior to making application for a license under this article.

18. "Veterans' organization" means any organization within this state, or any branch or lodge or chapter of a national or state organization within this state, not for pecuniary profit, the membership of which consists of individuals who were members of the armed services or forces of the United States, which has been in existence for two years prior to making application for a license under this article.

19. "Voluntary firemen's organization" means any organization within this state, not for pecuniary profit, established pursuant to title 9, chapter 9.

Sec. 4. Section 5-402, Arizona Revised Statutes, is amended to read:

5-402. **Licensing authority; powers; duties**

The ~~state tax commission~~ DEPARTMENT OF REVENUE is designated as the "licensing authority" of this article. The ~~state tax commission~~ DEPARTMENT OF REVENUE shall be in charge of enforcement of the terms and provisions of this article and, as state licensing authority, it shall:

1. Grant or refuse licenses under this article. In addition, the licensing authority shall have the power on his own motion based on reasonable grounds or on complaint made and after investigation and public hearing, at which the licensee shall be afforded an opportunity to be heard, to suspend or revoke any license issued by the licensing authority for any violation by the licensee or any officer, director, agent, member or employee of such licensee of the provisions of this article or any rule or regulation authorized under this article. Notice of suspension or revocation, as well as notice of such hearing, shall be given by certified mail of same to the licensee at the address contained in such license. The licensing authority may suspend the operation of a game pending a hearing, in which case, the hearing shall be held within ten days after such notice. Proceedings to suspend or revoke a license shall be held pursuant to the provisions of title 41, chapter 6.

2. Supervise the administration of this article, and to adopt, amend and repeal rules and regulations governing the holding, operating and

conducting of games of bingo, the rental of premises, and the purchase of equipment, to provide that games of bingo shall be held, operated and conducted only by licensees for the purposes and in conformity with the provisions of this article.

3. Keep records of all actions and transactions of the licensing authority.

4. Report on request to the governor or the state legislature respecting the administration of this article and make such recommendations in regard to legislation as the licensing authority shall deem necessary and proper.

Sec. 5. Section 10-367, Arizona Revised Statutes, is amended to read:

10-367. **Department of revenue approval as prerequisite to certificate of dissolution**

The corporation commission shall withhold issuance of a certificate of dissolution or withdrawal in the case of a corporation organized under the laws of this state or organized under the laws of another state and admitted to do business in this state, until receipt of a notice from the ~~state tax commission~~ DEPARTMENT OF REVENUE to the effect that the tax levied under the provisions of article 1 of chapter 8 of title 42 against the corporation has been paid, or until it is notified by the ~~state tax commission~~ DEPARTMENT OF REVENUE that the applicant is not subject to such tax under the provisions of article 1 of chapter 8 of title 42.

Sec. 6. Section 12-882, Arizona Revised Statutes, is amended to read:

12-882. **Duty of department of revenue regarding escheats; complaint and parties**

A. When the ~~estate tax commissioner~~ DIRECTOR OF THE DEPARTMENT OF REVENUE has reason to believe that property or estate has escheated to the state, he shall file a complaint in behalf of the state in the superior court of the county where such property or some part thereof is situated, setting forth:

1. A description of the property or estate.

2. The name of the person last lawfully seized or possessed thereof.

3. The names of tenants or persons in actual possession, if any, and the names of persons claiming the property or estate, if any are known to claim it.

4. The facts and circumstances in consequence of which such property or estate is claimed to have escheated.

5. A prayer for a writ of possession for the property or estate in behalf of the state.

B. The tenants or persons in actual possession of the property or estate, and the persons claiming it, or any right, title or interest therein, shall be named parties defendant in the complaint.

Sec. 7. Section 12-885, Arizona Revised Statutes, is amended to read:

12-885. **Seizure and sale of escheated property; disposal of proceeds**

A. A writ shall be issued to the sheriff or a constable of the county where the property is situated, commanding him to seize the property vested in the state.

B. The officer shall dispose of the property at public auction in the manner provided by law for sale of property under execution. The proceeds of such sale shall be paid to the ~~estate tax commissioner who shall deposit such proceeds~~ DEPARTMENT OF REVENUE AND DEPOSITED into the treasury of the state and placed to the credit of the permanent state school fund.

C. The ~~estate tax commissioner~~ DIRECTOR OF THE DEPARTMENT OF REVENUE shall keep accounts and records of all such proceeds paid into the treasury and of all such lands vested in the state.

Sec. 8. Section 12-886, Arizona Revised Statutes, is amended to read:

12-886. **Claim by heir or owner of proceeds from sale of escheated property; service of complaint; duty of attorney general**

A. If a person appears and claims any of the proceeds from the sale of escheated property as an heir, devisee or legatee, or as the owner who was absent for seven years, he may file a complaint in the superior court of the county where the estate was sold, stating the nature of his claim, and praying that the proceeds be paid to him.

B. A copy of the complaint shall be served on the ~~estate tax commissioner~~ DIRECTOR OF THE DEPARTMENT OF REVENUE and the attorney general shall answer such complaint.

Sec. 9. Section 12-887, Arizona Revised Statutes, is amended to read:

12-887. **Judgment and payment of claim**

If the court finds for plaintiff then the court shall certify the record in the proceedings to the ~~estate tax commissioner~~ DIRECTOR OF THE DEPARTMENT OF REVENUE who shall present the record to the ensuing session of the legislature, and the amount of the claim shall be paid from the appropriation made by the legislature.

Sec. 10. Section 12-888, Arizona Revised Statutes, is amended to read:

12-888. **Concurrent authority of the department of revenue**

A. The ~~estate tax commissioner~~ DEPARTMENT OF REVENUE shall have concurrent authority with the department of law as prescribed by subsection C of section 41-193.

B. The ~~estate tax commissioner~~ DEPARTMENT OF REVENUE shall institute investigations for discovery of property which may have escheated or would escheat to the state, and for such purpose, through the department of law, may require any person before the superior court to answer investigations, produce books and render accounts relating to the property. The ~~commissioner of estates~~ DIRECTOR OF THE DEPARTMENT OF REVENUE, through the department of law, may institute action in the superior court of the county in which the property is located for recovery of escheats.

Sec. 11. Section 12-889, Arizona Revised Statutes, is amended to read:

12-889. **Escheated property; rules and regulations; salary**

A. ~~There shall be a division of escheated property which shall be administered by the estate tax commissioner.~~ The ~~commissioner~~ DEPARTMENT OF REVENUE shall administer the provisions of this article.

B. The ~~commissioner is authorized to~~ DEPARTMENT OF REVENUE MAY promulgate necessary rules and regulations to carry out the provisions of this article.

~~C. The commissioner, in consideration of his additional duties of administering the division of escheated property, shall receive additional compensation as determined pursuant to section 38-611.~~

Sec. 12. **Repeal**

Section 35-193, Arizona Revised Statutes, as amended by Laws 1972, chapter 212, section 1, is repealed.

Sec. 13. Section 35-193, Arizona Revised Statutes, as amended by Laws 1972, chapter 141, section 52, is amended to read:

35-193. **Revolving funds**

A. The supervisory official of a budget unit the activities of which require immediate cash outlays for postage, c.o.d. packages, travel or other minor disbursements which are proper as ultimate claims for payment from state funds, and the state treasurer for the purpose of cashing checks and warrants, may apply to the division of finance to provide a revolving fund in any amount not to exceed one thousand dollars for any department except the university of Arizona and Arizona state university which shall not exceed twenty thousand dollars, the Arizona coliseum and exposition center board which shall not exceed fifteen thousand dollars, northern Arizona university, the state prison, the state department of health, the ~~employment security commission~~ DEPARTMENT OF ECONOMIC SECURITY, the Arizona game and fish commission and the state superintendent of public instruction, each of which shall not exceed ten thousand dollars, the office of the state treasurer, the ~~state tax commission~~ DEPARTMENT OF REVENUE, the Arizona state hospital~~,~~ AND the state department of public safety ~~and the state department of public welfare~~ which shall not exceed five thousand dollars each, the Arizona corporation commission, the ~~department~~ OFFICE of economic planning and development and the state banking department which shall not exceed three thousand dollars each, the attorney general-department of law and the auditor general which shall not exceed two thousand five hundred dollars and the state board of nursing which shall not exceed one thousand five hundred dollars.

B. The application for a revolving fund shall state the purposes for which required, the amount deemed necessary and the particular person who shall have custody of and be charged with the handling and accounting of the fund.

C. The assistant director for the division of finance shall allow the application, draw a warrant to the order of the officer applying therefor, and charge the amount thereof against the appropriation made to that budget unit.

D. The manner of accounting for a revolving fund shall be determined by the assistant director for the division of finance, and the officer applying therefor shall return the full amount of the revolving fund to the state treasurer on or before the close of the fiscal year in which the fund was established.

E. Any time during the fiscal year, at the request of the assistant director for the division of finance, the applicant shall return to the state treasurer the full amount of the revolving fund or amount requested and no claims for services of the officer applying therefor or the head of the budget unit shall be audited until such request has been complied with.

Sec. 14. Section 35-501, Arizona Revised Statutes, is amended to read:

35-501. **Department of revenue records of bond issues**

The ~~state tax commission~~ DEPARTMENT OF REVENUE shall ascertain and record in its office all issues of bonds or other securities issued for a term in excess of one year by the state or a county, city, town, school district, irrigation district or other political subdivision within the state. The record shall show the date of issuance, amount, denomination, rates of interest, maturity, dates of the bonds or securities and other information the ~~commission~~ DEPARTMENT requires.

Sec. 15. Section 35-502, Arizona Revised Statutes, is amended to read:

35-502. **Reports to department of revenue; omission or refusal to comply; penalty**

A. The state treasurer and the governing body of the county, city, town, district or other political subdivision shall make such reports to the ~~state tax commission~~ DEPARTMENT OF REVENUE as the ~~commission~~ DEPARTMENT requires relating to the issuance of the bonds and securities provided by section 35-501, and shall notify the ~~commission~~ DEPARTMENT of the retirement of any such bonds, and of all payments of interest thereon, immediately upon retirement of the bond or payment of interest.

B. Any person or member of any governing body wilfully omitting or refusing to comply with the orders of the ~~commission~~ DEPARTMENT issued pursuant to this article is guilty of a misdemeanor.

Sec. 16. Section 42-107, Arizona Revised Statutes, is amended to read:

42-107. **General powers**

The commission shall:

~~1. On or before November 15 each year issue a written report to the governor and the legislature concerning the commission's activities during~~

~~the year. The report shall also contain proposed legislation recommended by the commission for the improvement of the system of taxation in the state. In any election year a copy of this report shall be made available to the governor-elect. The commission shall furnish the governor such assistance as he requires.~~

~~2.~~ 1. Keep in its office a public record of its acts and orders, and publish, from time to time, for general circulation, information it deems proper or as provided by law.

~~3.~~ 2. Make rules for the performance of its duties and for conducted hearings and other proceedings before it.

~~4. Investigate all matters relating to taxation other than property taxation and in so doing require any officer whose duties relate to collection of taxes, or to disbursement of public funds, to report to it at such time and in such manner as the commission prescribes.~~

~~5. Require any person to give information pertaining to taxation.~~

~~6. Examine maps, drawings, books, invoices, papers, documents and~~ instruments.

~~7. Take the testimony of witnesses and allow mileage to such witnesses.~~

3. CONDUCT SUCH HEARINGS AS MAY BE REQUIRED BY SECTION 42-308.

Sec. 17. **Repeal**

Section 42-109, Arizona Revised Statutes, is repealed.

Sec. 18. Title 42, chapter 1, Arizona Revised Statutes, is amended by adding articles 1.1 and 1.2, to read:

ARTICLE 1.1 DEPARTMENT OF REVENUE

42-111. **Definitions**

IN THIS TITLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "BOARD" OR "STATE BOARD" MEANS THE STATE BOARD OF TAX APPEALS OR WHEN APPLICABLE A DIVISION THEREOF.

2. "DEPARTMENT" MEANS THE DEPARTMENT OF REVENUE.

3. "DIRECTOR" MEANS THE DIRECTOR OF THE DEPARTMENT.

42-111.01. **Department of revenue; director; appointments; search committee; compensation**

A. THERE IS ESTABLISHED A DEPARTMENT OF REVENUE.

B. THE DIRECTION, OPERATION AND CONTROL OF THE DEPARTMENT IS THE RESPONSIBILITY OF THE DIRECTOR.

C. THE DIRECTOR SHALL BE APPOINTED BY THE GOVERNOR FROM A LIST OF NAMES SUBMITTED BY THE SEARCH COMMITTEE PURSUANT TO SECTION 38-211 AND SHALL SERVE AT THE PLEASURE OF THE GOVERNOR.

D. THE STATE PERSONNEL COMMISSION SHALL ASSIST THE GOVERNOR IN PREPARING A JOB DESCRIPTION FOR THE POSITION OF DIRECTOR AND RECRUITING CANDIDATES FOR THE POSITION. THE QUALIFICATIONS OF THE CANDIDATES SHALL BE REVIEWED BY A COMMITTEE OF FIVE PERSONS SELECTED BY THE GOVERNOR. THE NAMES OF ALL THOSE CANDIDATES DETERMINED BY THE COMMITTEE TO BE QUALIFIED FOR THE POSITION SHALL BE SUBMITTED TO THE GOVERNOR FOR HIS CONSIDERATION. THE GOVERNOR MAY REQUEST ADDITIONAL NAMES FROM THE COMMITTEE IF HE DEEMS NECESSARY. FOR EACH SUBSEQUENT VACANCY IN THE POSITION OF DIRECTOR, A NEW COMMITTEE SHALL BE APPOINTED BY THE GOVERNOR AS PROVIDED HEREIN.

E. COMPENSATION FOR THE DIRECTOR SHALL BE ESTABLISHED PURSUANT TO SECTION 38-611.

42-111.02. **Department organization; director's staff; deputy director; assistant directors**

A. THE DEPARTMENT SHALL CONSIST OF THE FOLLOWING THREE DIVISIONS:

1. INCOME, SALES, EDUCATION EXCISE, SPECIAL EDUCATION EXCISE, USE, LUXURY AND ESTATE TAX DIVISION, WHICH SHALL ADMINISTER SUCH TAXES,

2. PROPERTY AND SPECIAL TAX DIVISION, WHICH SHALL ADMINISTER PROPERTY TAXES AND REAL ESTATE TRANSFER FEES.

3. ADMINISTRATIVE DIVISION, WHICH SHALL PROVIDE ADMINISTRATIVE SERVICES TO THE DEPARTMENT INCLUDING, BUT NOT LIMITED TO, SERVICES RELATING TO DATA PROCESSING, ACCOUNTING, RECORDS MANAGEMENT, PUBLICATIONS, DELINQUENT ACCOUNTS COLLECTION, PERSONNEL SERVICES AND BUDGET AND PROPERTY CONTROL.

B. THE DIRECTOR MAY EMPLOY STAFF PERSONNEL TO ASSIST HIM IN THE ADMINISTRATION OF THE DEPARTMENT. THE DIRECTOR'S STAFF MAY PERFORM FUNCTIONS WHICH INCLUDE, BUT ARE NOT LIMITED TO, BUDGET DEVELOPMENT, LEGAL RESEARCH AND ANALYSIS, TAX RESEARCH, DEPARTMENTAL AUDIT AND PUBLIC RELATIONS.

C. THERE SHALL BE A DEPUTY DIRECTOR OF THE DEPARTMENT WHO IS APPOINTED BY THE DIRECTOR WITH THE APPROVAL OF THE GOVERNOR. THE DEPUTY DIRECTOR SHALL SERVE AT THE PLEASURE OF THE DIRECTOR WITH THE APPROVAL OF THE GOVERNOR. THE DEPUTY DIRECTOR SHALL ASSIST THE DIRECTOR IN THE ADMINISTRATION OF THE DEPARTMENT AND SHALL HAVE SUCH DUTIES AND RESPONSIBILITIES AS MAY BE ASSIGNED TO HIM BY THE DIRECTOR.

D. THE DIRECTOR SHALL, WITH THE APPROVAL OF THE GOVERNOR, APPOINT AN ASSISTANT DIRECTOR TO HEAD EACH DIVISION OF THE DEPARTMENT. EACH ASSISTANT DIRECTOR SHALL BE DIRECTLY RESPONSIBLE FOR THE FUNCTIONS PERFORMED BY HIS DIVISION. EACH ASSISTANT DIRECTOR SHALL SERVE AT THE PLEASURE OF THE DIRECTOR WITH THE APPROVAL OF THE GOVERNOR.

E. THE DEPARTMENT SUCCEEDS TO THE AUTHORITY, POWERS, DUTIES AND RESPONSIBILITIES OF:

1. THE STATE TAX COMMISSION, EXCEPT AS EXPRESSLY PROVIDED IN ARTICLE 1 OF THIS CHAPTER AND IN SECTION 42-308.

2. THE DEPARTMENT OF PROPERTY VALUATION.

3. THE ESTATE TAX COMMISSIONER.

F. IN THE ARIZONA REVISED STATUTES, REFERENCES TO ANY AGENCY OR DEPARTMENT LISTED IN SUBSECTION E OR TO THE CHIEF ADMINISTRATIVE OFFICER THEREOF, OR TO ANY

COMMISSION OR COMMISSIONER, WITH RESPECT TO THE AUTHORITY, POWERS, DUTIES OR RESPONSIBILITIES ASSUMED BY THE DEPARTMENT, SHALL BE DEEMED TO BE REFERENCES TO THE DEPARTMENT OF REVENUE OR ITS DIRECTOR.

G. THE DIRECTOR MAY REASSIGN THE ADMINISTRATION OF TAXES AND MAY ASSIGN AND DELEGATE THE DUTIES, POWERS AND FUNCTIONS OF THE DEPARTMENT AMONG THE DIVISIONS THEREOF IN ORDER TO ACHIEVE MAXIMUM EFFICIENCY, ECONOMY AND EFFECTIVENESS. THE DIRECTOR OR HIS DEPUTY SHALL ENFORCE COOPERATION AMONG THE DIVISIONS IN THE PROVISION AND INTEGRATION OF ALL FUNCTIONS AT ALL LEVELS OF THE DEPARTMENT.

42-111.03. **General powers and duties of the department**

THE DEPARTMENT SHALL ADMINISTER ALL MATTERS FORMERLY ADMINISTERED BY THE DEPARTMENT OF PROPERTY VALUATION, ESTATE TAX COMMISSIONER AND STATE TAX COMMISSION, AND, IN ADDITION TO THE POWERS AND DUTIES ASSIGNED TO THE DEPARTMENT IN SECTION 42-111.02, SHALL:

1. FORMULATE POLICIES, PLANS AND PROGRAMS TO EFFECTUATE THE MISSIONS AND PURPOSES OF THE DEPARTMENT.

2. EMPLOY PERSONNEL SUBJECT TO THE PROVISIONS OF TITLE 41, CHAPTER 4, ARTICLES 5 AND 6, DETERMINE THE CONDITIONS OF EMPLOYMENT AND PRESCRIBE THE DUTIES AND POWERS OF ADMINISTRATIVE, PROFESSIONAL, TECHNICAL, SECRETARIAL, CLERICAL AND OTHER PERSONNEL AS MAY BE NECESSARY IN THE PERFORMANCE OF ITS DUTIES, AND CONTRACT FOR THE SERVICES OF OUTSIDE ADVISORS, CONSULTANTS AND AID AS MAY BE REASONABLY NECESSARY.

3. MAKE CONTRACTS AND INCUR OBLIGATIONS WITHIN THE GENERAL SCOPE OF ITS ACTIVITIES AND OPERATIONS SUBJECT TO THE AVAILABILITY OF ITS FUNDS.

4. CONTRACT WITH OR ASSIST OTHER DEPARTMENTS, AGENCIES OR INSTITUTIONS OF THE STATE, LOCAL AND FEDERAL GOVERNMENTS IN THE FURTHERANCE OF ITS PURPOSES, OBJECTIVES AND PROGRAMS.

5. ACCEPT GRANTS, MATCHING FUNDS AND DIRECT PAYMENTS FROM PUBLIC OR PRIVATE AGENCIES FOR THE CONDUCT OF

PROGRAMS WHICH ARE CONSISTENT WITH THE OVERALL PURPOSES AND OBJECTIVES OF THE DEPARTMENT.

6. PROVIDE INFORMATION AND ADVICE WITHIN THE SCOPE OF ITS DUTIES SUBJECT TO THE LAWS ON CONFIDENTIALITY OF INFORMATION AND DEPARTMENTAL RULES AND REGULATIONS ADOPTED PURSUANT THERETO.

7. ADVISE WITH AND MAKE RECOMMENDATIONS TO THE GOVERNOR AND THE LEGISLATURE ON ALL MATTERS CONCERNING ITS OBJECTIVES.

8. HAVE AN OFFICIAL SEAL WHICH SHALL BE JUDICIALLY NOTICED.

9. PRESCRIBE THE FORMS FOR USE BY CITIES AND COUNTIES IN THE PREPARATION OF THEIR BUDGETS AND IN THE SUBMISSION OF ALL TAX DATA.

10. PROMULGATE SUCH RULES AND REGULATIONS AS REQUIRED BY FEDERAL OR STATE LAWS OR REGULATIONS OR AS THE DEPARTMENT DEEMS NECESSARY TO PROTECT CONFIDENTIAL INFORMATION, PROVIDED THAT NO NAMES OR OTHER INFORMATION OF ANY TAXPAYER, CLAIMANT, OR EMPLOYER SHALL BE MADE AVAILABLE FOR ANY POLITICAL, COMMERCIAL OR OTHER UNOFFICIAL PURPOSE.

11. PROVIDE AN INTEGRATED, COORDINATED AND UNIFORM SYSTEM OF TAX ADMINISTRATION AND REVENUE COLLECTION FOR THE STATE.

42-111.04. **Powers and duties of director**

THE DIRECTOR SHALL BE DIRECTLY RESPONSIBLE TO THE GOVERNOR FOR THE DIRECTION, CONTROL AND OPERATION OF THE DEPARTMENT AND SHALL:

1. MAKE SUCH ADMINISTRATIVE RULES AND REGULATIONS AS HE DEEMS NECESSARY AND PROPER FOR THE EFFECTIVE ADMINISTRATION OF THE DEPARTMENT.

2. ON OR BEFORE NOVEMBER 15 OF EACH YEAR ISSUE A WRITTEN REPORT TO THE GOVERNOR AND LEGISLATURE CONCERNING THE DEPARTMENT'S ACTIVITIES DURING THE YEAR.

THE REPORT SHALL ALSO CONTAIN PROPOSED LEGISLATION RECOMMENDED BY THE DEPARTMENT FOR THE IMPROVEMENT OF THE SYSTEM OF TAXATION IN THE STATE. IN ANY ELECTION YEAR A COPY OF THIS REPORT SHALL BE MADE AVAILABLE TO THE GOVERNOR-ELECT AND TO THE LEGISLATURE-ELECT.

3. PROVIDE SUCH ASSISTANCE TO THE GOVERNOR AND THE LEGISLATURE AS THEY MAY REQUIRE.

42-111.05. **Interrogatories to taxpayers; power to require information; penalties**

A. THE DIRECTOR MAY PREPARE INTERROGATORIES TO BE PROPOUNDED TO TAXPAYERS CONCERNING MATTERS RELATING TO TAXES, WITH AN OATH OR AFFIRMATION ANNEXED, WHICH SHALL BE FULLY ANSWERED BY THE TAXPAYERS TO WHOM THEY ARE SUBMITTED.

B. ANY PERSON WHO KNOWINGLY MAKES A FALSE ANSWER TO ANY PROPER QUESTION SUBMITTED TO HIM BY THE DIRECTOR OR WHO WILFULLY FAILS TO ANSWER ANY QUESTION SUBMITTED, OR TO TAKE OR SUBSCRIBE THE OATH OR AFFIRMATION ANNEXED THERETO IS GUILTY OF A MISDEMEANOR.

C. THE DIRECTOR MAY ADMINISTER OATHS OR AFFIRMATIONS, ISSUE SUBPOENAS REQUIRING ATTENDANCE AND TESTIMONY OF WITNESSES, TAKE EVIDENCE AND REQUIRE BY SUBPOENA DUCES TECUM THE PRODUCTION OF BOOKS, PAPERS AND OTHER DOCUMENTS WHICH MAY BE RELEVANT TO THE POWERS AND DUTIES OF THE DEPARTMENT.

D. THE DIRECTOR MAY HOLD HEARINGS TO OBTAIN INFORMATION DEEMED NECESSARY TO CARRY OUT THE POWERS AND DUTIES OF THE DEPARTMENT. HEARINGS SHALL BE HELD AT A TIME AND PLACE AND IN THE MANNER PRESCRIBED BY THE DIRECTOR AND NOTICE OF SUCH HEARING SHALL BE GIVEN IN THE MANNER AND FORM PRESCRIBED BY THE DIRECTOR.

E. IN THE CASE OF REFUSAL OF THE PERSON TO OBEY A SUBPOENA ISSUED BY THE DIRECTOR, THE SUPERIOR COURT OF THE COUNTY IN WHICH THE SUBPOENA WAS SERVED OR THE PERSON RECEIVING THE SUBPOENA RESIDES, UPON APPLICATION BY THE DIRECTOR, SHALL ISSUE TO SUCH PERSON AN ORDER REQUIRING HIM TO APPEAR BEFORE IT AND TO

PRODUCE EVIDENCE IF SO ORDERED, OR GIVE TESTIMONY, OR TO APPEAR BEFORE THE COURT AND SHOW CAUSE WHY HE SHOULD NOT BE REQUIRED TO DO SO. FAILURE TO OBEY SUCH ORDER OF THE COURT MAY BE PUNISHED BY THE COURT AS CONTEMPT THEREOF.

ARTICLE 1.2. ADVISORY COUNCILS

42-111.21. **Tax advisory council; special advisory councils**

A. IN ORDER TO FACILITATE THE EFFICIENT, ECONOMICAL AND EFFECTIVE ADMINISTRATION OF TAXATION AND REVENUE COLLECTION IN THIS STATE, AND IN ORDER TO PROVIDE FOR A CONTINUING REVIEW AND EXCHANGE OF IDEAS FOR A FAIR AND UNIFORM SYSTEM OF TAXATION, THERE IS ESTABLISHED THE TAX ADVISORY COUNCIL.

B. THE TAX ADVISORY COUNCIL SHALL CONSIST OF THE MEMBERS OF THE TAX COMMISSION, THE DIRECTOR OF THE DEPARTMENT OF REVENUE, WHO SHALL BE ITS CHAIRMAN, THE MEMBERS OF THE STATE BOARD OF TAX APPEALS AND TWO PRIVATE CITIZENS APPOINTED BY THE GOVERNOR. OF THE MEMBERS APPOINTED BY THE GOVERNOR ONE MEMBER SHALL BE APPOINTED FOR A TERM EXPIRING JULY 1, 1976 AND ONE MEMBER SHALL BE APPOINTED FOR A TERM EXPIRING JULY 1, 1977. THEREAFTER, APPOINTED MEMBERS' TERMS SHALL BE THREE YEARS.

C. THE DIRECTOR SHALL ESTABLISH ANY SPECIAL PURPOSE COUNCILS AS ARE REQUIRED BY STATE OR FEDERAL LAW, RULES OR REGULATIONS, OR DETERMINED TO BE ESSENTIAL TO THE PUBLIC'S INTEREST.

D. APPOINTMENT TO FILL A VACANCY ON THE COUNCIL OR ANY SPECIAL COUNCIL RESULTING FROM OTHER THAN EXPIRATION OF TERM SHALL BE FOR THE UNEXPIRED PORTION OF THE TERM ONLY.

E. THE DEPARTMENT SHALL PROVIDE SECRETARIAL AND STAFF SUPPORT SERVICES TO THE COUNCILS.

F. THE PRIVATE CITIZEN MEMBERS OF THE TAX ADVISORY COUNCIL SHALL RECEIVE FIFTY DOLLARS PER DAY FOR TIME SPENT IN THE PERFORMANCE OF THEIR DUTIES. THE MEMBERS

OF ANY SPECIAL PURPOSE COUNCIL SHALL SERVE WITHOUT COMPENSATION, EXCEPT FOR TRAVEL AND SUBSISTENCE EXPENSES AS PROVIDED BY LAW FOR OTHER STATE OFFICERS AND EMPLOYEES.

42-111.22. **Meetings of councils**

THE TAX ADVISORY COUNCIL AND SUCH SPECIAL ADVISORY COUNCILS AS ARE APPOINTED SHALL MEET NOT LESS THAN QUARTERLY AND, IN ADDITION, AT THE CALL OF THE CHAIRMAN. THE COUNCIL SHALL MEET AT SUCH TIMES AND PLACES AS CONVENIENT OR NECESSARY FOR THE CONDUCT OF THEIR AFFAIRS, AND SHALL RENDER THEIR FINDINGS, REPORTS AND RECOMMENDATIONS IN WRITING TO THE GOVERNOR, TO THE DIRECTOR OF THE DEPARTMENT OF REVENUE AND THE LEGISLATURE.

Sec. 19. **Article heading**

Article heading for title 42, chapter 1, article 2, is changed from "DEPARTMENT OF PROPERTY VALUATION" to "PROPERTY VALUATION".

Sec. 20. **Repeal**

Sections 42-121 and 42-122, Arizona Revised Statutes, are repealed.

Sec. 21. Section 42-123, Arizona Revised Statutes, is amended to read:

42-123. **Powers and duties of department**

A. The ~~director~~ DEPARTMENT shall:

1. Exercise general supervision over county assessors in the administration of the state property tax laws of the state for the purpose of insuring that all property is uniformly valued for state property tax purposes.

2. Prescribe rules and regulations relating to the enforcement of the powers and duties of the department under the provisions of this title.

3. Require the use by the county assessors of prescribed forms for the listing and valuing of property for tax purposes, the reporting of changes in valuations and for such other purposes as may be required by the ~~director~~ DEPARTMENT under the provisions of this title.

4. Require county assessors to maintain uniform maps and records.

5. Adopt standard appraisal methods and techniques for use by the department and county assessors in determining the valuation of property, and prepare and maintain manuals and other necessary guidelines reflecting such methods and techniques in order to perpetuate a current inventory of all property subject to taxation and the valuation thereof. In the standard appraisal methods and techniques adopted current usage shall be included in the formula for reaching a determination of full cash value and when the methods and techniques adopted prescribe the use of market data as an indication of market value, the price paid for future anticipated property value increments shall be excluded.

6. Require the county assessors to meet with the director at the state capitol, or at a place designated by him, at least twice a year for the purpose of considering matters relating to property taxation. The traveling expenses of assessors in attending such meetings shall be paid by the respective counties.

7. Investigate property valuations and any matters relating to property taxes and require the production of any private or public record relating to such valuations or property taxes. The director or his agents may enter upon and examine any and all property within the state for the purpose of determining its full cash value and require any officer whose duties relate to the assessment or collection of taxes to report to him at such time and in such manner as he prescribes. In the event the owner or possessor of property refuses entrance to the director or his agents, the valuation of such property may be estimated by the director.

8. Require the use by county assessors of such a data processing system as the ~~director~~ DEPARTMENT may prescribe, provided that any county assessor having a data processing system compatible with the system prescribed by the ~~director~~ DEPARTMENT may continue to use his own system as long as it is coordinated with the system prescribed by the ~~director~~ DEPARTMENT.

9. ~~The director shall~~ Contract with the counties to furnish electronic data processing equipment in instances where the counties do not have the equipment necessary to meet the requirements of the ~~director~~ DEPARTMENT.

10. Furnish assistance to the county assessors in order to implement placement on the rolls of the valuations determined under article 2.1 of this chapter and to assure a uniform valuation of all property throughout

the state for property tax purposes, including but not limited to the providing of services of department personnel to the counties, provided that subsequent to June 30, 1968 the cost of providing the services of department personnel to the counties shall be charged to the county served.

11. Furnish the state board with such information as it may request.

12. At such time as the state acquires from the national aeronautics and space administration orthophoto base maps for use by all departments of Arizona state government and others in need of such maps, charge for duplication and sale of these maps and deposit such revenues in the state general fund.

B. The ~~director~~ DEPARTMENT may:

1. Examine into all alleged violations of the provisions of this title relating to the valuation of property and the assessment and collection of taxes and request the attorney general or the county attorney in their respective counties to commence and prosecute actions and proceedings or to represent counties to commence and prosecute actions and proceedings or to represent the department in litigation to enforce the laws relating to taxation and orders, or the rules and regulations of the department. When in the opinion of the director and in the opinion of the attorney general or the county attorney of the county in which the public official serves, a public official, who performs valuing, taxing or equalizing functions, is guilty of official misconduct or neglect of duty, the director shall take whatever steps are necessary to insure that complaints are filed and prosecutions commenced against such officials for their removal from office. A complaint by the director charging official misconduct or neglect of duty of a public officer shall be delivered to the county attorney or to the attorney general who shall file the original with the superior court in the county in which the public official serves and cause a copy thereof to be served upon such public official. Proceedings upon such complaints shall be in accordance with the provisions of subsections B and C of section 38-342, and sections 38-343 and 38-345.

2. Study the tax systems of other states.

3. Employ technical experts and assistants and make contracts for services as may be required to carry out its duties.

4. Appoint advisory committees representative of various classes of property.

5. Request the attorney general to initiate a mandamus action if any assessor fails to follow any regulation, rule, order or direction of the director or the department or if the director determines that an assessor, or a county board of equalization has practiced discrimination in the valuation of property. For the purposes of this section, county boards of equalization and the county assessors are state officers within the meaning of article 6, section 5 of the constitution of Arizona.

6. Contest any proposed valuation or classification or any proposed change in valuations or classifications before any county board of equalization or before the state board of ~~property~~ tax appeals. If any decision of any county board of equalization or of the state board of ~~property~~ tax appeals is, in the opinion of the director, erroneous, the director may appeal such decision to the superior court in the manner provided in section 42-151, on or before the final date a taxpayer may file an appeal from the valuation or classification of his property.

7. Sell contact prints of any national aeronautics and space administration orthophoto base maps acquired by the ~~director~~ DEPARTMENT and deposit such revenues in the state general fund.

Sec. 22. **Repeal**

Section 42-125, Arizona Revised Statutes, is repealed.

Sec. 23. Section 42-126, Arizona Revised Statutes, is amended to read:

42-126. **Records of valuations; forwarding changes to the division; action required for change in valuation**

The ~~director~~ DEPARTMENT may maintain a complete and current record of all property subject to property tax and of property tax assessments in this state. The assessor, treasurer, county boards of equalization and state board of ~~property~~ tax appeals shall furnish the department with a notice of every change in valuation or assessment of any property listed on the rolls and the reasons therefor on such form as may be prescribed by the ~~director~~ DEPARTMENT. The assessors shall furnish to the department such other information as the ~~director~~ DEPARTMENT may require. The assessors and treasurers shall not make any change in the valuation or assessment of any property listed on the rolls unless written notice of such change has been furnished to the department in accordance with the form prescribed by the ~~director~~ DEPARTMENT and the ~~director~~ DEPARTMENT has approved such change. If the ~~director~~ DEPARTMENT does not approve or disapprove such change within a period of twenty days

following the date of receipt by the department of the proposed change, the change shall thereupon become effective and shall be placed on the roll. If the ~~director~~ DEPARTMENT disapproves a proposed change, the assessor may within ten days after receipt of the notice of disapproval request a hearing before the state board of ~~property~~ tax appeals in respect to the order disapproving the change. A hearing shall be held by the state board within twenty days after application therefor and the state board shall rule thereon within ten days after the hearing. A copy of such application shall be mailed to the ~~director~~ DEPARTMENT.

Sec. 24. **Repeal**

Section 42-129, Arizona Revised Statutes, is repealed.

Sec. 25. **Article heading**

Article heading of title 42, chapter 1, article 2.1, is changed from "DIVISION OF APPRAISAL AND ASSESSMENT STANDARDS" to "CLASSIFICATIONS OF PROPERTY".

Sec. 26. Section 42-141, Arizona Revised Statutes, is amended to read:

42-141. **State board of tax appeals**

A. There is established a state board of ~~property~~ tax appeals as an independent agency which shall not in any way be subject to the supervision or control of the ~~state tax commission~~ DEPARTMENT OF REVENUE or the state ~~department~~ TAX COMMISSION. ~~of property valuation, and~~ The board shall have full power to equalize the valuation of all property throughout the state AND TO HEAR AND DECIDE ALL APPEALS FROM DECISIONS OF THE DEPARTMENT OF REVENUE.

B. The state board shall consist of ~~three~~ NINE members appointed by the governor pursuant to section 38-211. THE BOARD SHALL SIT IN BANC ON ALL MATTERS RELATING TO PROPERTY TAX EQUALIZATION. THE BOARD SHALL CONSIST OF THREE DIVISIONS, KNOWN AS DIVISIONS ONE, TWO AND THREE. EACH DIVISION SHALL HAVE THREE MEMBERS. Members shall be residents of this state.

C. ~~They~~ MEMBERS OF DIVISION ONE shall be selected on the basis of their knowledge of and experience in the use of property valuation and appraisal procedures and shall have a minimum of five years' professional experience as a certified public accountant, a public accountant, a licensed

real estate broker, an attorney, a property appraiser accredited by a nationally recognized professional organization, or other experience related to the use of property valuation and appraisal procedures. DIVISION ONE SHALL HANDLE ALL MATTERS ENTRUSTED BY LAW TO THE STATE BOARD RELATING TO THE VALUATION, CLASSIFICATION AND TAXATION OF PROPERTY AND WITH REAL ESTATE TRANSFER FEES AND SHALL HEAR AND DECIDE APPEALS FROM DECISIONS OF THE DEPARTMENT OF REVENUE ON SUCH MATTERS. THE ACTS, DECISIONS AND ORDERS OF DIVISION ONE ON SUCH MATTERS SHALL CONSTITUTE THE ACTS, DECISIONS AND ORDERS OF THE STATE BOARD.

D. MEMBERS OF DIVISION TWO SHALL BE SELECTED ON THE BASIS OF THEIR KNOWLEDGE OF AND EXPERIENCE IN TAXATION OF CORPORATE, TRUST AND INDIVIDUAL INCOME AND OF ESTATES AND SHALL HAVE A MINIMUM OF FIVE YEARS' PROFESSIONAL EXPERIENCE AS A CERTIFIED PUBLIC ACCOUNTANT, A PUBLIC ACCOUNTANT, AN ATTORNEY, A TRUST OR ESTATE OFFICER, OR OTHER EXPERIENCE RELATED TO TAXATION OF INCOME AND ESTATES. DIVISION TWO SHALL HANDLE ALL MATTERS ENTRUSTED BY LAW TO THE STATE BOARD DEALING WITH INCOME TAXATION AND ESTATE TAXATION AND SHALL HEAR AND DECIDE APPEALS FROM THE DEPARTMENT OF REVENUE ON SUCH MATTERS. THE ACTS, DECISIONS AND ORDERS OF DIVISION TWO ON SUCH MATTERS SHALL CONSTITUTE THE ACTS, DECISIONS AND ORDERS OF THE STATE BOARD.

E. MEMBERS OF DIVISION THREE SHALL BE SELECTED ON THE BASIS OF THEIR KNOWLEDGE OF AND EXPERIENCE IN TRANSACTION PRIVILEGE, USE AND LUXURY TAXATION AND SHALL HAVE A MINIMUM OF FIVE YEARS' PROFESSIONAL EXPERIENCE AS A CERTIFIED PUBLIC ACCOUNTANT, AN ATTORNEY, A LICENSEE SUBJECT TO ANY OF SUCH TAXES IN THIS STATE, A BUSINESSMAN, OR OTHER EXPERIENCE RELATED TO SUCH TAXES. DIVISION THREE SHALL HANDLE ALL MATTERS ENTRUSTED BY LAW TO THE STATE BOARD RELATING TO SUCH TAXES OR ANY OTHER TAXATION NOT HANDLED BY DIVISION ONE OR DIVISION TWO AND SHALL HEAR AND DECIDE APPEALS FROM THE DEPARTMENT OF REVENUE ON SUCH MATTERS. THE ACTS, DECISIONS AND ORDERS OF DIVISION THREE ON SUCH MATTERS SHALL CONSTITUTE THE ACTS, DECISIONS AND ORDERS OF THE STATE BOARD.

F. Not more than two MEMBERS OF EACH DIVISION ~~members~~ shall be members of the same political party. No member of the board shall

hold any other public office under the laws of this state or any of its political subdivisions, nor be a candidate for an elective office under the laws of this state, nor of any other state. No member of the board shall hold any position of trust nor provide or engage in any occupation or business which would corruptly conflict with his duties as a member of the board, nor take part directly or indirectly in any election campaign in the interest of any political party or other organization or any candidate or measure to be voted on by the people. Nothing in this subsection shall prohibit a person from properly and lawfully engaging in his business or profession.

~~C.~~ G. ~~Of the members first appointed, one shall be appointed to serve for a term to expire on February 1, 1970, and one each for terms expiring on the third Monday in January two and four years thereafter.~~ THE INITIAL BOARD SHALL CONSIST OF THE PRESENT MEMBERS OF THE BOARD OF PROPERTY TAX APPEALS, WHO SHALL CONTINUE TO SERVE AS MEMBERS OF DIVISION ONE OF THE TAX APPEALS BOARD FOR THE DURATION OF THE TERMS FOR WHICH APPOINTED, AND SIX ADDITIONAL MEMBERS, THREE OF WHOM SHALL POSSESS THE QUALIFICATIONS DESCRIBED IN SUBSECTION D AND SHALL CONSTITUTE DIVISION TWO AND THREE OF WHOM SHALL POSSESS THE QUALIFICATIONS DESCRIBED IN SUBSECTION E AND SHALL CONSTITUTE DIVISION THREE. ONE MEMBER OF DIVISIONS TWO AND THREE SHALL SERVE FOR TERMS EXPIRING ON THE THIRD MONDAY OF JANUARY OF 1975, 1977 AND 1979. THEREAFTER, ALL MEMBERS SHALL SERVE FOR A TERM OF SIX YEARS OR FOR THE DURATION OF THE TERM FOR WHICH APPOINTED. The member OF EACH DIVISION having the shortest term remaining shall act as chairman OF SUCH DIVISION provided he has served on the board at least two years. If the member having the shortest term remaining does not qualify to act as chairman, the ~~board~~ DIVISION shall elect its own chairman. A CHAIRMAN OF THE BOARD SHALL BE ELECTED FROM AND BY MAJORITY VOTE OF THE CHAIRMEN OF EACH DIVISION. ~~Succeeding members shall be appointed for terms of six years, but~~ No member shall be appointed for more than two terms. The first board shall meet within thirty days after its appointment and shall organize and adopt rules and regulations.

~~D.~~ H. Each member of the board shall receive fifty dollars per day for time spent in the performance of his duties. He shall also receive such travel and other expenses as provided by law for other state officers.

~~E.~~ I. The governor may remove any member for cause.

Sec. 27. Section 42-142, Arizona Revised Statutes, is amended to read:

42-142. **Employees; board and division meetings**

A. The board shall appoint a clerk and such other employees as it deems necessary to carry out its duties. NOTWITHSTANDING THE PROVISIONS OF SECTION 41-192, SUBSECTION E, UPON REQUEST OF THE BOARD, THE ATTORNEY GENERAL SHALL DESIGNATE, FOR SUCH TIME AND PURPOSES AS THE BOARD REQUIRES, AN ATTORNEY, ACCEPTABLE TO THE BOARD, WHOSE COMPENSATION SHALL BE FIXED AND PAID BY THE BOARD.

B. The board shall meet annually at the state capitol on the first Monday after July 15 and shall hold hearings and meetings at such other times at the call of the chairman or a majority of the board and otherwise as may be prescribed by the rules of the board as required to carry out its duties. The principal office of the board shall be at the capitol, but the board may sit or hold hearings at any other place within the state. A majority of the board shall constitute a quorum for making orders and decisions or transacting other official business and the board may act even though ~~one position~~ THREE POSITIONS on the board ~~is~~ ARE vacant. ~~One~~ THREE or more members may hold hearings and take testimony to be reported for action by the board when authorized by rule or order of the board. The board shall keep a record of its proceedings.

C. EACH DIVISION OF THE BOARD SHALL HAVE THE SAME POWERS AND DUTIES WITH RESPECT TO ITS OWN MANAGEMENT AND PROCEDURES AS ARE PROVIDED FOR THE BOARD IN SUBSECTIONS A AND B, EXCEPT THAT A DIVISION MAY NOT ACT IF MORE THAN ONE POSITION IS VACANT, AND EXCEPT THAT ONE OR MORE MEMBERS OF A DIVISION MAY HOLD HEARINGS AND TAKE TESTIMONY TO BE REPORTED FOR ACTION BY THE DIVISION WHEN AUTHORIZED BY RULE OF THE BOARD OR ORDER OF THE DIVISION.

Sec. 28. Title 42, chapter 1, article 3, Arizona Revised Statutes, is amended by adding sections 42-142.01, 42-142.02 and 42-142.03, to read:

42-142.01. **Hearing officers; assignment of appeals**

A. WITHIN LIMITATIONS OF LEGISLATIVE APPROPRIATIONS THEREFOR, THE BOARD MAY APPOINT HEARING OFFICERS, INCLUDING A CHIEF HEARING OFFICER, WHO SHALL HEAR SUCH APPEALS AS MAY BE ASSIGNED TO THEM BY THE BOARD, AND WHO SHALL BE SUBJECT TO THE PROVISIONS OF TITLE 41, CHAPTER 4, ARTICLES 5 AND 6.

B. APPEALS ASSIGNED TO A HEARING OFFICER BY THE BOARD SHALL BE SUBJECT TO THE PROVISIONS OF SECTION 42-142.02.

42-142.02. **Appeals assigned to hearing officers; determinations of hearing officer; review of determinations**

A. HEARINGS CONDUCTED BY HEARING OFFICERS SHALL BE GOVERNED BY RULES AND REGULATIONS PRESCRIBED BY THE BOARD.

B. UPON THE CONCLUSION OF ANY HEARING, OR PRIOR THERETO WITH CONCURRENCE OF THE PARTIES, THE HEARING OFFICER SHALL PROMPTLY AND NOT LATER THAN THIRTY DAYS AFTER THE MATTER IS SUBMITTED FOR DECISION DETERMINE THE MATTER AND RENDER A DECISION IN ACCORDANCE WITH HIS DETERMINATION.

C. THE DECISION SHALL CONTAIN FINDINGS OF FACT AND CONCLUSIONS OF LAW AND SHALL BE FILED WITH THE BOARD. A COPY OF THE DECISION SHALL BE SENT FORTHWITH BY REGISTERED OR CERTIFIED MAIL TO ALL PARTIES IN INTEREST.

D. THE DECISION IS FINAL WHEN ENTERED UNLESS WITHIN THIRTY DAYS AFTER THE DATE ON WHICH A COPY OF THE DECISION IS RECEIVED BY THE PARTIES, ONE OF THE PARTIES REQUESTS A REVIEW UNDER SECTION 42-142.03. THE DECISION SHALL CONTAIN A STATEMENT EXPLAINING THE RIGHTS OF THE PARTIES UNDER SECTION 42-142.03.

42-142.03. **Review of hearing officer decisions**

A. THE REQUEST FOR REVIEW BY THE BOARD OF A DECISION OF A HEARING OFFICER NEED ONLY STATE THAT THE PARTY REQUESTS A REVIEW OF THE DECISION.

B. THE REQUEST FOR REVIEW SHALL BE MAILED TO THE BOARD AND COPIES OF THE REQUEST SHALL BE MAILED BY THE BOARD TO ALL OTHER PARTIES TO THE PROCEEDING BEFORE THE HEARING OFFICER. NOT MORE THAN A THIRTY DAY EXTENSION OF THE PERIOD FOR REQUESTING REVIEW MAY BE GRANTED BY THE BOARD.

C. WHEN REVIEW HAS BEEN REQUESTED, THE RECORD OF SUCH ORAL PROCEEDINGS AT THE HEARINGS BEFORE THE

HEARING OFFICER FOR PURPOSES OF THE REVIEW SHALL BE TRANSCRIBED AT THE EXPENSE OF THE BOARD. THE RECORD SHALL BE CERTIFIED TO BE TRUE AND CORRECT BY THE HEARING OFFICER.

D. NOTICE OF THE REVIEW SHALL BE GIVEN TO THE PARTIES BY REGISTERED OR CERTIFIED MAIL.

E. THE REVIEW BY THE BOARD SHALL BE BASED UPON THE RECORD SUBMITTED TO IT UNDER THE PROVISIONS OF SUBSECTION C, AND, SUCH ADDITIONAL TESTIMONY, EVIDENCE OR ORAL OR WRITTEN ARGUMENT AS THE BOARD MAY RECEIVE. IF THE BOARD DETERMINES THAT A CASE HAS BEEN IMPROPERLY, INCOMPLETELY, OR OTHERWISE INSUFFICIENTLY DEVELOPED OR HEARD BY THE HEARING OFFICER, IT MAY REMAND THE CASE TO THE HEARING OFFICER FOR FURTHER EVIDENCE TAKING, CORRECTION, OR OTHER NECESSARY ACTION.

F. THE BOARD MAY AFFIRM, REVERSE, MODIFY OR SUPPLEMENT THE DECISION OF THE HEARING OFFICER AND MAKE SUCH DISPOSITION OF THE CASE AS IT DETERMINES TO BE APPROPRIATE. IT SHALL MAKE ITS DECISION WITHIN SIXTY DAYS AFTER THE REVIEW HAS BEEN REQUESTED.

G. THE DECISION OF THE BOARD SHALL BE FILED AND A COPY THEREOF SENT BY REGISTERED OR CERTIFIED MAIL TO THE PARTIES.

H. A DECISION OF THE BOARD IS FINAL UNLESS WITHIN THIRTY DAYS AFTER THE PARTIES RECEIVE NOTICE THEREOF, ONE OF THE PARTIES APPEALS TO THE SUPERIOR COURT AS PROVIDED BY LAW.

Sec. 29. Section 42-144, Arizona Revised Statutes, is amended to read:

42-144. **Increase or decrease in individual valuation; hearing; notice**

The state board of ~~property~~ tax appeals may at any time require any county board of supervisors or the clerk thereof and the department to furnish statements showing the valuation of the property of any person within any county or within the state. The board shall consider and equalize such valuations and after hearing may increase or decrease the valuation of the property of any person, provided that no increase in any valuation shall be made without first giving at least five days' notice, by

certified or registered letter to the owner of the property to be affected at his address shown on the then existing tax roll, of its intention to do so and of the time and place of the hearing of the board at which such increase is proposed to be acted upon. The owner of the property so affected may appear at the hearing and be heard in protest of any such proposed increase.

Sec. 30. Section 42-145, Arizona Revised Statutes, is amended to read:

42-145. **Transmitting changes in valuations to counties**

On or before July 25 each year the state board of ~~property~~ tax appeals shall transmit:

1. To the board of supervisors of each county a statement of changes, if any, which it has made in the valuation of any property within the county,

2. To the department a statement of changes, if any, which it has made in the valuation of any property valued by the department and

3. To the ~~commission~~ DEPARTMENT OF REVENUE a statement of changes, if any, in the valuation of property of taxpayers who pay their taxes to the ~~commission~~ DEPARTMENT OF REVENUE, except that in the case of private car companies such statement shall be transmitted on or before December 10.

Sec. 31. Section 42-146, Arizona Revised Statutes, is amended to read:

42-146. **Appeal from state board of tax appeals**

A. Any taxpayer dissatisfied with the valuation or classification of his property as reviewed by the state board of ~~property~~ tax appeals, may appeal to the superior court in the manner provided by section 42-151 and not otherwise.

B. Appeals for private car companies shall be taken on or before January 15, appeals for unsecured personal property shall be taken before the taxes become delinquent, and all other appeals shall be taken on or before November 1.

C. APPEALS FROM ALL OTHER ORDERS AND DECISIONS OF THE BOARD SHALL BE AS PROVIDED BY LAW.

Sec. 32. **Article heading**

Article heading for title 42, chapter 1, article 4, is changed from

"APPEALS TO SUPERIOR COURT" to "TAX APPEALS TO SUPERIOR COURT".

Sec. 33. Section 42-151, Arizona Revised Statutes, is amended to read:

42-151. **Property tax appeals to superior court; procedure; payment of tax as prerequisite to appeal**

A. An appeal to the superior court RELATIVE TO VALUATION OR CLASSIFICATION OF PROPERTY is commenced by filing a notice of appeal with the superior court of the county where the property which is the subject of the appeal is located, unless the appeal is for a private car company or an airline company or the property was valued by the department ~~of property valuation~~ and is located in more than one county, in which case the appeal is commenced by filing a notice of appeal with the superior court of Maricopa county.

B. The notice of appeal shall contain a statement of the reasons why the valuation or classification is excessive or erroneous.

C. The clerk of the superior court shall docket the appeal in the name of the appellant as plaintiff and of the state or county, whichever is appropriate, and the department as defendants except in an appeal pursuant to section 42-123, subsection B, paragraph 6, in which case the clerk of the superior court shall docket the appeal with the department as plaintiff and the person in whose name the property is listed as defendant.

D. A copy of the notice of appeal shall be served on the defendant or defendants and the state board of ~~property~~ tax appeals within ten days of filing, in the manner provided for service of process in the rules of civil procedure or by certified or registered mail. An affidavit showing such service shall be filed with the clerk of the court. In an appeal taken pursuant to section 42-123, subsection B, paragraph 6, service shall be on the person in whose name the property is listed at the address shown on the then existing tax roll.

E. All taxes levied and assessed against property on which an appeal has been filed by the owner thereof shall be paid under protest prior to the date the tax becomes delinquent. A receipt shall be given for the amount of such tax paid, and within ~~ten~~ FORTY-FIVE days a copy of the receipt shall be filed by the owner with the clerk of the court in which the appeal is docketed. If such taxes are not paid prior to becoming delinquent, ~~of~~ OR if a copy of the receipt for payment is not so filed, the court shall dismiss the appeal.

F. A fee of fifteen dollars shall be paid to the clerk of the superior court by any taxpayer appealing.

Sec. 34. Section 42-152, Arizona Revised Statutes, is amended to read:

42-152. **Hearing of appeal; judgment; enforcement; correction of assessment roll**

A. The superior court shall hear the appeal within ninety days after the appeal is docketed, with or without a jury, unless both parties file a written agreement with the court for a postponement.

B. At the hearing both parties may present evidence of any matters that relate to the classification or to the full cash value of the property in question as of the date of its assessment. The valuation or classification as approved by the appropriate state or county authority shall be presumed to be correct and lawful.

C. If the court finds that the valuation is excessive or insufficient, the court shall find the full cash value of the property. If the court finds that the classification is in error, it shall determine the correct classification. If the assessment was excessive, the court will render judgment for the taxpayer and against the state or county, whichever is appropriate, in an amount equal to the excess in taxes levied and assessed. If the assessment was correct, the action shall be dismissed with costs against the plaintiff except in appeals taken pursuant to section 42-123, subsection B, paragraph 6.

D. If the court finds the assessment is deficient, the judgment shall be for the state or county, whichever is appropriate, and against the taxpayer for the costs of the appeal and the taxes due on the property in excess of the amount originally levied and assessed. The judgment shall be a lien upon the real and personal property of appellant with like effect as though the assessment had originally been in the amount of the judgment, and execution may issue upon the judgment.

E. When judgment is awarded to a taxpayer who paid his taxes to the county treasurer, the judgment shall be paid by the county treasurer of the county in which the property is located out of sums collected from property taxes during the next fiscal year, unless there are sufficient sums available in funds budgeted for that purpose by the county to allow an immediate refund, or the amount of the judgment may be credited toward any taxes which may be remaining due on the property which is the subject of the appeal, subject in either case to the approval of the board of

supervisors. The amount of the judgment shall then be subtracted from the sums due to the state and other political subdivisions in the next fiscal year in proportion to the amount each received from the overpayment of taxes made by appellant. The state and any political subdivision affected by the judgment shall include in their budgets for the next fiscal year the proportional amount of the judgment for which each is liable. Any increase in the budget because of the portion of the judgment being included therein shall not be subject to any budget limitation which may be provided by law.

F. Judgment in favor of an appellant who paid his taxes to the ~~commission~~ DEPARTMENT shall be paid from the general fund of the state.

G. The clerk of the court shall transmit the judgment to the clerk of the board of supervisors or to the ~~commission~~ DEPARTMENT, whichever is appropriate, and to the state board. The board of supervisors or the ~~commission~~ DEPARTMENT, whichever is appropriate, shall, within fifteen days after receipt of the judgment unless appeal is taken as provided under the rules of civil procedure, correct the rolls in accordance with the judgment of the court.

Sec. 35. Section 42-201, Arizona Revised Statutes, is amended to read:

42-201. **Definitions**

In this ~~title~~ CHAPTER, unless the context otherwise requires:

1. "Assessed valuation" means the percentage of the full cash value of property to which the tax rate is to be applied.

~~2. "Commission" means the state tax commission.~~

~~3.~~ 2. "County board" or "board of equalization" means county board of supervisors sitting as the county board of equalization.

~~4.~~ 3. "Current usage" means the use to which property is put at the time of valuation by the assessor or the department.

~~5. "Department" means the department of property valuation.~~

~~6. "Director" means the director of the department of property valuation.~~

~~7.~~ 4. "Full cash value" for property tax purposes is synonymous with market value which means that estimate of value that is derived annually by the use of standard appraisal methods and techniques.

~~8.~~ 5. "Personal property" includes property of every kind, both tangible and intangible, not included in the term real estate.

~~9.~~ 6. "Producing mine or mining claim" means any mine or mining claim from which any coal, mineral or mineral substance, other than clay, sand, gravel, building stone or any mineral or mineral substance normally processed into artificial stone, has been extracted for commercial purposes at any time during a period of three years prior to the first Monday in January of the tax year.

~~10.~~ 7. "Real estate" includes the ownership of, claim to, possession of or right of possession to, lands or patented mines.

~~11.~~ 8. "Roll" means the assessment and tax roll.

~~12.~~ 9. "State board" OR "BOARD" means the state board of ~~property~~ tax appeals.

~~13.~~ 10. "Valuation" means the full cash value of property found for use on the roll.

Sec. 36. Section 42-224, Arizona Revised Statutes, is amended to read:

42-224. **Listing of property; methods and contents as described by department**

For the assessment year beginning January, 1968 and each assessment year thereafter, the department ~~of property valuation~~ shall prescribe in detail the contents of property lists including the specific wording to be used by all assessors in the several counties and the method of listing property. The property statement shall not include any question which is not germane to the valuation function.

Sec. 37. Section 42-245, Arizona Revised Statutes, is amended to read:

42-245. **Appeal of valuation and classification**

A. Any person dissatisfied with the valuation or classification of his property as fixed by the county board of equalization may appeal in the following manner:

1. To the superior court in the manner provided in section 42-151 on or before November 1.

2. To the state board of ~~property~~ tax appeals by filing a petition with the state board within twenty days of the date of the mailing of the decision of the county board to the petitioner. Upon receipt, the state board shall forward a copy of the petition to the director. ~~of property valuation.~~ The petition will be in the form prescribed by the state board and the state board shall render a written decision on such petition within thirty days of the date of hearing such petition, but not later than July 25, and immediately transmit a copy of the decision to the petitioner.

B. In all cases where the county board has ordered a reduction in valuation of any property, the assessor or the department may appeal such decision to the state board in the same manner as provided in subsection A of this section. In the event of an appeal by the assessor or the department, a copy of the petition shall be transmitted by certified or registered mail on or before the date of the filing of the petition to the listed owner of the property which is the subject of the appeal at the address shown on the then existing tax roll. The property owner shall be a party to any proceedings in the appeal.

Sec. 38. Section 42-245.02, Arizona Revised Statutes, is amended to read:

42-245.02. **State board, power to order new evaluation**

The state board may order the department ~~of property valuation~~ to make a new evaluation of the value of property in a certain geographic area or taxation classification when it appears that the assessor has failed to follow any regulation, rule, order or direction of the department, has been guilty of misconduct or neglect of duty, or practiced discrimination in the classification or valuation of property.

Sec. 39. Section 42-248, Arizona Revised Statutes, is amended to read:

42-248. **Abstract of roll; forwarding copies; abstract of property in state**

A. On or before the first Monday in August the clerk of the county board of equalization shall make an abstract of the roll containing the valuations by taxing districts of all property in the county subject to valuation by the county assessor and such other information as is prescribed by the department.

B. The clerk shall file one copy of the abstract in the office of the board of supervisors, and transmit additional copies to ~~the state tax commission,~~ the state board and the department.

C. The department shall prepare an abstract containing the valuation by county and taxing district of all property subject to property taxation in the state. Prior to December 1 the department shall transmit copies of such abstract to the ~~state tax commission,~~ state board of ~~property~~ tax appeals and county board of supervisors.

Sec. 40. Section 42-272, Arizona Revised Statutes, is amended to read:

42-272. **Procedure, affidavits and forms**

The department ~~of property valuation~~ shall prescribe the procedure, affidavits and forms required to carry into effect tax exemptions on property specified in section 2, article 9, constitution of Arizona.

Sec. 41. Section 42-382, Arizona Revised Statutes, is amended to read:

42-382. **Delinquent list; transmitting list to state treasurer and department of revenue**

A. On the first Monday in November and May each year the county treasurer shall, at the close of business of that day, enter upon the roll a statement that he has made a levy upon all property therein assessed, the taxes upon which are delinquent, and immediately ascertain the several amounts of taxes then delinquent, carry them on the roll in a separate column, add up the column, enter the total on the roll, and verify it by oath, all of which shall constitute the "delinquent list." The county treasurer shall complete the delinquent list by December 31 each year for the first installment of taxes due and on June 30 the following year for the second installment of taxes due.

B. On December 1 and June 1 each year the board of supervisors shall examine and compare the delinquent list, correct any errors in descriptions of property, and certify the list by its chairman.

C. On the first Monday in January and July each year the clerk of the board shall transmit to the state treasurer and ~~tax commission~~ DEPARTMENT OF REVENUE a statement in writing of the amount of the delinquent tax roll.

Sec. 42. Section 42-405, Arizona Revised Statutes, is amended to read:

42-405. **Omissions, errors or defects in form**

Omissions, errors or defects in an assessment list or tax roll, when it can be ascertained from the records of the county assessor what was intended,

may be supplied or corrected by the assessor, at any time before the return of the assessment roll to the county treasurer, or by the county treasurer at any time thereafter, subject in either case to the prior approval of the department ~~of property valuation~~ and the county board of supervisors. When such omission, error or defect has been carried into the delinquent list or into the publication provided for by this article, the list or publication may be amended and republished, or notice of the correction may be published and posted in the manner provided by this article for the publication and posting of the original list and notice.

Sec. 43. Section 42-606, Arizona Revised Statutes, is amended to read:

42-606. **Board of equalization of personal property; meetings; appeal**

A. The board of supervisors of each county shall convene on the first Monday of each month as a board of equalization of personal property at which time any person whose property has been valued as provided in this article and whose name appears on the last personal property tax roll and who has appealed to the county board pursuant to the provisions of section 42-604, may appear before the board of equalization of personal property and present his objections to the valuation of his property in the same manner as provided in section 42-241.01. After hearing the objections the board may change any valuation. To provide equalization the board of supervisors sitting as a board of equalization for personal property may not adjourn from day to day but shall act as a board of equalization only on the first Monday in each month.

B. Any person dissatisfied with the amount of his valuation as fixed by the board may appeal to the superior court before the taxes become delinquent, in the same manner as provided by sections 42-151 and 42-152, or petition the state board of ~~property~~ tax appeals within ten days from the date of the decision of the county board. The state board shall render a written decision on such petitions within ten days after receipt thereof by the state board and shall transmit a copy of the decision to the appellant, assessor, supervisors and department.

C. In all cases where the county board has ordered a reduction in valuation of any property, the assessor or the department may appeal such decision to the state board in the same manner as prescribed above. In the event of an appeal by the assessor or the department a copy of the petition shall be transmitted by the petitioner by certified or registered mail on or before the date of filing of the petition to the listed owner of the property which is the subject of appeal at the address shown on the then existing tax roll. The property owner shall be a party to any proceedings in the appeal.

Sec. 44. Section 42-632, Arizona Revised Statutes, is amended to read:

42-632. **Filing for exemption**

A person filing a claim for exemption of property in transit shall do so upon a form and in the manner the ~~state tax commission~~ DEPARTMENT prescribes. The claim shall be accompanied by a certificate of the operator of the warehouse in which the property is located stating that the property is entered in the warehouse records as property in transit.

Sec. 45. Section 42-641, Arizona Revised Statutes, as amended by Laws 1973, chapter 33, section 1, is amended to read:

42-641. **Definitions**

In this article, unless the context otherwise requires~~:~~,

~~1. "Department" means the department of property valuation.~~

~~2.~~ "Mobile home" means any vehicle, other than a self-propelled motor vehicle, designed for human habitation and built on a chassis designed for being drawn upon the highways by a motor vehicle, and which is in excess of eight feet in width or forty feet in length, or which is, regardless of size, used as a place of residence or for a commercial purpose and which has not been assessed pursuant to section 42-642, paragraph E.

Sec. 46. Section 42-644, Arizona Revised Statutes, is amended to read:

42-644. **Duty to maintain register; reports to county assessor; violation**

A. Every person who permits a mobile home to be placed upon land which he owns, possesses or controls, in such a manner as will permit occupancy thereof as a dwelling or sleeping place for one or more persons for a period of thirty days or more, shall keep a register in which shall be entered such information as may be required by the department. ~~of property valuation.~~

B. Forms on which the register shall be maintained shall be prescribed by the department ~~of property valuation~~ and furnished by the county assessor. A copy of the information disclosed on the register for each thirty day period shall be sent to the county assessor of the county in which the land is located not later than the tenth day following the month covered by the report.

C. A person who fails to maintain the register or make the report required by subsections A and B of this section is guilty of a misdemeanor.

Sec. 47. Section 42-701, Arizona Revised Statutes, is amended to read:

42-701. **Definitions**

In this article, unless the context otherwise requires:

1. "Air commerce" means the scheduled transportation by aircraft of persons or property for hire in interstate, intrastate or international transportation.

2. "Aircraft" means any contrivance used or designed for navigation or flight through the air.

3. "Airline company" means any person who undertakes, directly or indirectly, to engage in the business of scheduled air commerce.

~~4. "Commission" means the state tax commission.~~

~~5.~~ 4. "Flight property" means aircraft fully equipped for flight.

~~6.~~ 5. "Operating" or "operated" means regularly scheduled landings or take-offs of aircraft.

~~7.~~ 6. "Person" means any individual, corporation, firm, partnership, company or association, and includes a guardian, trustee, executor, administrator, receiver, conservator or any person acting in a fiduciary capacity therefor.

Sec. 48. Section 42-704, Arizona Revised Statutes, is amended to read:

42-704. **Determination of value**

On or before the first Monday in June, the department shall determine the full cash value of all flight property operated in this state in air commerce by every airline company by using the same method of valuation as used in the valuation of other unsecured personal property. ~~The valuation determined shall be transmitted to the commission on or before the third Monday in June.~~ The valuation apportioned to this state of such flight property shall be determined by the department to be the proportion of the total valuation thereof determined on the basis of the total of the following percentages:

1. Fifty per cent of the percentage which the total time scheduled on the ground within this state of the flight property during the preceding

calendar year is of the total time scheduled on the ground within and without this state of such flight property during the preceding calendar year.

2. Fifty per cent of the percentage which the total mileage scheduled within this state of the flight property on flights operated in this state during the preceding calendar year is of the total mileage scheduled within and without this state of such flight property during the preceding calendar year.

Sec. 49. Section 42-705, Arizona Revised Statutes, is amended to read:

42-705. **Levy and collection of tax; in lieu nature of tax**

A. The ~~commission~~ DEPARTMENT OF REVENUE shall annually ~~upon receipt from the department~~ enter in a book the full cash value as determined of the flight property of the airline companies within this state, ~~and~~ shall assess such property as provided in sections 42-136 and 42-227~~.~~, AND ~~The commission~~ shall annually make a tax levy against the values so assessed and determined to exist in the state at a rate which will equal the average rates of levy for all purposes in the several taxing districts of the state for the current year.

B. The ~~commission~~ DEPARTMENT shall, as prescribed by the timetable provided in section 42-342, proceed to collect the taxes and pay them into the general fund of the state. Such tax shall be in lieu of all other ad valorem taxes upon the flight property of such companies.

Sec. 50. Section 42-721, Arizona Revised Statutes, is amended to read:

42-721. **Definitions**

In this article, unless the context otherwise requires~~:~~,

~~1. "Commission" means the state tax commission.~~

~~2.~~ "Express company" means any person engaged in conveying to, from, within or through the state, money or articles by express.

Sec. 51. Section 42-722, Arizona Revised Statutes, is amended to read:

42-722. **Annual statement**

Every express company doing business in the state shall, between June 30 and September 1 each year, under the oath of its chief officer in this state,

make and file with the ~~state tax commission~~ DEPARTMENT a statement in such form as the ~~commission~~ DEPARTMENT prescribes, containing:

1. The name and nature of business of the company.

2. Whether a person, association or corporation, and under the law of what state or country organized.

3. The location of the principal office and the name and post office addresses of the president, secretary, auditor, treasurer, tax agent, if any, and superintendent or general manager, and the name and post office address of the chief officer or managing agent of the company in this state.

4. The entire receipts for business done within this state, including all amounts earned or charged, whether or not actually received, giving the name of the office and agent and the amount received by him, for the year ending June 30, including its proportion of gross receipts for business transacted within this state in connection with other companies.

5. The total amount of receipts for business transacted within this state, showing the receipts during each calendar month of the period covered by the statement.

6. The amounts actually paid by the express company, itemized for the year ending June 30, to the railroads within the state for transportation of freight of the express company within this state, showing the amount paid to each railroad company, and the amount of payments during each calendar month.

7. The receipts after deducting the amount paid for transportation of freight from the entire receipts.

8. Such other facts and information as the ~~commission~~ DEPARTMENT requires.

Sec. 52. Section 42-723, Arizona Revised Statutes, is amended to read:

42-723. **Failure to make annual statement**

If an express company fails or refuses to make the statement within the time prescribed by section 42-722, the ~~commission~~ DEPARTMENT shall notify the company of that fact by letter mailed and addressed to the local agent of the company, enclosing the form of statement to be made, and thereupon each local agent, on or before September 15, shall file with the

~~commission~~ DEPARTMENT the statement, verified by oath of the agent, containing information the ~~commission~~ DEPARTMENT requires.

Sec. 53. Section 42-724, Arizona Revised Statutes, is amended to read:

42-724. **Determination of gross receipts; hearing**

A. The ~~commission shall meet annually on the third Monday in September, and~~ DEPARTMENT on or before the first Monday in October shall ascertain the gross receipts of express companies for business done in this state by deducting the amounts paid for transportation of freight from the entire receipts, and the amounts thus ascertained shall, in each instance, be deemed the annual gross receipts of the company for business done within the state.

B. If a company and its agents fail to make the statement required by law or to furnish information requested by the ~~commission~~ DEPARTMENT, the ~~commission~~ DEPARTMENT shall obtain the information in some other manner.

C. Before the gross receipts are determined, any person interested may on written application appear before the ~~commission~~ DEPARTMENT and be heard in the matter.

~~D. At any time previous to the third Monday in October the commission may review and correct its findings.~~

Sec. 54. Section 42-725, Arizona Revised Statutes, is amended to read:

42-725. **Tax rate; levy and collection of tax; action to collect**

A. ~~The commission shall, on the first Monday in November, report to the state treasurer the amount found by it as the gross receipts of express companies.~~ The ~~state treasurer~~ DEPARTMENT shall annually in the month of December charge and collect from each express company a state tax of six per cent of the amount of the gross receipts as fixed by the ~~commission~~ DEPARTMENT, and such tax shall be in lieu of all other taxes upon the properties of such companies.

B. If an express company fails or refuses to pay the tax before the third Monday in December, the ~~state treasurer~~ DEPARTMENT shall collect the tax, with interest at the rate of twelve per cent per annum, by an action instituted and prosecuted by the attorney general upon request of the ~~state treasurer or the commission~~ DIRECTOR.

C. THE DEPARTMENT SHALL ANNUALLY ON OR BEFORE THE SECOND MONDAY IN JANUARY REPORT TO THE STATE TREASURER THE AMOUNT FOUND AS THE GROSS RECEIPTS OF EXPRESS COMPANIES.

Sec. 55. Section 42-726, Arizona Revised Statutes, is amended to read:

42-726. **Violations; penalties**

A. An express company failing to make and file the annual statement on or before September 1 is subject to a penalty of five hundred dollars and an additional penalty of one hundred dollars for each day thereafter it fails to file the statement, which shall be recovered by an action in the name of the state. The attorney general, on request of the ~~commission~~ DIRECTOR, shall institute the action.

B. A local agent failing to make and file the statement on or before September 15, if so requested by the ~~commission~~ DEPARTMENT, is guilty of a misdemeanor punishable by a fine of not less than one hundred nor more than three hundred dollars, and each day's failure to file the statement after September 20 shall constitute a new offense.

Sec. 56. Section 42-741, Arizona Revised Statutes, is amended to read:

42-741. **Definitions**

In this article, unless the context otherwise requires:

~~1. "Commission" means the state tax commission.~~

~~2. "Department" means the department of property valuation.~~

~~3.~~ 1. "Entire receipts" means, as applied to a private car company operating partly within and partly without the state, all earnings on business beginning and ending within the state, and a proportion based upon the proportion of mileage within this state to the entire mileage over which the business is done, of earnings on all transstate and interstate business passing through, into or out of the state.

~~4.~~ 2. "Private car company" means a person engaged in the business of operating, furnishing or leasing cars, whether or not owned by such person and regardless of what name is applied to such cars, to be used for transporting or accommodating persons or freight over railroad lines, located wholly or partly within the state, not owned, leased or operated by such person.

Sec. 57. Section 42-745, Arizona Revised Statutes, is amended to read:

42-745. **Determination and review of value**

A. The department shall ascertain and determine, on or before October 15, the full cash value of the property of the company within this state whether used in intrastate or interstate business, and such value shall constitute the full cash value of the property of the private car company within the state for that year. This valuation shall be immediately transmitted to the private car company by certified or registered mail.

B. On or before November 1 any private car company may, on written application, request the department to review its valuation.

C. The department ~~of property valuation~~ shall rule on any review of valuation under subsection B on or before November 15. Every private car company whose valuation has been reviewed shall be notified of the department's ruling by mail. ~~and all the private car company valuations shall be immediately transmitted to the commission.~~

Sec. 58. Section 42-745.01, Arizona Revised Statutes, is amended to read:

42-745.01. **Appeals**

A. Any private car company may appeal the valuation of its property as determined by the department ~~of property valuation~~ to the state board of ~~property~~ tax appeals in accordance with the provisions of section 42-124.02 on or before December 1, and the board shall immediately notify the ~~commission~~ DEPARTMENT of any such appeal.

B. The state board of ~~property~~ tax appeals shall decide all private car company appeals on or before December 10.

C. In addition to the remedies provided in this article any private car company may avail itself of the administrative reviews and appeals therefrom as provided in sections 42-146, 42-204 and 42-254.

Sec. 59. Section 42-746, Arizona Revised Statutes, is amended to read:

42-746. **Entry of value; levy of tax; collection; in lieu nature of tax; exception**

The ~~commission~~ DEPARTMENT shall annually~~, upon receipt from the department,~~ enter in a book the full cash value as determined of the

property of the private car companies within the state for the prior calendar year, ~~and shall~~ assess such property as provided in sections 42-136 and 42-227~~.~~, AND ~~The commission shall each year~~ make a tax levy against the values so assessed and determined at a rate which shall equal the average rate of levy for all purposes in the several taxing districts of the state for the current year. The tax shall be in lieu of all other taxes upon the properties and business of private car companies except the annual license tax and registration fee. The ~~commission~~ DEPARTMENT shall proceed to collect the taxes which will be due and payable on and after December 15 and will be delinquent after January 15 next.

Sec. 60. Section 42-747, Arizona Revised Statutes, is amended to read:

42-747. **Interest upon late payments; distraint for failure to pay; sale; disposition of tax collections**

A. If a private car company fails or refuses to pay the tax as provided for in this article by January 15 each year, the ~~commission~~ DEPARTMENT shall collect the tax, with interest at ten per cent per annum for each subsequent month in which the tax remains unpaid. If the tax is not paid within sixty days after such date, the ~~commission~~ DEPARTMENT shall distrain sufficient goods and chattels of the company found within the state to pay the tax, together with penalties and costs accrued thereon.

B. The ~~commission~~ DEPARTMENT shall advertise in two newspapers printed in Maricopa county stating the time and place when the property distrained will be sold, and if the taxes and penalties accruing thereon are not paid before the time of sale, which shall be not less than ten days after taking such property, the ~~commission~~ DEPARTMENT shall sell, at public auction for cash, as much of the property as is sufficient to pay the tax, penalties and costs of distraint and sale.

C. The ~~commission~~ DEPARTMENT shall pay to the state treasurer each month all taxes collected for deposit in the general fund.

Sec. 61. Section 42-761, Arizona Revised Statutes, is amended to read:

42-761. **Annual statement**

A. On or before the first day of April each year any person owning, operating or constructing a railroad in the state shall, by its president, secretary, tax agent or principal accounting officer, return to the department ~~of property valuation~~ a sworn statement or schedule containing:

1. A statement of its right-of-way, track and roadbed, giving the entire length of this and other states, and showing the proportion in each city, town and county, and the total thereof in this state.

2. The length of all sidetracks and the aggregate length thereof, and the name of the city, town and county in which they are located.

3. A complete list, giving size, location as to city, town and county, the material of which they are constructed and the value of all depots, station houses, machine shops and other buildings located wholly or in part on the right-of-way, and of all platforms, fuel and water stations, and machinery and tanks connected therewith.

4. The number of ties in the track per mile, the weight per yard of iron or steel rails used in main or sidetracks, what joints are used in main or sidetracks, the ballasting of the tracks, whether with rock, gravel, dirt or other material, the length of time the iron and steel has been used, and the length of time the road has been built.

5. A full list of the rolling stock, distinctly stating the number, class and value of locomotives and all kinds of cars owned or leased by the company and in the state on the first day of January each year at twelve o'clock noon.

6. The amount of capital stock authorized, the number of shares into which the capital stock is divided, the amount of capital stock paid up, the market value of the stock, or if it has no market value, then the actual value of the shares of stock, the amount of outstanding bonded indebtedness and the market value thereof.

7. A correct detailed inventory of the number, kind and value of all tools and materials used for repairs, and all other personal property.

8. A statement of the amount and value of the property designated in this section.

9. Such further information as the department ~~of property valuation~~ requires.

B. Upon written request of any person owning, operating or constructing a railroad in the state, by its secretary, tax agent or principal accounting officer, the director may, for good cause shown, enlarge or extend the required time of filing an annual statement.

Sec. 62. Section 42-791, Arizona Revised Statutes, is amended to read:

42-791. **Definitions**

In this article, unless the context otherwise requires:

~~1. "Commission" means the state tax commission.~~

~~2.~~ 1. "Telegraph company" means a person engaged in this state in the business of transmitting telegraphic messages to, from, through or within the state.

~~3.~~ 2. "Telephone company" means a person engaged in this state in the business of transmitting telephonic messages to, from, through or within the state.

Sec. 63. Section 42-792, Arizona Revised Statutes, is amended to read:

42-792. **Annual statement**

A. Every telephone and telegraph company shall annually, on or before the first day of April, under the oath of its chief officer in this state, make and file with the department ~~of property valuation~~ in such form as the department ~~of property valuation~~ prescribes, a statement containing:

1. The name and nature of the business of the company, whether a person, association or corporation, and under the laws of what state or country organized.

2. The location of its principal office.

3. The names and post office addresses of its president, secretary, tax agent, auditor, treasurer, superintendent or general manager, and the chief officer or managing agent in this state.

4. The par value and market value of its shares of stock.

5. A detailed schedule of the real estate owned by it in this state, where located, and the value thereof.

6. The total length of its lines in the state, including lines controlled or used under lease or otherwise, and the number of miles of lines in each county.

7. A full and correct inventory of all other personal property owned in the state on the first day of January preceding, where located, and the value thereof.

8. The total gross receipts for the year ending January 1 from whatever source derived, and the portion thereof derived wholly within the state.

9. The operating expenses for the year ending January 1, itemized or divided as required by the department. ~~of property valuation.~~

10. The amount paid in dividends and the percentage such dividends bear to its capital.

B. Upon written request of any telephone and telegraph company in the state, by its secretary, tax agent or principal accounting officer, the director may, for good cause shown, enlarge or extend the required time of filing an annual statement.

Sec. 64. Section 42-795, Arizona Revised Statutes, is amended to read:

42-795. **Violations; penalties; action for recovery**

If a telephone or telegraph company fails to file the statement provided by section 42-792 within the time prescribed, unless the ~~commission~~ DEPARTMENT for good cause has extended the time, such company shall be subject to a penalty of five hundred dollars, and an additional penalty of one hundred dollars for each day thereafter it fails to file the statement, which shall be recovered by an action in the name of the state brought by the attorney general on request of the director.

Sec. 65. Section 42-901, Arizona Revised Statutes, is amended to read:

42-901. **Method of taxing national banking associations**

National banking associations shall be taxed on their net income under title 43 and shall in addition be subject to all other taxes authorized by section 5219, United States Revised Statutes as amended, levied or imposed by the state or any political subdivision thereof. The ~~commission~~ DEPARTMENT OF REVENUE shall determine the allowable cost factor attributable to exempt income from United States government obligations and municipal bonds, and may by rules and regulations prescribe any information necessary to make such determination.

Sec. 66. Section 42-1201, Arizona Revised Statutes, is amended to read:

42-1201. **Definitions**

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

1. "Affix" and "affixed" includes imprinting tax meter stamps on packages and individual containers as authorized by the ~~state tax commission~~ DEPARTMENT.

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

3. "Cigars" means all rolls of tobacco or any substitute therefor wrapped with tobacco.

~~4. "Commission" means the state tax commission.~~

~~5.~~ 4. "Consumer" means a person who comes into possession of any luxuries subject to the tax imposed by this article for the purpose of using, giving away or disposing of such luxuries in any manner other than by sale, barter or exchange.

~~6.~~ 5. "Luxury" means any article, object or device upon which a tax is imposed under the provisions of this article.

~~7.~~ 6. "Malt extract, derivatives or combinations thereof" mean and include all extracts, derivatives and combinations commonly called malt or malt extract, and all combinations or extracts that are derivatives of sprouted barley, malt extract or products prepared in whole or in part from barley or products of barley, which may be used in the preparation or manufacture of any beverage.

~~8.~~ 7. "Malt liquor" means any liquid containing more than one-half of one per cent alcohol by volume which is made by the process of fermentation and not distillation of hops or grains, but not including liquids made by the process of distillation of such substances.

~~9.~~ 8. "Person" means any individual, firm, partnership, joint adventure, association, corporation, municipal corporation, estate, trust, club, society or any other group or combination acting as a unit, and the plural as well as the singular number.

~~10.~~ 9. "Retailer" means any person who comes into possession of the luxuries subject to the taxes imposed by this article for the purpose of selling such luxuries for consumption and not for resale.

~~11.~~ 10. "Spirituous liquor" means any liquid containing more than one-half of one per cent alcohol by volume which is produced by distillation of any fermented substance and which is used or prepared for use as a beverage.

~~12.~~ 11. "Vinous liquor" means any liquid containing more than one-half of one per cent alcohol by volume made by the process of fermentation of grapes, berries, fruits, vegetables or other substances, but not including those liquids in which hops or grains are used in the process of fermentation and not including liquids made by the process of distillation of such substances.

~~13.~~ 12. "Wholesaler" means a person who sells any luxury taxed under the provisions of this article to retail dealers or for the purposes of resale only.

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

Sec. 67. Section 42-1202, Arizona Revised Statutes, is amended to read:

42-1202. **Administrative powers of department; credentials of agents**

A. This article shall be administered by the ~~state tax commission~~ DEPARTMENT OF REVENUE.

B. In the administration of this article the ~~commission~~ DEPARTMENT, its ~~members,~~ agents and representatives shall possess all the powers, duties and authority of police officers within the state, and all the powers and authority of appraisement, valuation, assessment, correction, computation, estimation, supervision, direction, investigation, inspection, collection and enforcement vested in the ~~commission~~ DEPARTMENT by any law of the state relating to public revenue and taxation applicable to the administration of this article.

C. The ~~commission~~ DEPARTMENT may:

1. Make and prescribe rules and regulations, not in conflict with this article, necessary for the enforcement thereof.

2. Adopt different detailed regulations applicable to diverse methods and conditions of sale or use of the luxuries upon which a tax is imposed by this article.

3. Prescribe in each classification upon whom, as between the wholesaler and the retailer or between the owner, lessor or other person in possession of any luxury, the primary duty of affixing official stamps or official labels rests and the manner in which the stamps or labels shall be affixed.

D. All agents or representatives of the ~~commission~~ DEPARTMENT shall for identification purposes have credentials signed by the ~~chairman of the commission~~ DIRECTOR and countersigned by the governor.

Sec. 68. Section 42-1203, Arizona Revised Statutes, is amended to read:

42-1203. **License permitting sale of tobacco, cigars and cigarettes; application; fee; restrictions on sales; violation; penalty**

A. Every person selling or offering for sale any tobacco, cigarettes or cigars on which a tax is imposed by this article shall obtain from the ~~commission~~ DEPARTMENT a license to sell tobacco, cigarettes and cigars. Application for the license shall be in the form provided by the ~~commission~~ DEPARTMENT and shall be accompanied by a fee of five dollars if the application is for a wholesaler's license, or a fee of one dollar if for a retailer's license.

B. The ~~commission~~ DEPARTMENT shall issue a license authorizing the applicant to sell tobacco, cigarettes and cigars in the state upon condition that the applicant complies with the provisions of this article and the regulations of the ~~commission~~ DEPARTMENT. The license shall be nontransferable, valid until revoked by the ~~commission~~ DEPARTMENT, and shall be displayed in the applicant's place of business.

C. No wholesaler licensed pursuant to this article shall sell or offer for sale any tobacco, cigarettes or cigars upon which a tax is imposed by this article to any person within this state other than a wholesaler or retailer licensed pursuant to this article. No retailer licensed pursuant to this article shall sell or offer for sale, or transfer or return for credit to any wholesaler or other person, any unused luxury tax stamps, except as provided in this article for redemption of stamps by the ~~commission~~ DEPARTMENT.

D. Any licensee violating any provision of this section is guilty of a misdeameanor.

Sec. 69. Section 42-1205, Arizona Revised Statutes, is amended to read:

42-1205. **Reports of sales required of distillers and manufacturers of distilled spirits and vinous and malt liquors; payment of tax by wholesalers of vinous, malt or spirituous liquors; addition of tax to sales price**

A. Every distiller or manufacturer of distilled spirits and vinous and malt liquors who sells any of such products to wholesalers within the state shall, at the time of making the sale, file with the ~~commission~~ DEPARTMENT a copy of the invoice of the sale, showing in detail the kind of liquor or beverage sold, the quantities of each, the size of the container and the weight of the contents, the alcoholic content where required by this article, and the name of the person, firm or corporation to whom sold.

B. Every wholesaler of vinous or malt liquors purchasing vinous or malt liquors for resale within the state shall pay the luxury and privilege tax on all such liquors so purchased and add the amount of the tax to the sales price. The wholesaler shall pay the tax to the ~~commission~~ DEPARTMENT monthly on or before the tenth day of each month. On or before such date the wholesaler shall prepare a sworn return for the preceding month in such form as prescribed by the ~~commission~~ DEPARTMENT, showing the amount of vinous and malt liquors purchased during the preceding month, the amount of tax for the period covered by the return, and such other information as the ~~commission~~ DEPARTMENT deems necessary for the proper administration of this article. The taxpayer shall deliver the return, together with a remittance of the amount of the tax due, to the ~~office of the commission~~ DEPARTMENT.

C. Every wholesaler of spirituous liquors selling spirituous liquors within the state shall pay the luxury and privilege tax on all such liquor sold within the state and add the amount of such tax to the sales price. The wholesaler shall pay the tax to the ~~commission~~ DEPARTMENT monthly on or before the tenth day of each month. On or before such date the wholesaler shall prepare a sworn return for the preceding month in the form prescribed by the ~~commission~~ DEPARTMENT, showing the amount of spirituous liquors sold in this state during the preceding month, the amount of tax for the period covered by the return, and such other information the ~~commission~~ DEPARTMENT deems necessary for the proper administration of this article. The wholesaler shall deliver the return, together with a remittance of the amount of the tax due, to the ~~office of the commission~~ DEPARTMENT.

Sec. 70. Section 42-1206, Arizona Revised Statutes, is amended to read:

42-1206. **Bonds required of liquor wholesalers; type of surety; minimum bond**

A. Every wholesaler of spirituous, vinous and malt liquors shall file with the ~~commission~~ DEPARTMENT, in such form as the ~~commission~~ DEPARTMENT prescribes, a bond or bonds, duly executed by the wholesaler as principal, and with a corporation duly authorized to execute and write bonds within the state as surety, payable to the state, and conditioned upon the payment of all excise taxes, penalties and other obligations of the wholesaler arising under this article.

B. The ~~commission~~ DEPARTMENT shall fix the total amount of the bond or bonds required of the wholesaler and may increase or reduce the amount at any time. In fixing the total amount, the ~~commission~~ DEPARTMENT shall require a bond or bonds equivalent in total amount to twice the wholesaler's estimated monthly excise tax, ascertained in such manner as the ~~commission~~ DEPARTMENT deems proper. The total amount of the bond or bonds required of any wholesaler shall not be less than two thousand dollars.

Sec. 71. Section 42-1207, Arizona Revised Statutes, as amended by Laws 1973, Chapter 8, section 1, is amended to read:

42-1207. **Revenue stamps; specifications; purchase price of stamps**

A. The ~~commission~~ DEPARTMENT shall prepare and have on hand official adhesive stamps of the various types according to the classifications set forth in sections 42-1204 and 42-1231 of luxuries upon which a tax is imposed by this article, and by article 1.1 of this chapter, and a stamp shall be affixed to each package of cigarettes sold. The stamps shall be of a character so that they cannot be removed when once attached to an article without destroying them.

B. The official stamps shall be printed on durable material, and shall set forth plainly on the face of each stamp the denomination thereof, the facsimile signature of the ~~chairman of the commission~~ DIRECTOR at the time of the printing thereof, and the classification of the luxury upon which the stamp is to be affixed.

C. Official stamps to be affixed to all malt extracts, or derivatives or combinations thereof, shall be obtainable from the ~~commissioner~~ DEPARTMENT by wholesalers or retailers by purchase at ninety-five per cent of the face value thereof.

D. The official stamps to be affixed to packages of cigarettes shall be obtainable from the ~~commission~~ DEPARTMENT by each wholesaler and retailer by purchase at the following rates:

1. Ninety-six per cent of the face value for the first thirty thousand dollars worth of stamps purchased by him in any month,

2. Ninety-seven per cent of the face value for the second thirty thousand dollars worth of stamps purchased by him in any month, and

3. Ninety-eight per cent of the face value on all stamps in excess of sixty thousand dollars purchased by him in any month.

E. Subject to the provisions of section 42-1207.01, a licensed wholesaler or retailer who furnishes a bond of a surety company qualified to do business within the state, in an amount equal to two and one-half times the amount of his current monthly stamp purchases and conditioned upon the payment within the time prescribed, may make payment for the official stamp on or before the twentieth day of the month next following his purchase of an official stamp. All other wholesalers and retailers shall pay for each stamp at the time of purchase.

Sec. 72. Section 42-1207.01, Arizona Revised Statutes, is amended to read:

42-1207.01. **Cancellation of credit for revenue stamps or meter machines; collection of debt**

A. Upon a finding that the amount of stamp purchases, or meter machine usage, exceeds seventy-five per cent of the amount of the bond the ~~tax commission~~ DEPARTMENT may cancel the credit privileges provided to qualified wholesalers or retailers pursuant to section 42-1207, subsection C and to qualified licensed wholesalers or retailers pursuant to section 42-1211, subsection D.

B. If the indebtedness, of a wholesaler or retailer whose credit privileges have been canceled pursuant to this section, remains unpaid for thirty days after cancellation the ~~tax commission~~ DIRECTOR shall request the attorney general to take suitable action on behalf of the ~~commission~~ DEPARTMENT to either collect on such indebtedness or the surety bond.

Sec. 73. Section 42-1210, Arizona Revised Statutes, is amended to read:

42-1210. **Redemption of unused stamps; refunds where article exported or stamp erroneously affixed; tax inapplicable to interstate sales**

A. The ~~commission~~ DEPARTMENT shall redeem unused stamps that a retailer or wholesaler presents for redemption, and pay for them from funds collected under this article.

B. The tax imposed by this article upon any articles or substances shall be refunded when the amount of the tax has been paid thereon and when proof is made to the ~~commission~~ DEPARTMENT that such articles or substances were exported from the state or that the stamps have been affixed to articles or substances upon which stamps are not required. The manner of making proof shall be in accordance with regulations adopted by the ~~commission~~ DEPARTMENT.

C. The tax imposed by this article shall not be imposed upon any article or substance sold in interstate commerce which the state is prohibited from taxing under the constitution of the United States.

Sec. 74. Section 42-1211, Arizona Revised Statutes, as amended by Laws 1973, Chapter 8, section 2, is amended to read:

42-1211. **Meter stamp machines; prepayment of tax; inspection; redemption**

A. The ~~commission~~ DEPARTMENT may, if it determines that it is practicable to affix stamps by an impression made by the use of metering machines, in lieu of supplying stamps under the provisions of section 42-1207, authorize a licensed wholesaler or retailer to use any metering machine approved by it. The machine shall be sealed by the ~~commission~~ DEPARTMENT before it is used, and it shall be used in accordance with regulations prescribed by the ~~commission~~ DEPARTMENT. Tax meter stamps imprinted by a metering machine shall set forth plainly the denomination of the stamps and such other legends as may be prescribed by the ~~commission~~ DEPARTMENT in lieu of facsimile signature as set forth in section 42-1207.

B. Stamps to be affixed by a metering machine impression shall be paid for at the same rates and in the same manner as stamps sold pursuant to section 42-1207, and shall be deemed to have been purchased when registered on the machine. The ~~commission~~ DEPARTMENT shall cause each metering machine approved by it to be read and inspected at regular quarterly intervals.

C. The ~~commission~~ DEPARTMENT shall redeem, under regulations approved by it, the unused amount of tax for which any meter is registered, and pay for it from funds collected under this article.

Sec. 75. Section 42-1212, Arizona Revised Statutes, is amended to read:

42-1212. **Purchase by retailer of unstamped cigarettes from without state; report required; violation; penalty**

A. Every retailer who purchases or acquires cigarettes on which a tax is imposed by the provisions of this article from any person not doing business in this state, and on which stamps evidencing the payment of the tax have not been affixed, shall, within forty-eight hours after receipt thereof, report the omission to the ~~state tax commission~~ DEPARTMENT. The report shall be made upon a form provided by the ~~commission~~ DEPARTMENT, and shall contain such information as required by the ~~commission~~ DEPARTMENT. The retailer shall, within the time provided, cause to be affixed stamps in the amount of the tax imposed by this article on all such cigarettes in his possession.

B. Any retailer who violates any provision of this section is guilty of a misdemeanor punishable by a fine of not less than one hundred DOLLARS nor more than three hundred dollars, by imprisonment in the county jail not less than fifteen nor more than sixty days, or both. If a retailer is convicted of a second violation of this section, his license shall be revoked by the ~~commission~~ DEPARTMENT for a period not to exceed one year.

Sec. 76. Section 42-1212.01, Arizona Revised Statutes, is amended to read:

42-1212.01. **Filing of return; payment of tax**

Every wholesaler or retailer of cigars or tobacco products other than cigarettes shall pay the luxury and privilege tax on all such products received within the state and add the amount of such tax to the sales price. The wholesaler or retailer shall pay the tax to the ~~commission~~ DEPARTMENT monthly on or before the fifteenth day of each month. On or before such date the wholesaler or retailer shall prepare a sworn return for the preceding month in the form prescribed by the ~~commission~~ DEPARTMENT, showing the amount of cigars or tobacco products other than cigarettes received in this state during the preceding month, the amount of tax for the period covered by the return, and such other information the ~~commission~~ DEPARTMENT deems necessary for the proper administration of this article. The wholesaler or retailer shall deliver the return, together with a remittance of the amount of the tax due, to the ~~office of the commission~~ DEPARTMENT.

Sec. 77. Section 42-1213, Arizona Revised Statutes, is amended to read:

42-1213. **Failure to affix stamps; forfeiture of commodity; sale of forfeited commodity; effect of seizure and sale**

A. When the ~~commission~~ DEPARTMENT or its agents or representatives authorized by it for such purpose discover any luxury subject to tax under the provisions of this article to which official stamps have not been affixed as required by this article, the ~~commission~~ DEPARTMENT or its agent or representative may forthwith seize and take possession of such luxury and it shall be deemed forfeited to the state. The ~~commission~~ DEPARTMENT shall within a reasonable time thereafter, pursuant to a notice posted upon the premises or by publication in a newspaper of general circulation in the county where the seizure was made, not less than five days before the date of sale, offer for sale and sell such forfeited luxuries. From the proceeds of the sale the ~~commission~~ DEPARTMENT shall collect the tax due thereon, together with a penalty of fifty per cent thereof and costs incurred in the proceedings, and shall pay the balance, if any, to the person whose claim of ownership is found by the ~~commission~~ DEPARTMENT to be valid. The sale shall be made in the county which is most convenient and economical.

B. The seizure and sale shall not relieve any person from the penalties provided for the violation of any provisions of this article.

Sec. 78. Section 42-1214, Arizona Revised Statutes, is amended to read:

42-1214. **Records and invoices required of wholesalers and retailers; use of and inspection by department**

A. When a wholesaler in this state sells or delivers to any person any of the luxuries on which a tax is imposed by this article, he shall make a duplicate invoice thereof, showing the date of delivery, the amount and value of each sale, shipment or consignment, and the name and location of the purchaser or person to whom delivery is made, and shall file and retain such invoice for a period of two years, subject to inspection and use by the ~~commission~~ DEPARTMENT.

B. Every wholesaler or retailer shall procure and retain invoices showing the amount and value of each purchase or shipment of any luxuries received by him, which shall show the date thereof, the name and location of the shipper, and the value of the purchase or shipment, and shall retain the invoices for a period of two years, subject to inspection and use by the ~~commission~~ DEPARTMENT.

C. All books, papers, invoices and records of any wholesaler or retailer whether or not required under the provisions of this article to be kept, showing sales, receipts and purchases of luxuries, shall at all times during the usual business hours be open for inspection by the ~~commission~~ DEPARTMENT, and any stock of luxuries in and upon any premises where placed, stored or sold, may be examined by the ~~commission~~

DEPARTMENT for the purpose of determining whether or not the provisions of this article are being complied with.

Sec. 79. Section 42-1215, Arizona Revised Statutes, is amended to read:

42-1215. **Disposition of revenue**

The ~~commission~~ DEPARTMENT shall promptly, and at least daily, remit all monies received under the provisions of this article to the state treasurer accompanied by a statement showing the amount received under the provisions of paragraphs 1 through 5 of section 42-1204.

Sec. 80. Section 42-1216, Arizona Revised Statutes, is amended to read:

42-1216. **Violations by wholesaler; penalty**

A. All cigarettes on which a tax is imposed by this article which are sold or delivered by any licensed wholesaler, shall have affixed thereon the luxury stamps in the amount of the tax imposed.

B. A wholesaler violating this section is guilty of a misdemeanor punishable by a fine of not less than two hundred nor more than three hundred dollars, by imprisonment for not less than fifteen nor more than sixty days, or both.

C. A wholesaler convicted of a second violation of this section, may have his license revoked by the ~~commission~~ DEPARTMENT for a period not to exceed one year.

Sec. 81. Section 42-1217, Arizona Revised Statutes, is amended to read:

42-1217. **Violations; penalties**

A. A person is guilty of a felony punishable by imprisonment in the state prison for not less than one nor more than ten years, who:

1. Falsely or fraudulently makes, forges, alters or counterfeits, or causes or procures to be falsely or fraudulently made, forged, altered or counterfeited, any stamp or meter impression prepared or prescribed by the ~~commission~~ DEPARTMENT under the authority of this article, or who knowingly and wilfully utters, publishes, passes or tenders as true any false, altered, forged or counterfeited stamp or meter impression, or uses any stamp provided for and required by this article which has already once been used, for the purpose of evading the tax imposed.

2. Tampers with, or causes to be tampered with, any metering machine authorized to be used under the provisions of this article.

B. Any person who sells any luxury without the stamps required by this article being affixed thereto is guilty of a misdemeanor punishable by a fine of not less than one hundred nor more than five hundred dollars, by imprisonment in the county jail for not more than ninety days, or both, for each offense.

C. Any retailer who has in his possession any package, bottle or other container containing a luxury which does not bear the stamps required to be affixed thereto by this article is guilty of a misdemeanor punishable by a fine of not less than twenty-five nor more than two hundred dollars for each offense.

D. A person is guilty of a misdemeanor punishable by a fine of not less than twenty-five nor more than two hundred dollars for each offense, who:

1. Is engaged in the business of selling any luxury, either at wholesale or retail, and who refuses or fails to produce on demand by the ~~commission~~ DEPARTMENT invoices of all luxuries purchased or received by him within the two years immediately prior to such demand, unless he shows by satisfactory proof that he is unable to do so for reasons beyond his control.

2. Makes a false entry upon any invoice, package or container of luxuries, or who with intent to avoid the tax imposed by this article presents a false entry for inspection of the ~~commission~~ DEPARTMENT.

3. Prevents or hinders the ~~commission~~ DEPARTMENT from making a full inspection of any place where any luxury is sold or stored, or prevents or hinders the inspection of invoices, books, records or papers required to be kept.

4. Violates any provision of this article, or lawful rule or regulation promulgated by the ~~commission~~ DEPARTMENT under the authority of this article, for which no other penalty is prescribed.

Sec. 82. Section 42-1301, Arizona Revised Statutes, is amended to read:

42-1301. **Definitions**

In this article, unless the context otherwise requires:

1. "Business" includes all activities or acts, personal or corporate, engaged in or caused to be engaged in with the object of gain, benefit or advantage, either directly or indirectly, but not casual activities or sales.

~~2. "Commission" means the state tax commission, and any board, commission or official upon whom the duties and powers exercised by the state tax commission under existing laws may devolve.~~

~~3.~~ 2. "Contracting" means engaging in business as a contractor.

~~4.~~ 3. "Contractor" is synonymous with the term "builder" and means a person, firm, partnership, corporation, association or other organization, or a combination of any of them, who undertakes to or offers to undertake to, or purports to have the capacity to undertake to, or submits a bid to, or does himself or by or through others, construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, excavation or other structure, project, development or improvement, or to do any part thereof, including the erection of scaffolding or other structure or works in connection therewith, and includes subcontractors and specialty contractors. For all purposes of taxation or deduction, this definition shall govern without regard to whether or not the contractor is acting in fulfillment of a contract.

~~5.~~ 4. "Engaging", when used with reference to engaging or continuing in business, includes the exercise of corporate or franchise powers.

~~6.~~ 5. "Gross income" means the gross receipts of a taxpayer derived from trade, business, commerce or sales and the value proceeding or accruing from the sale of tangible personal property, or service, or both, and without any deduction on account of losses.

~~7.~~ 6. "Gross proceeds of sales" means the value proceeding or accruing from the sale of tangible personal property without any deduction on account of the cost of property sold, expense of any kind, or losses, but cash discounts allowed and taken on sales shall not be included as gross income.

~~8.~~ 7. "Gross income" or "gross proceeds of sales" shall not be construed to include goods, wares or merchandise, or value thereof, returned by customers when the sale price is refunded either in cash or by credit, nor the sale of any article accepted as part payment on any new article sold, if and when the full sale price of the new article is included in the "gross income" or "gross proceeds of sales", as the case may be.

~~9.~~ 8. "Gross receipts" means the total amount of the sale, lease or rental price, as the case may be, of the retail sales of retailers, including any services that are a part of the sales, valued in money, whether received in money or otherwise, including all receipts, cash, credits and property of every kind or nature, and any amount for which credit is allowed by the seller to the purchaser without any deduction therefrom on account of the cost of the property sold, materials used, labor or service performed, interest paid, losses or any other expense, but does not include cash discounts allowed and taken nor the sale price of property returned by customers when the full sale price thereof is refunded either in cash or by credit.

~~10.~~ 9. "Person" or "company" includes individual, firm, partnership, joint adventure, association, corporation, municipal corporation, estate, trust or any other group or combination acting as a unit, and the plural as well as the singular number.

~~11.~~ 10. "Retailer" includes every person engaged in the business of making sales at retail, and when in the opinion of the ~~commission~~ DEPARTMENT it is necessary for the efficient administration of this article, includes dealers, distributors, supervisors, employers and salesmen, representatives, peddlers or canvassers as the agents of the dealers, distributors, supervisors or employers under whom they operate or from whom they obtain the tangible personal property sold by them, whether in making sales on their own behalf or on behalf of the dealers, distributors, supervisors or employers.

~~12.~~ 11. "Sale" means any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatever, of tangible personal property, for a consideration, and includes:

(a) Any transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price.

(b) The fabrication of tangible personal property for consumers who furnish either directly or indirectly the materials used in the fabrication work and the furnishing, preparing or serving for a consideration of any tangible personal property consumed on the premises of the person furnishing, preparing or serving such tangible personal property.

~~13.~~ 12. "Sale at retail" means a sale for any purpose other than for resale in the form of tangible personal property, but "transfer of possession", "lease" and "rental" as used in the definition of "sale" means

only such transactions as are found upon investigation to be in lieu of sales as defined without the words "lease or rental".

~~14.~~ 13. "Tangible personal property" means personal property which may be seen, weighed, measured, felt, touched or is in any other manner perceptible to the senses.

~~15.~~ 14. "Taxpayer" means any person liable for any tax imposed by this article.

~~16.~~ 15. "Tax year" or "taxable year" means either the calendar year or the taxpayer's fiscal year when permission is obtained from the ~~commission~~ DEPARTMENT to use a fiscal year as the tax period instead of the calendar year.

~~17.~~ 16. "Wholesaler" or "jobber" means any person who sells tangible personal property for resale and not for consumption by the purchaser.

Sec. 83. Section 42-1302, Arizona Revised Statutes, is amended to read:

42-1302. **Exclusion of tax from gross income, receipts or proceeds**

For the purpose of this article the total amount of gross income, gross receipts or gross proceeds of sales shall be deemed to be the amount received, exclusive of the tax imposed by this article, if the person upon whom the tax is imposed establishes to the satisfaction of the ~~commission~~ DEPARTMENT that the tax has been added to the sale price and not absorbed by him, but in no event shall the person upon whom the tax is imposed, when an added charge is made to cover the tax levied by this article, remit less than the amount so collected to the ~~commission~~ DEPARTMENT.

Sec. 84. Section 42-1303, Arizona Revised Statutes, is amended to read:

42-1303. **Administration and enforcement of article; employees; bonds**

A. The administration of this article is vested in and shall be exercised by the ~~tax commission~~ DEPARTMENT OF REVENUE, except as otherwise provided by this article, and all payments required by this article shall be made to the ~~commission~~ DEPARTMENT.

B. The enforcement of this article in any court of the state shall be under the exclusive jurisdiction of the ~~commission~~ DEPARTMENT and the attorney general.

C. The ~~commission~~ DEPARTMENT shall appoint, as necessary, such agents, clerks and stenographers authorized by law, who shall perform such duties as may be required not inconsistent with this article, and who shall be authorized to act for the ~~commission~~ DEPARTMENT as it prescribes and as provided by this article. Each agent shall execute a bond in the amount of five thousand dollars conditioned upon the faithful discharge of his duties, but the ~~commission~~ DEPARTMENT may, in its discretion, bond all or any of its agents by a multiple or joint bond. The agents, clerks and stenographers may be removed by the ~~commission~~ DEPARTMENT for cause and the ~~commission~~ DEPARTMENT shall be the final judge of the sufficiency of the cause.

Sec. 85. Section 42-1304, Arizona Revised Statutes, is amended to read:

42-1304. **Department records**

A. Records and accounts shall be kept by the ~~commission~~ DEPARTMENT showing separately the taxes collected under each of the classifications and amounts collected from businesses engaged in within each county as prescribed in sections 42-1309 through 42-1315. On or before the fifth day of each month the ~~commission~~ DEPARTMENT shall deliver a statement to the state treasurer, and a duplicate thereof to the ~~commissioner~~ ASSISTANT DIRECTOR FOR THE DIVISION of finance, showing all collections made during the preceding month, setting forth the classifications and amounts collected from businesses engaged in within each county.

B. The ~~commission~~ DEPARTMENT shall keep full and accurate records of all monies received by it, shall show how such monies were disbursed and shall preserve all returns filed with it for a period of four years.

Sec. 86. **Repeal**

Sections 42-1305 and 42-1306, Arizona Revised Statutes, are repealed.

Sec. 87. Section 42-1307, Arizona Revised Statutes, is amended to read:

42-1307. **Confidential nature of reports**

Unless required by judicial order or as provided by this article, the ~~members of the commission~~ DEPARTMENT, its agents, clerks or stenographers shall not divulge the gross income, gross proceeds of sales or the amount of tax paid by any person as shown by the reports filed as required by this article, except to ~~members and~~ employees of the

~~commission~~ DEPARTMENT for the purpose of checking, comparing and correcting returns, or to the governor, the attorney general or other authorized representative of the state, in any action pertaining to the tax due under this article.

Sec. 88. Section 42-1308, Arizona Revised Statutes, is amended to read:

42-1308. **Privilege licenses; violations; penalty**

A. Every person who receives gross proceeds of sales or gross income upon which a privilege tax is imposed by this article, desiring to engage or continue in business, shall make application to the ~~commission~~ DEPARTMENT for a privilege license accompanied by a fee of one dollar. Such a person shall not engage or continue in business until he has obtained a privilege license. Licensees operating on March 24, 1954, shall be deemed to have complied with the provisions of this section.

B. If the applicant is not in arrears in payment of any tax imposed by this article, the ~~commission~~ DEPARTMENT shall issue a license authorizing him to engage and continue in such business, upon condition that he complies with this article. The license shall be continuous.

C. The privilege license shall not be transferable upon a change of ownership or change of location of the business. For the purpose of this subsection:

1. "Transferable" means any conveyance or change of the right or privilege to engage or continue in business by virtue of the issuance of the privilege license.

2. "Ownership" means any right, title or interest in the business.

3. "Location" means the firm, business and mailing address appearing in the application for license and on the privilege license.

D. When the ownership or location of a business upon which a privilege tax is imposed by this article has been changed within the meaning of subsection C of this section, the licensee shall surrender the license to the ~~commission~~ DEPARTMENT. The license shall be reissued to the new owners or for the new location upon application by the taxpayer and payment by him of the one dollar fee.

E. A person engaged in or conducting a business in two or more locations shall procure a license for each location. This requirement shall not be construed as conflicting with section 42-1325.

F. A person who violates any provision of this section is guilty of a misdemeanor punishable by a fine for each offense of not less than ten dollars, or by imprisonment for not less than ten days.

Sec. 89. Section 42-1309, Arizona Revised Statutes, is amended to read:

42-1309. **Levy of tax; purposes; distribution**

A. There is levied and there shall be collected by the ~~commission~~ DEPARTMENT for the purpose of raising public money to be used in liquidating the outstanding obligations of the state and county governments, to aid in defraying the necessary and ordinary expenses of the state and the counties, to reduce or eliminate the annual tax levy on property for state and county purposes, and to reduce the levy on property for public school education, privilege taxes measured by the amount or volume of business transacted by persons on account of their business activities, and in the amounts to be determined by the application of rates against values, gross proceeds of sales, or gross income, as the case may be, in accordance with the schedule as set forth in sections 42-1310 through 42-1315.

B. If any funds remain after the payments are made for state purposes, as provided for by subsection A of this section, the remainder of the funds, to the extent to which they will apply, shall be in lieu of county or ad valorem taxes for educational purposes on a per capita basis as provided by sections 15-1233, 15-1235 and 15-1236.

Sec. 90. Section 42-1316, Arizona Revised Statutes, is amended to read:

42-1316. **Shipment or sale of certain products outside state; valuation for assessment of tax**

If any person engaging in any business classified in subdivision (a), paragraph 2 of section 42-1310 ships or transports products, or any part thereof, out of the state without making sale of such products, or ships his products outside of the state in an unfinished condition, the value of the products or articles in the condition or form in which they existed when transported out of the state and before they enter interstate commerce shall be the basis for assessment of the tax imposed by paragraph 2 of section 42-1310, and the ~~commission~~ DEPARTMENT shall prescribe equitable and uniform rules for ascertaining such value.

Sec. 91. Section 42-1317, Arizona Revised Statutes, is amended to read:

42-1317. **Conditional sales**

For the purpose of computing the tax levied by this article, "conditional sales", as defined by section 44-301, shall be treated as credit sales and the tax shall be paid only upon the amounts received under such conditional sales contracts, but if the seller transfers his interest in such contract to a third person, he shall pay upon the full sale price of the commodity unless a record is kept of payments thereafter made on the contract in such manner that the ~~commission~~ DEPARTMENT may at all times ascertain from the records of the seller the amount paid thereon by the purchaser. If at any time the ~~commission~~ DEPARTMENT cannot so ascertain the amount paid thereon, the tax shall become due and payable as to any amounts not shown to be paid by the records of the seller or to the satisfaction of the ~~commission~~ DEPARTMENT.

Sec. 92. Section 42-1318, Arizona Revised Statutes, is amended to read:

42-1318. **Sales between affiliated persons**

In determining value as applied to sales from one to another of affiliated corporations or persons, or other circumstances where the relation between the buyer and seller is such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale, the ~~commission~~ DEPARTMENT shall prescribe uniform and equitable rules for determining the value upon which the tax shall be levied, corresponding as nearly as possible to the gross proceeds from the sale of similar products of like quality or character by other taxpayers where no common interest exists between the buyer and seller, but otherwise under similar circumstances and conditions.

Sec. 93. Section 42-1321, Arizona Revised Statutes, is amended to read:

42-1321. **Exemptions**

A. This article shall not apply to:

1. Sales of gasoline upon which a tax has been imposed under the provisions of article 1, chapter 9, title 28.

2. Common or contract motor carriers of passengers or property paying a tax under provisions of section 40-641.

3. Sales of tangible personal property to a person licensed as a contractor under chapter 10 of title 32 who holds a valid privilege tax license for engaging or continuing in the business of contracting under this article when the tangible personal property so sold is incorporated or fabricated

by the contractor into any structure, project, development or improvement in fulfillment of a contract therefor.

4. Sales in interstate or foreign commerce when prohibited from being so taxed by the constitution of the United States or the constitution of this state.

5. All personal property purchased in this state by any hospital organized and operated exclusively for charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual, or operated by the state or any political subdivision of this state.

B. After June 30, 1956, the provisions of this article shall not apply to sales made directly:

1. To the United States government, its departments or agencies by a manufacturer, modifier, assembler or repairer.

2. To a manufacturer, modifier, assembler or repairer when such sales are of any ingredient or component part of products sold directly to the United States government, its departments or agencies by the manufacturer, modified assembler or repairer.

C. After June 30, 1956, there shall be deducted from the privilege tax fifty per cent of the amount of tax levied under the provisions of section 42-1312 upon any sale of tangible personal property made directly to the United States government, its departments or agencies, which is not exempt under the provisions of subsection B of this section.

D. In computing the tax levied by this article upon the activities classified in subdivision (a) of paragraph 2 of section 42-1310, the price shall be reduced by the actual freight paid by any person from the place of production to the place of delivery when the freight is included in the sales price of the products.

E. The ~~commission~~ DEPARTMENT shall require every person claiming an exemption provided by subsection B of this section, or the deduction provided by subsection C of this section, to file on forms prescribed by the ~~commission~~ DEPARTMENT at such times as the ~~commission~~ DEPARTMENT directs a sworn statement disclosing the name of the purchaser and the exact amount of sales upon which the exemption or deduction is claimed.

F. For the purpose of this section:

1. "Manufacturer" means a person who is principally engaged in the fabrication, production or manufacture of products, wares or articles for use from raw or prepared materials, imparting to such materials new forms, qualities, properties and combinations.

2. "Modifier" means a person who reworks, changes or adds to products, wares or articles of manufacture.

3. "Assembler" means a person who unites or combines products, wares or articles of manufacture so as to produce a change in form or substance without changing or altering the component parts.

4. "Repairer" means a person who restores or renews products, wares or articles of manufacture.

G. The definitions contained in subsection F of this section shall not be interpreted to include the following businesses, but the following listing is not intended to be nor shall it be interpreted to be a complete listing of the businesses which are excluded by subsection F from the tax exemption provided by subsection B of this section:

1. Mining, quarrying, smelting or producing for sale, profit or commercial use any oil, natural gas, limestone, sand, gravel, copper, gold, silver or other mineral product, compound or combination of mineral products, or felling, producing or preparing timber or any product of the forest for sale, profit or commercial use.

2. Producing or furnishing electricity, electric lights, current, power or gas, natural or artifical, or water.

3. Transmitting local or long distance messages or conversations by telephone, or messages by telegraph, from one point to another point in the state.

4. Operating ~~pipe lines~~ PIPELINES for transporting oil, natural gas, artificial gas, water or coal slurry, through pipes or conduits from one point to another point in the state.

5. Job printing, engraving, embossing or copying.

6. Slaughtering animals for food, packing, processing or compounding meat or meat products.

7. Construction contracting.

Sec. 94. Section 42-1322, Arizona Revised Statutes, is amended to read:

42-1322. **Monthly return; time for payment; extension of time**

A. The taxes levied under this article shall be due and payable monthly on or before the fifteenth day of the month next succeeding the month in which the tax accrues, and shall be delinquent five days thereafter.

B. The taxpayer shall on or before the fifteenth day of the month prepare a return showing the amount of the tax for which he is liable for the preceding month, and shall mail the return together with a remittance, in the form required by section 42-1323, for the amount of the tax, to the ~~office of the commission~~ DEPARTMENT. The return shall be verified by the oath of the taxpayer or an authorized agent.

C. Any taxpayer who fails to pay such tax within five days from the date upon which the payment becomes due shall be subject to and shall pay a penalty of ten per cent of the amount of the tax, plus interest at the rate of one-half of one per cent per month or fraction of a month from the time the tax was due and payable until paid.

D. Any person taxable under this article making cash and credit sales, shall report such cash and credit sales separately, and upon making application therefor may obtain from the ~~commission~~ DEPARTMENT an extension of time for payment of taxes due on the credit sales. The extension shall be granted by the ~~commission~~ DEPARTMENT under such rules and regulations as the ~~commission~~ DEPARTMENT prescribes. When the extension is granted, the taxpayer shall thereafter include in each monthly report all collections made on such credit sales during the month next preceding, and shall pay the taxes due thereon at the time of filing such report.

E. The monthly returns required under this article shall be made upon forms prescribed by the ~~commission~~ DEPARTMENT.

F. The ~~commission~~ DEPARTMENT, for good cause, may extend the time for making any return required by this article, and may grant such reasonable additional time within which to make the return as it deems proper, but the time for filing the return shall not be extended beyond the fifteenth day of the second month next succeeding the regular due date of the return.

Sec. 95. Section 42-1323, Arizona Revised Statutes, is amended to read:

42-1323. **Method of payment**

All remittances of taxes imposed by this article shall be made by bank draft, check, cashier's check, money order or money to the ~~commission~~ DEPARTMENT, which shall issue receipts therefor to the taxpayers, but no remittance other than cash shall be final discharge of liability for the tax levied by this article until it has been paid in cash to the ~~commission~~ DEPARTMENT.

Sec. 96. Section 42-1326, Arizona Revised Statutes, is amended to read:

42-1326. **Refunds of excess payments**

If, upon examination of a monthly return made under this article, it appears that an amount of tax has been paid in excess of the tax lawfully due, then the excess amount shall be credited against any tax then due from such taxpayer under any other monthly return. The ~~commission~~ DEPARTMENT, in its discretion, may issue to the taxpayer a credit voucher for any balance of the excess, or may, upon an audit of the taxpayer's accounts and records, refund to the taxpayer such amount as may be found due by issuing a certificate of overpayment and a claim for refund to the ~~commissioner~~ ASSISTANT DIRECTOR FOR THE DIVISION of finance which shall be investigated and approved by the attorney general. Upon approval, the ~~commissioner~~ ASSISTANT DIRECTOR FOR THE DIVISION of finance shall draw a warrant in favor of the taxpayer against the state treasurer which shall be paid from the special privilege tax account, and an amount equivalent to the proportion of the tax paid in excess of the amount due which has been paid to a county shall be deducted from any amount thereafter to be paid under this article to the county and credited to the special privilege tax account.

Sec. 97. Section 42-1327, Arizona Revised Statutes, is amended to read:

42-1327. **Deficiencies; penalty; notice; payment**

A. If a taxpayer fails to file a return, or if the ~~commission~~ DEPARTMENT is not satisfied with the return and payment of the amount of tax required by this article to be paid to the state by any person, it may examine the return and recompute and re-examine the amount required to be paid, based upon the facts contained in the return or upon any information within its possession or which comes into its possession. All additional amounts determined to be due under the provisions of this section shall bear interest at the rate of one-half of one per cent per month or fraction of a month from the time the additional tax was due and payable until paid.

B. If any part of the deficiency for which a determination of an additional amount due is made, is found to be due to negligence or intentional disregard of this article or authorized rules and regulations of the ~~commission~~ DEPARTMENT, but without intent to defraud, a penalty of ten per cent of such amount shall be added, plus interest at the rate of one-half of one per cent per month or fraction of a month from the time the additional tax was due and payable until paid.

C. If any part of the deficiency for which a determination of an additional amount due is made, is found to be due to fraud, or to have been done with an intent to evade this article, or authorized rules or regulations of the ~~commission~~ DEPARTMENT, a penalty of twenty-five per cent of such amount shall be added, plus interest at the rate of one-half of one per cent per month or fraction of a month from the time the additional tax was due and payable until paid.

D. The ~~commission~~ DEPARTMENT shall give to the taxpayer written notice of its determination of a deficiency by mail, and such deficiency, plus penalties and interest, shall be due and payable thirty days after receipt of the notice and demand, or if an appeal is taken to the ~~commission~~ DEPARTMENT, within ten days after the order or decision of the ~~commission~~ DEPARTMENT has become final.

E. Except in the case of a fraudulent return, failure or refusal to make a return, every notice of a determination of an additional amount due shall be mailed within three years after the fifteenth day of the calendar month following the period for which the amount is proposed to be determined or within three years after the return is filed, whichever period expires later.

F. If the taxpayer makes an error in computing the tax assessable against him, the ~~commission~~ DEPARTMENT shall correct the error or reassess the proper amount of taxes and notify the taxpayer of its action by promptly mailing to him a copy of the corrected assessment. Any additional tax for which the taxpayer may be liable shall be paid within ten days after the receipt of such statement, but no correction, assessment or reassessment shall be made for any month since March 23, 1935 after the expiration of three years from the date upon which the taxpayer was obligated to file his return for such month under this article, and no action or proceeding may be taken or commenced to collect any taxes levied by this article until the amount thereof has been established by assessment, correction or reassessment. If a taxpayer fraudulently fails or refuses to file a return for any month, the ~~commission~~ DEPARTMENT may assess the amount of taxes payable for that month at any time, or the ~~commission~~

DEPARTMENT may cause an audit to be made of the taxpayer's records covering any period of time not specifically exempted by this section. Such audits shall disclose the gross taxable income for the period audited, the tax due, the tax paid and any additional tax due for the period audited. The ~~commission~~ DEPARTMENT shall assess the taxpayer for any additional tax due, and furnish such taxpayer with a copy of the assessment together with a copy of the summary of audit.

G. Any additional tax due as disclosed by an audit made under this section shall be paid within thirty days after receipt of such assessment, or if an appeal is taken to the ~~commission~~ DEPARTMENT, within ten days after the order or decision of the ~~commission~~ DEPARTMENT has become final.

Sec. 98. Section 42-1330, Arizona Revised Statutes, is amended to read:

42-1330. **Taxpayer's records**

A. Every person engaging or continuing within this state in any business for which a tax is imposed by this article shall keep and preserve appropriate records of the gross income, gross receipts and gross proceeds of sales of the business, and such other books or accounts necessary to determine the tax for which the taxpayer is liable, and shall keep and preserve for a period of two years all invoices of goods and merchandise purchased for resale.

B. Such books, invoices and other records shall be open for examination at any time by the ~~commission~~ DEPARTMENT or its duly authorized agent.

Sec. 99. Section 42-1331, Arizona Revised Statutes, is amended to read:

42-1331. **Personal liability for tax; remedies for collection**

Every tax imposed by this article and all increases, interest and penalties thereon shall become, from the time they are due and payable, a personal debt of the taxpayer to the state, and may be collected by action in any superior court instituted in the name of the state by the attorney general upon request of the ~~commission~~ DEPARTMENT. Such remedy shall be in addition to existing remedies or those provided in this article.

Sec. 100. Section 42-1332, Arizona Revised Statutes, is amended to read:

42-1332. **Failure to make return; false return; preventing examination; perjury; penalties**

A. It is unlawful for any person to:

1. Fail or refuse to make any return required by this article.

2. Fail to remit the full amount of any additional charge made to cover the tax.

3. Fail or refuse to furnish any supplemental return or other pertinent and available data required by the ~~commission~~ DEPARTMENT.

4. Make or cause to be made a false or fraudulent return.

5. Fail or refuse to permit any lawful examination of any book, paper, account, record or other memoranda by the ~~commission~~ DEPARTMENT or any of its authorized agents or employees.

B. A person violating any provision of subsection A ~~of this section~~ shall be punished by a fine of not more than five hundred dollars, by imprisonment for not more than three months, or both.

C. Any person required to make, render, sign or verify any return or report required by this article who makes any false or fraudulent return or report with intent to defeat or evade the collection of any tax, interest or penalty imposed by this article is guilty of perjury and shall be punished by a fine of not more than one thousand dollars, by imprisonment in the state prison for not more than one year, or both, or if a corporation, by a fine of not more than five thousand dollars.

Sec. 101. Section 42-1333, Arizona Revised Statutes, is amended to read:

42-1333. **Failure to file return; notice; hearing; levy of tax**

A. If any person required to file a return fails or refuses to do so, the ~~commission~~ DEPARTMENT shall proceed to obtain facts and information on which to base the tax prescribed by this article, and for such purpose the ~~commission~~ DEPARTMENT or its agent may examine the books, records and papers of such person, and may take evidence on oath of any person who it believes is in possession of facts or information pertinent to the inquiry. The ~~commission~~ DIRECTOR or ~~its~~ HIS agent may administer the oath. As soon as the ~~commission~~ DEPARTMENT procures such information it shall hold a public hearing for the purpose of ascertaining the amount of tax payable by such person.

B. The ~~commission~~ DEPARTMENT shall give not less than ten days' notice in writing of the time and place of holding the hearing, which shall be mailed to the person at his last known address, or served upon him personally.

C. The levy of the tax after such hearing shall be final as to any person who fails or refuses to file a return.

Sec. 102. Section 42-1334, Arizona Revised Statutes, is amended to read:

42-1334. **Enjoining defaulting taxpayer from continuing in business**

Any person against whom a tax is levied under this article may be enjoined by an action commenced by the attorney general or a county attorney in the name of the state, at the request of the ~~commission~~ DEPARTMENT, from engaging or continuing in any business for which a tax is imposed by this article until the taxes have been paid, and until such person has complied with this article.

Sec. 103. Section 42-1335, Arizona Revised Statutes, is amended to read:

42-1335. **Tax lien; notice; priority of lien**

A. Any tax, penalty or interest imposed under this article which has become final, as provided in this article, shall become a lien upon the ~~commission~~ DEPARTMENT issuing a notice and claim of lien setting forth the name of the taxpayer, the amount of the tax, penalty and interest, the period or periods for which due, the date of accrual thereof and stating that the state claims a lien therefor.

B. The notice and claim of lien shall be issued under the official seal of the ~~commission~~ DEPARTMENT and signed by ~~its chairman~~ THE DIRECTOR and shall be recorded in the office of the county recorder of any county in which the taxpayer owns property. After the notice and claim of lien is filed, the taxes, penalties and interest in the amounts specified therein shall be a lien on all real and personal property of the taxpayer located in such county, superior to all other liens and assessments placed of record subsequent to filing of the notice and claim of lien, except liens for ad valorem taxes.

Sec. 104. Section 42-1336, Arizona Revised Statutes, is amended to read:

42-1336. **Warrant for collection of delinquent taxes; recording and release of notice and claim of lien**

A. After notice and claim of lien as provided by section 42-1335 has been recorded, or concurrently therewith, the ~~commission~~ DEPARTMENT shall issue a warrant under the official seal of the ~~commission~~ DEPARTMENT signed by ~~its chairman~~ THE DIRECTOR directed to any agent of the ~~commission~~ DEPARTMENT authorized to collect taxes, commanding him to levy upon and sell the real and personal property of the taxpayer found within any county in this state for the payment of the amount of such tax with the added penalties, interest and cost of executing the warrant, return such warrant to the ~~commission~~ DIRECTOR and pay to ~~it~~ HIM the money collected by virtue thereof, by a time to be therein specified not to exceed six months from the date of the warrant, or if no collection is made, then to return the warrant to the ~~commission~~ DIRECTOR at the end of six months with a report of the reasons for failure to collect the amount therein required.

B. In the execution of such warrant, the agent shall have all the powers conferred by law on sheriffs, but he shall not be entitled to any fee or compensation in excess of actual expenses paid in performance of such duty. Upon receipt of the warrant, the agent shall thereupon proceed upon the warrant with like effect and in the same manner prescribed by law in respect to execution issued against property upon a judgment of a court of record.

C. The agent to whom the warrant is directed shall, within five days after receipt thereof, file a copy thereof with the clerk of the superior court in any county within this state in which the taxpayer has property, and the clerk shall thereupon enter on the judgment docket, in the column of judgment debtors, the name of the delinquent taxpayer mentioned in the warrant and, in the appropriate columns, the amount of the tax or portion thereof, penalties and interest for which the warrant was issued and the date when such copy was filed and docketed, and thereupon the amount of the warrant so docketed shall become a lien upon the title to any interest in real or personal property of the delinquent taxpayer against whom it is issued in the same manner as a judgment duly docketed in the office of the clerk of the superior court.

D. The ~~commission~~ DIRECTOR or HIS agent to whom the warrant is directed may file with the county recorder of any county within this state in which a taxpayer has property an abstract of the judgment entered by the clerk of the superior court, and the county recorder shall thereupon record the abstract in the records of abstracts of judgments in the same manner as any other judgment entered by a superior court of the state. The abstract when recorded shall become a lien upon the title to any

interest in real or personal property of the taxpayer against whom it is issued in the same manner as any other abstract of judgment duly recorded in the office of the county recorder.

E. If a warrant is returned not satisfied in full, the ~~commission~~ DEPARTMENT shall have the same remedies to enforce the claim for taxes against the delinquent taxpayer as if the state had recovered judgment against the delinquent taxpayer for the amount of the tax.

F. Any lien perfected pursuant to this article shall, upon payment of the taxes, penalties and interest affected thereby, be released by the ~~commission~~ DEPARTMENT in the same manner as mortgages and judgments are released.

G. The county recorder to whom notices are sent shall file and record them without charge.

Sec. 105. Section 42-1337, Arizona Revised Statutes, is amended to read:

42-1337. **Liability of purchaser of business; lien of tax**

A. The tax imposed by this article shall be a lien upon the property of any person subject to this article who sells his business or stock of goods, or quits business, if such person fails to make a final return and payment of such tax within fifteen days after selling or quitting his business.

B. Such person's successors or assigns shall be required to withhold from the purchase money an amount sufficient to cover the taxes required to be collected and interest or penalties due and payable until such time as the former owner produces a receipt from the ~~commission~~ DEPARTMENT showing that the ~~commission~~ DEPARTMENT has been paid or a certificate stating that no amount is due as then shown by the records of the ~~commission~~ DEPARTMENT. If a subsequent audit shows a deficiency arising prior to the sale of such business, the deficiency shall be an obligation of the seller and shall not constitute a liability against the buyer who has received a certificate from the ~~commission~~ DEPARTMENT. If the purchaser of a business or stock of goods fails to withhold sufficient purchase money as provided by this subsection, he shall be personally liable for payment of the amount of taxes required to be collected or paid by the former owner on account of the business so purchased, together with interest and penalties accrued and unpaid by the former owner or assignors.

Sec. 106. Section 42-1338, Arizona Revised Statutes, is amended to read:

42-1338. **Appeal to department; petition for redetermination; finality of order**

A. Any person from whom an amount is determined to be due under this article may apply to the ~~commission~~ DEPARTMENT by a petition in writing within thirty days after the notice required by section 42-1327 is received by him, or within such additional time as allowed by the ~~commission~~ DEPARTMENT, for a hearing, correction or redetermination of the action taken by the ~~commission~~ DEPARTMENT. The petition shall set forth the reasons why such hearing, correction or redetermination should be granted and the amount in which the tax should be reduced. The ~~commission~~ DEPARTMENT shall promptly consider the petition and ~~may~~ SHALL grant ~~or deny the~~ A hearing, IF REQUESTED. ~~If the hearing is granted or denied, the commission shall make such order in the matter as appears to be just and lawful and shall mail a copy of the order to the petitioner. If a hearing is granted, the order shall specify the time and place fixed by the commission for the hearing or redetermination.~~

B. If a petition for hearing, correction or redetermination is not filed within such thirty day period, or within such additional time allowed by the ~~commission~~ DEPARTMENT, the amount determined to be due shall become final at the expiration thereof, and such person shall be deemed to have waived and abandoned the right to question the amount determined to be due.

C. The orders or decisions made upon filing a petition for a hearing, correction or redetermination shall become final thirty days after notice thereof has been received by the petitioner, ~~but without prejudice to the right of petitioner to pay the tax under protest and to bring action as~~ provided in section 42-1339 UNLESS THE PETITIONER APPEALS THE ORDER OR DECISION TO THE STATE BOARD.

Sec. 107. Title 42, chapter 8, article 1, Arizona Revised Statutes, is amended by adding section 42-1338.01, to read:

42-1338.01. **Appeal to state board; finality of order**

A. ANY PERSON AGGRIEVED BY A DECISION OR ORDER OF THE DEPARTMENT PURSUANT TO SECTION 42-1338 MAY APPEAL TO THE STATE BOARD BY FILING A NOTICE OF APPEAL IN WRITING WITHIN THIRTY DAYS AFTER THE RECEIPT OF THE DECISION OR ORDER APPEALED FROM. THE STATE BOARD SHALL TAKE TESTIMONY AND EXAMINE DOCUMENTARY EVIDENCE AS NECESSARY TO DETERMINE THE APPEAL, ALL IN ACCORDANCE WITH RULES AND REGULATIONS TO GOVERN SUCH APPEALS.

B. UPON DETERMINING THE APPEAL, THE STATE BOARD SHALL ISSUE A DECISION CONSISTENT THEREWITH, WHICH SHALL BECOME FINAL THIRTY DAYS AFTER RECEIPT OF NOTICE THEREOF BY THE TAXPAYER. ANY ADDITIONAL TAX DUE SHALL BE PAID WITHIN THIRTY DAYS AFTER THE BOARD'S DECISION HAS BECOME FINAL, BUT WITHOUT PREJUDICE TO THE RIGHT OF PETITIONER TO PAY THE TAX UNDER PROTEST AND TO BRING AN ACTION WITHIN THIRTY DAYS AS PROVIDED IN SECTION 42-1339. THE STATE MAY ALSO BRING AN ACTION IN SUPERIOR COURT WITHIN THIRTY DAYS AFTER THE BOARD'S DECISION HAS BECOME FINAL, TO DETERMINE THE VALIDITY OF ITS DEFICIENCY ASSESSMENT OR DENIAL OF THE TAXPAYER'S CLAIM FOR REFUND.

Sec. 108. Section 42-1339, Arizona Revised Statutes, is amended to read:

42-1339. **Payment of tax under protest; taxpayer's action; payment of judgment in favor of taxpayer**

A. No injunction, writ of mandamus or other legal or equitable process shall issue in an action in any court in this state against an officer of the state to prevent or enjoin the collection of any tax, penalty or interest due under this article.

B. After payment of any tax, penalty or interest under protest verified by oath and setting forth the grounds of objection to the legality of the tax, a taxpayer may bring action against the ~~commission~~ DEPARTMENT in any superior court of the state for the recovery of the tax, interest or penalty so paid under protest. The action shall not be commenced more than thirty days after the order or decision of the ~~commission~~ STATE BOARD becomes final, and failure to bring the action within such thirty days shall constitute a waiver of the protest and a waiver of all claims against the state arising from the illegality in the tax, penalties and interest so paid. No grounds of illegality of the tax shall be considered by the court other than those set forth in the protest filed at the time payment is made, but payments of taxes made under protest subsequent to the original protested item and prior to filing the action within the thirty days may be included or incorporated in the same action. Either party to such action may appeal to the supreme court OR COURT OF APPEALS as provided by law. ~~, except that the time in which an appeal may be taken shall be limited to sixty days.~~

C. If a final judgment is rendered in favor of the taxpayer in the action, the amount of the judgment or such portion thereof as may be necessary

shall first be credited on any taxes, penalties and interest due from the plaintiff taxpayer under this article, and the amount of the balance remaining due the taxpayer shall be certified by the ~~commission~~ DEPARTMENT to the ~~commissioner~~ ASSISTANT DIRECTOR FOR THE DIVISION of finance, together with a certified copy of the final judgment and a claim for refund authenticated by the ~~commission~~ DEPARTMENT. Upon receipt thereof the ~~commissioner~~ ASSISTANT DIRECTOR FOR THE DIVISION of finance shall draw a warrant directed to the state treasurer in favor of the taxpayer in an amount equal to the amount of the tax found by the judgment to have been collected illegally, less the amount of any taxes, penalties and interest due from the taxpayer under this article, to be paid from the tax protest fund. The ~~commissioner~~ ASSISTANT DIRECTOR FOR THE DIVISION of finance shall draw a separate warrant directed to the state treasurer in favor of the taxpayer in an amount equal to the interest and other costs recovered against the ~~commission~~ DEPARTMENT by the judgment in such action, which shall be paid by the state treasurer from the special privilege tax account.

Sec. 109. Section 42-1340, Arizona Revised Statutes, is amended to read:

42-1340. **Tax protest fund**

A. If a taxpayer, at the time of paying any tax imposed by this article or by the ~~commission~~ DEPARTMENT, protests payment of all or any part of the tax, the amount protested shall be deposited by the state treasurer to the credit of the tax protest fund. Such amount shall remain in the fund until:

1. A final judgment has been rendered and the time for appeal has expired.

2. A dismissal of the action brought by the taxpayer has been entered.

3. Thirty days have elapsed after the order of the ~~commission~~ DEPARTMENT OR STATE BOARD, IF APPEALED TO, became final and during which time the taxpayer did not commence an action.

B. If a final judgment has been rendered providing that the whole or any part of the amount was due and lawfully payable on the date when paid, the amount found lawfully payable shall be disposed of in the manner provided by this article for other collections made under this article, and shall be deemed a collection as of the date of such final determination.

C. If a refund is granted in the action, the amount of such refund shall be paid as provided by section 42-1339, and the remainder of the monies so credited to the tax protest fund shall be treated as other collections under this article as of the date of such refund.

Sec. 110. Section 42-1341, Arizona Revised Statutes, as amended by Laws 1972, chapter 142, section 59, is amended to read:

42-1341. **Special privilege tax account; license fee and privilege tax administration fund; appropriation to department of economic security and municipalities; permitting the taking of a special census to be used as the basis for apportionment**

A. The ~~commission~~ DEPARTMENT shall each day remit all revenues collected under this article to the state treasurer and the state treasurer shall credit the payments to a fund designated as a special privilege tax account.

B. For the purpose of enforcing the provisions of this article, there is appropriated to the ~~commission~~ DEPARTMENT from taxes collected under this article four per cent of the taxes collected each month which shall be credited by the state treasurer to the license fee and privilege tax administration fund. The fund shall be disbursed only in the manner and in amounts as provided by the legislature in the general appropriation bill, and any amount remaining unexpended in the special fund at the end of the fiscal year shall revert to the general fund.

C. There is appropriated to the department of economic security from the taxes collected under this article fifteen per cent of the taxes collected each month to be used for the purposes set forth in chapter 1 of title 46.

D. The state treasurer shall pay twenty-five per cent of the tax collected under this article to the various municipalities of the state to be used by the municipalities for any municipal purpose and to be distributed in proportion to their population as shown by the last federal decennial census. Any municipality during the fifth year following the decennial census, may cause to be taken by the United States Census Bureau a special census of the population within the municipal limits. The result of such special census may be certified by the ~~state tax commission~~ DIRECTOR. Commencing on July 1, in the sixth year following the last federal decennial census, such special census shall be used as the basis of apportionment of the taxes collected under this article in determining the amount payable to such municipality until the next federal decennial census.

Sec. 111. Section 42-1341.01, Arizona Revised Statutes, is amended to read:

42-1341.01. **Special census**

Notwithstanding any of the provisions of section 42-1341, any municipality initially incorporated subsequent to the decennial census or July 1 of the fifth year thereafter and which has caused a special census of the population within the municipal limits to be taken by the United States census bureau may cause the result of such special census to be certified to the ~~state tax commission~~ DIRECTOR. Commencing on July 1, following the completion of such special census, it shall be used as the basis of apportionment of the taxes collected under this article in determining the amount payable to such municipality until the next federal decennial census or special census as provided under section 28-1501.01.

Sec. 112. Section 42-1342, Arizona Revised Statutes, is amended to read:

42-1342. **State and county share of tax collections; determination of county share**

After deducting from the special privilege tax account the appropriation made for expenses of the ~~commission~~ DEPARTMENT in administering this article, the appropriation made to the state board of social security and welfare, the appropriation made to the municipalities, and warrants drawn against the account pursuant to sections 42-1326 and 42-1339, forty per cent of the remaining amount in the account collected in each calendar month shall be credited by the state treasurer to the general fund of the state, and the other sixty per cent shall be paid by the state treasurer every calendar month to the several county treasurers of the state by averaging the following proportions:

1. The proportion that the assessed valuation of each county, after deducting that part of the assessed valuation exempt from taxation at the beginning of the month for which the amount is to be paid, bears to the total assessed valuations of all the counties after deducting that portion of the assessed valuations exempt from taxation at the beginning of the month for which the amount is to be paid.

2. The proportion that the tax monies collected under this article upon the gross proceeds or gross income from businesses engaged in within each county during the month in which the tax monies were collected bears to the total tax monies collected under this article throughout the state for the calendar month.

Sec. 113. Section 42-1343, Arizona Revised Statutes, is amended to read:

42-1343. **Determination of place of business in computing county share of tax monies**

A. For the purpose of determining a county's proportion of tax, a taxpayer shall be deemed to be engaged in business under:

1. Section 42-1310, paragraph 1 1 and subdivision (d) of paragraph 2, in the county where the transportation begins.

2. Section 42-1310, subdivision (a) of paragraph 2, in the county where the oil, natural gas, limestone, sand, gravel, copper, gold, silver or other mineral product is extracted, mined, quarried, smelted or pumped, or where the timber is felled.

3. Section 42-1310, subdivision (b) of paragraph 2, in the county where the electricity, gas or water is delivered to the consumer.

4. Section 42-1310, subdivision (c) of paragraph 2, in the county from which the messages or conversations by telephone or messages by telegraph are transmitted.

5. Section 42-1310, subdivision (e) of paragraph 2, in the county where the oil or artificial or natural gas is delivered to the consumer.

6. Section 42-1313, in the case of dining cars, and section 42-1310, subdivision (f) of paragraph 2, in each county in which such cars are operated in the same proportion that the mileage of railroads in each county over which the cars are operated bears to the total mileage of railroads in the state over which the cars are operated.

7. Section 42-1310, subdivision (g) of paragraph 2, in the county where the newspaper, magazine or other periodical and publication is published.

8. Section 42-1310, subdivision (h) of paragraph 2, in the county where the job printing, engraving, embossing and copying is done, where the ~~bill boards~~ BILLBOARDS are located, where the advertising by direct mail is sent from, where the radio or television advertising is transmitted from, and where the advertising by any other means calculated to appeal to prospective purchasers originates.

9. Section 42-1312, subsection A, in the county where the sale is made.

10. Section 42-1313, except in the case of dining cars, in the county where the restaurants, dining rooms, lunchrooms, lunchstands, soda fountains or similar establishments where articles of food or drink are sold for consumption on the premises are located.

11. Section 42-1314, in the county where the businesses therein enumerated are located or conducted.

12. Section 42-1315, paragraph 1, in the county where the compounding, packing, preserving or processing is done if sold at wholesale by the person compounding, packing, preserving or processing, otherwise at the place of sale of such tangible property sold at wholesale.

B. Except as provided in this section, where a taxpayer is engaged in business in more than one county, the business in which he is engaged in each county shall be determined by the ~~commission~~ DEPARTMENT, and each respective county shall be entitled to distribution of its share of taxes on the basis of the business engaged in by such taxpayer in that county.

Sec. 114. Section 42-1344, Arizona Revised Statutes, is amended to read:

42-1344. **Use of share of tax monies by counties; inclusion of estimate of anticipated tax collections in county budget**

A. The tax accruing to the counties shall be used by the counties for the following purposes in the order named:

1. In payment of principal and interest due on any bonds issued by the county.

2. In payment of outstanding warrants issued by the county in years preceding the year in which the tax is received.

3. Any balance remaining after payment of interest and principal due on the bonds and the outstanding warrants shall be credited to the general fund of the county.

B. The ~~commission~~ DEPARTMENT, on or before the first Monday of July each year, shall estimate the anticipated tax monies to be collected under this article payable to each county of the state under this article during the ensuing fiscal year, and shall forthwith transmit the estimate to each county treasurer. Each county board of supervisors shall include the estimate in the county's budget in its estimate of receipts from sources other than property taxes.

C. No debt, obligation or liability shall be paid or liquidated from any portion of the tax collected under this article which is credited to the county general fund unless it is for an item or purpose specific in amount included in the budget.

Sec. 115. Section 42-1345, Arizona Revised Statutes, is amended to read:

42-1345. **Procedure upon variance between county share of tax monies received and budget estimate**

A. In estimating and adopting the budget, if the amount of the tax money estimated under this article to be paid into the general fund of the county in any year is less than the amount which was estimated for the preceding year, then in determining the amount which may be levied for tax purposes under the limitations imposed by section 42-304, the difference in the estimated amounts may be added to the amount levied for such purposes upon the tax rolls of the preceding year and for the purposes of such limitations, the total shall be deemed the amount levied for such purposes upon the tax rolls of the preceding year.

B. All amounts of money paid to a county in a fiscal year under this article which are in excess of the amount thereof estimated in the budget for that year shall be placed in a special fund and kept therein by the county until the next succeeding fiscal year, and the amount thereof shall be included in the budget of the county for that year and shall be expended only for the purposes included in the budget. Such amount shall be considered and treated in all respects as though it had been estimated to be received during that fiscal year under this article.

C. If the amount of money paid to a county in a fiscal year under this article is less than the amount estimated for such year by the ~~commission~~ DEPARTMENT and by reason thereof there are outstanding unpaid warrants, the ~~commission~~ DEPARTMENT upon application of the county may authorize the county to levy and assess ad valorem taxes in the following fiscal year in an amount sufficient to pay the outstanding warrants, but in no event in an amount greater than the difference between the amount estimated to be received by the county and the amount actually received under this article. Upon entry of such order by the ~~commission~~ DEPARTMENT the board of supervisors may thereupon levy and assess taxes at the same time as other taxes are levied.

Sec. 116. Section 42-1346, Arizona Revised Statutes, is amended to read:

42-1346. **Notices**

A. Notices required or authorized by this article to be given by mail to a taxpayer shall be addressed to him at his last known address, or to such address as may appear in the records of the ~~commission~~ DEPARTMENT, and shall be sent by registered first class mail with return receipt requested.

B. For the purposes of this article notice shall be presumed received upon the date shown by an executed return receipt, or, if such receipt is not executed, then upon the date such notice was attempted to be delivered.

Sec. 117. Section 42-1361, Arizona Revised Statutes, is amended to read:

42-1361. **Levy of tax**

A. There is levied and shall be collected by the ~~commission~~ DEPARTMENT OF REVENUE a tax:

1. On the privilege of doing business in this state, measured by the amount or volume of business transacted by persons on account of their business activities, and in the amounts to be determined by the application, against values, gross proceeds of sales, or gross income, as the case may be, in accordance with the provisions and schedules as set forth in title 42, chapter 8, article 1, at rates equal to fifty per cent of the rates imposed in such article.

2. On the storage, use or consumption in this state of tangible personal property subject to the tax prescribed by title 42, chapter 8, article 2, at a rate equal to fifty per cent of the rate imposed in such article.

B. The tax levied and collected under the terms of this article is designated as the "education excise tax".

Sec. 118. Section 42-1362, Arizona Revised Statutes, is amended to read:

42-1362. **Administration**

Unless the context otherwise requires, the provisions of article 1 of this chapter shall govern the administration of the tax imposed by paragraph 1, subsection A, section 42-1361, and the provisions of article 2 of this chapter shall govern the administration of the tax imposed by paragraph 2, subsection A, section 42-1361, however:

1. No separate license, return or record shall be required, made or kept or filed, and the tax due under paragraph 1, subsection A, section 42-1361, shall be included and reported, shown and paid with the transaction privilege tax in accordance with the provisions of article 1 of this chapter. The tax due under paragraph 2, subsection A, section 42-1361, shall be included and reported, shown and paid with the use tax in accordance with the provisions of article 2 of this chapter.

2. The provisions of section 42-1303 shall not require the execution of a separate bond conditioned upon the faithful discharge of the duties of any agent of the ~~commission~~ DEPARTMENT OF REVENUE in the administration of this article. The conditions of bonds executed for the administration of article 1 shall be enlarged to include the administration of this article.

3. The provisions of sections 42-1341 and 42-1342 shall not apply to this article.

4. The ~~commission~~ DEPARTMENT OF REVENUE shall each day remit all revenues collected under this article to the state treasurer and the state treasurer shall credit the payments to a fund designated as the education excise tax clearing account.

5. After deducting from the education excise tax clearing account only warrants drawn against the account by the application of sections 42-1326, 42-1339 and 42-1413, the whole of the balance then remaining, without any further deductions, shall be credited to the education excise tax fund and shall be appropriated each year for public educational purposes. The state board of equalization shall make an estimate of the amount of money to be received hereunder, as required by section 42-301.

6. The tax imposed by this article shall be a lien upon the property of any person subject to the tax to the extent provided in section 42-1337 and may be included, without segregation, in any lien filed for unpaid taxes under the provisions of that section.

7. Any person aggrieved by the enforcement of any provisions of this article shall have the right of protest and appeal as provided by sections 42-1338 and 42-1339.

Sec. 119. Section 42-1371, Arizona Revised Statutes, is amended to read:

42-1371. **Levy of tax**

A. There is levied and shall be collected by the ~~commission~~ DEPARTMENT OF REVENUE a tax on the privilege of doing business in this state at a rate of one and one-half per cent of the gross proceeds of sales or gross income from the business upon every person engaging or continuing within this state in the following businesses:

1. Transporting for hire persons or property by motor vehicle from one point to another point in this state.

2. Producing and furnishing, or furnishing to consumers, electricity, electric lights, current, power or gas, natural or artificial, and water. Sales of electricity, current, power or gas, natural or artificial, and water to a distributor who has a transaction privilege tax license issued in this state to resell such property, shall be exempt from the tax under this paragraph.

3. Transmitting local or long distance messages or conversations by telephone, or messages by telegraph, from one point to another point in the state, including gross income derived from tolls, subscriptions and services on behalf of subscribers, or by the publication of a directory of the names of subscribers.

4. Transporting for hire freight or passengers by railroads or aircraft from one point to another point in the state.

5. Publication of newspapers, magazines or other periodicals and publications, when published within the state, including the gross income derived from subscriptions, advertising and notices.

6. Contracting, but payments paid by the contractor for labor employed in construction, improvements or repairs shall not be subject to such tax.

7. Job printing, engraving, embossing and copying, sold to purchasers in this state. The sale of job printing, engraving, embossing and copying to a person in this state who has a transaction privilege tax license issued in this state to resell such property shall be exempt from the tax under this ~~subdivision~~ PARAGRAPH.

8. Operating pipelines for transporting oil, natural gas, or artificial gas, through pipes or conduits from one point to another point in the state.

9. Operating private car lines, as they are defined in chapter 4, article 3, of this title, from one point to another point in the state.

10. Advertising by billboards, direct mail, radio, television or by any means calculated to appeal to prospective purchasers.

B. There is levied and shall be collected by the ~~commission~~ DEPARTMENT OF REVENUE a tax on the privilege of doing business in this state at a rate of one-half of one per cent of the gross proceeds of sales or gross income from the business upon every person engaging or continuing within this state in the business of mining, quarrying, smelting, or producing for sale, profit or commercial use, any oil, natural gas, limestone, sand, gravel, copper, gold, silver or other mineral product, compound or combination of mineral products.

C. The tax levied and collected under the terms of this article is designated as the "special excise tax for education."

Sec. 120. Section 42-1372, Arizona Revised Statutes, is amended to read:

42-1372. **Administration**

Unless the context otherwise requires, the provisions of article 1 of this chapter shall govern the administration of the tax imposed by section 42-1371, provided:

1. No separate license, return or record shall be required, made or kept or filed, and the tax due under section 42-1371 shall be included and reported, shown and paid with the transaction privilege tax in accordance with the provisions of article 1 of this chapter.

2. The provisions of section 42-1303 shall not require the execution of a separate bond conditioned upon the faithful discharge of the duties of any agent of the ~~commission~~ DEPARTMENT OF REVENUE in the administration of this article. The conditions of bonds executed for the administration of article 1 shall be enlarged to include the administration of this article.

3. The provisions of sections 42-1341 and 42-1342 shall not apply to this article.

4. The ~~commission~~ DEPARTMENT OF REVENUE shall each day remit all revenues collected under this article to the state treasurer through the ~~commissioner of~~ ASSISTANT DIRECTOR FOR THE DIVISION OF finance, and the state treasurer shall credit the payments to a fund designated as the tax clearing account for businesses included by the terms of this article.

5. After deducting from the tax clearing account, prescribed by paragraph 4, only warrants drawn against the account by the application

of sections 42-1326, 42-1339 and 42-1413, the whole of the balance then remaining, without any further deductions, shall be credited to the state general fund.

6. The tax imposed by this article shall be a lien upon the property of any person subject to the tax to the extent provided in section 42-1337 and may be included, without segregation, in any lien filed for unpaid taxes under the provisions of that section.

7. Any person aggrieved by the enforcement of any provisions of this article shall have the right of protest and appeal as provided by sections 42-1338 and 42-1339.

Sec. 121. Section 42-1401, Arizona Revised Statutes, is amended to read:

42-1401. **Definitions**

In this article, unless the context otherwise requires:

~~1. "Commission" means the state tax commission.~~

~~2.~~ 1. "Contracting" means engaging in business as a contractor.

~~3.~~ 2. "Contractor" is synonymous with the term "builder" and means a person, firm, partnership, corporation, association or other organization, or a combination of any of them, who undertakes to or offers to undertake to, or purports to have the capacity to undertake to, or submits a bid to, or does himself or by or through others, construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, excavation or other structure, project, development or improvement, or to do any part thereof, including the erection of scaffolding or other structure or works in connection therewith, and includes subcontractors and specialty contractors. For all purposes of taxation or exemption, this definition shall govern without regard to whether or not the contractor is acting pursuant to or in fulfillment of a contract.

~~4.~~ 3. "Notice" means written notice served personally or by registered mail addressed to the last known address of the person to whom such notice is given.

~~5.~~ 4. "Person" means individual, firm, partnership, joint adventure, association, corporation, estate, trust, receiver, syndicate, this state, any county, city, municipality, district or other political subdivision or agency thereof.

~~6.~~ 5. "Purchase" means any transfer, exchange or barter, conditional or otherwise, in any manner or by any means, of tangible personal property for a consideration, including transactions whereby the possession of property is transferred but the seller retains the title as security for payment.

~~7.~~ 6. "Retailer" includes every person engaged in the business of making sales of tangible personal property for storage, use or other consumption or in the business of making sales at auction, of tangible personal property owned by such person or others for storage, use or other consumption. When in the opinion of the ~~commission~~ DEPARTMENT it is necessary for the efficient administration of this article to regard any salesmen, representatives, peddlers or canvassers as the agents of the dealers, distributors, supervisors or employers under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors or employers, the ~~commission~~ DEPARTMENT may so regard them and may regard the dealers, distributors, supervisors or employers as retailers for purposes of this article.

~~8.~~ 7. "Sales price" means the total amount for which tangible personal property is sold, including any services that are a part of the sale, valued in money, whether paid in money or otherwise, and any amount for which credit is given to the purchaser by the seller without any deduction therefrom on account of the cost of the property sold, materials used, labor or services performed, interest charged, losses or other expenses, but does not include discounts allowed and taken, or charges for labor or services in installing, remodeling or repairing.

~~9.~~ 8. "Storage" means keeping or retention of tangible personal property purchased from a retailer for any purpose except sale in the regular course of business or subsequent use solely outside this state.

~~10.~~ 9. "Taxpayer" means every retailer as defined in paragraph ~~7~~ 6 of this section and every person storing, using or consuming tangible personal property the storage, use or consumption of which is subject to the tax imposed by this article when such tax was not paid to a retailer.

~~11.~~ 10. "Use or consumption" means the exercise of any right or power over tangible personal property incident to the ownership thereof except the holding for sale or the sale of such property in the regular course of business.

Sec. 122. **Repeal**

Sections 42-1403 through 42-1405, Arizona Revised Statutes, are repealed.

Sec. 123. Section 42-1406, Arizona Revised Statutes, is amended to read:

42-1406. **Confidential nature of records; violation; penalty**

A. Except by judicial order it is unlawful for the ~~commission~~ DEPARTMENT or any person having an administrative duty under this article to make known in any manner the business affairs, operations or information obtained by an investigation of records and equipment of any retailer or any other person visited or examined in the discharge of official duty, or the amount or sums of income, profits, losses, expenditures or any particular thereof, set forth or disclosed in any return, or to permit any return, or copy thereof, or any book containing any abstract or particulars thereof to be seen or examined by any person.

B. Violation of the provisions of this section is a misdemeanor punishable by a fine of not more than one thousand dollars, by imprisonment in the county jail for not more than one year, or both.

Sec. 124. Section 42-1407, Arizona Revised Statutes, is amended to read:

42-1407. **Registration of retailers**

Every retailer shall, within thirty days after July 1, 1956, or thereafter, and before selling any tangible personal property for storage, use or consumption within this state, register with the ~~commission~~ DEPARTMENT upon forms prescribed by the ~~commission~~ DEPARTMENT.

Sec. 125. Section 42-1408, Arizona Revised Statutes, is amended to read:

42-1408. **Levy of tax; tax rate; purchaser's liability**

There is levied and imposed an excise tax on the storage, use or consumption in this state of tangible personal property purchased from a retailer on or after July 1, 1956, at the rate of two per cent of the sales price thereof. Every person storing, using or otherwise consuming in this state tangible personal property purchased from a retailer is liable for the tax. Such person's liability is not extinguished until the tax has been paid to this state, except that a receipt from a retailer maintaining a place of

business in this state or from a retailer who is authorized by the ~~commission~~ DEPARTMENT to collect the tax, under such rules and regulations as it may prescribe, and who is for the purposes of this article regarded as a retailer maintaining a place of business in this state, given to the purchaser in accordance with the provisions of section 42-1411 is sufficient to relieve the purchaser from further liability for the tax to which the receipt refers.

Sec. 126. Section 42-1411, Arizona Revised Statutes, is amended to read:

42-1411. **Collection from purchaser; receipt; tax as debt to state**

Every retailer shall collect from the purchaser the tax imposed by this article and give to such purchaser a receipt therefor in the manner and form prescribed by the ~~commission~~ DEPARTMENT. The tax required to be collected shall be shown separately on the invoice or other proof of sale. The tax required to be collected shall constitute a debt owed by the retailer to this state.

Sec. 127. Section 42-1412, Arizona Revised Statutes, is amended to read:

42-1412. **Monthly return; time for payment; extension of time**

A. Every retailer engaged in the business of making sales of tangible personal property the use, storage or consumption of which is subject to the tax imposed by this article, and every person who purchases for use, storage or consumption any such property for which the tax is not paid to the retailer, shall, on or before the fifteenth day of each month make to the ~~commission~~ DEPARTMENT, on forms prescribed by it, a return showing the tangible personal property sold for use, storage or consumption or purchased for use, storage or consumption within the state, during the preceding calendar month. Such return shall be verified by oath or affirmation of the retailer or person making the report, or his agent, and shall be accompanied by payment of the tax shown thereon to be due.

B. For good cause shown the ~~commission~~ DEPARTMENT may extend the time for making a return and paying the tax, but the time for filing the return shall not be extended beyond the fifteenth day of the second month next succeeding the regular due date of the return.

Sec. 128. Section 42-1413, Arizona Revised Statutes, is amended to read:

42-1413. **Refunds of excess payments**

A. If the ~~commission~~ DEPARTMENT determines that any amount, penalty or interest has been paid more than once, or has been erroneously or illegally collected or computed, the amount of such excess shall be credited by the ~~commission~~ DEPARTMENT against any tax installment due from the taxpayer under the provisions of this article. If it is determined that any refund due a taxpayer cannot be credited against a tax installment due from the taxpayer entitled to a refund, the ~~commission~~ DEPARTMENT may issue to such taxpayer a credit voucher for any balance of such excess or may refund to the taxpayer the amount found due by issuing a certificate of overpayment and a claim for refund to the ~~commissioner of~~ DEPARTMENT OF ADMINISTRATION ASSISTANT DIRECTOR FOR finance. The ~~commissioner of~~ DEPARTMENT OF ADMINISTRATION ASSISTANT DIRECTOR FOR finance shall draw a warrant in favor of such taxpayer against the state treasurer, which shall be paid from the use tax receipts fund.

B. If any amount has been illegally determined to be due from any person but not yet collected, the ~~commission~~ DEPARTMENT shall authorize the cancellation of the amount or amounts upon its records.

C. No refund or credit shall be approved by the ~~commission~~ DEPARTMENT after three years from the last day of the month following the close of the period for which the overpayment was made unless a claim therefor is filed with the ~~commission~~ DEPARTMENT within such period.

Sec. 129. Section 42-1414, Arizona Revised Statutes, is amended to read:

42-1414. **Deficiencies; additional determinations; penalty; notice**

A. If the ~~commission~~ DEPARTMENT is not satisfied with the return and payment of the amount of tax required to be paid by any person, it is authorized to compute and determine the amount, based upon the facts contained in the return or upon information within its possession or that comes into its possession.

B. If any person neglects or refuses to make a return when required, the ~~commission~~ DEPARTMENT shall make an estimate for the period or periods in respect to which such person failed to make a return, based upon any information in its possession or that comes into its possession, of the amount of the total purchase price of tangible personal property sold or purchased by such person, the use of which is subject to the tax

imposed by this article, and upon the basis of the estimate shall compute and determine the amount required to be paid, adding to the amount thus arrived at a penalty equal to ten per cent thereof.

C. All amounts determined to be due under the provisions of this section shall bear interest at the rate of one-half of one per cent per month or fraction thereof, from the date on which such amounts were required to be reported until paid.

D. If the neglect or failure of any person to make the proper return or to pay the full amount of tax required to be paid or to file a return, is due to fraud or is with intent to evade the provisions of this article or the rules and regulations of the ~~commission~~ DEPARTMENT, a penalty of fifteen per cent of the amount required to be paid by such person shall be added, in addition to all other penalties.

E. Promptly upon the making of any determination as provided in this section, the ~~commission~~ DEPARTMENT shall give written notice thereof to the person against whom the determination is directed.

F. Except in the case of a fraudulent return or the case of a failure or refusal to make a return, every notice of a determination of an additional amount due shall be mailed within three years after the fifteenth day of the calendar month following the period for which the amount is proposed to be determined or within three years after the return is filed, whichever period expires later.

Sec. 130. Section 42-1415, Arizona Revised Statutes, is amended to read:

42-1415. **Appeal to department; petition for redetermination; finality of order**

A. Any person from whom an amount is determined to be due under the provisions of ~~section 42-1414~~ THIS ARTICLE may apply to the ~~commission~~ DEPARTMENT by a petition in writing within thirty days after ~~such~~ THE notice REQUIRED BY SECTION 42-1414 is received by him, or within such additional time as may be allowed by the ~~commission~~ DEPARTMENT, for a hearing, correction or redetermination of the action taken by the ~~commission~~ DEPARTMENT. The petition shall set forth the reasons why such hearing, correction or redetermination should be granted and the amount in which any tax should be reduced. The ~~commission~~ DEPARTMENT shall promptly consider the petition and ~~may~~ SHALL grant ~~or deny such~~ A hearing, IF REQUESTED. ~~If the hearing is granted~~

~~or denied, the commission shall make such order in the matter as appears to be just and lawful and shall mail a copy of the order to the petitioner. If a hearing is granted, the order shall specify the time and place fixed by the commission for the hearing or redetermination.~~

B. If a petition for hearing, correction or redetermination is not filed within the thirty day period provided by subsection A of this section, the amount determined to be due shall become final at the expiration thereof, and such person shall be deemed to have waived and abandoned the right to question the amount determined to be due.

C. All orders or decisions made upon the filing of a petition for a hearing, correction or redetermination shall become final thirty days after notice thereof has been received by the petitioner, UNLESS THE PETITIONER APPEALS THE ORDER OR DECISION TO THE STATE BOARD. ~~but without prejudice to the right of the petitioner to pay the tax under protest and to bring an action as provided in section 42-1421.~~

Sec. 131. Title 42, chapter 8, article 2, Arizona Revised Statutes, is amended by adding section 42-1415.01, to read:

42-1415.01. **Appeal to state board; finality of order**

A. ANY PERSON AGGRIEVED BY A DECISION OR ORDER OF THE DEPARTMENT PURSUANT TO SECTION 42-1415 MAY APPEAL TO THE STATE BOARD BY FILING A NOTICE OF APPEAL IN WRITING WITHIN THIRTY DAYS AFTER THE RECEIPT OF THE DECISION OR ORDER APPEALED FROM. THE STATE BOARD SHALL TAKE TESTIMONY AND EXAMINE DOCUMENTARY EVIDENCE AS NECESSARY TO DETERMINE THE APPEAL, ALL IN ACCORDANCE WITH RULES AND REGULATIONS TO GOVERN SUCH APPEALS.

B. UPON DETERMINING THE APPEAL, THE STATE BOARD SHALL ISSUE A DECISION CONSISTENT THEREWITH, WHICH SHALL BECOME FINAL THIRTY DAYS AFTER RECEIPT OF NOTICE THEREOF BY THE TAXPAYER. ANY ADDITIONAL TAX DUE SHALL BE PAID WITHIN THIRTY DAYS AFTER THE BOARD'S DECISION HAS BECOME FINAL, BUT WITHOUT PREJUDICE TO THE RIGHT OF PETITIONER TO PAY THE TAX UNDER PROTEST AND TO BRING AN ACTION WITHIN THIRTY DAYS AS PROVIDED IN SECTION 42-1421. THE STATE MAY ALSO BRING AN ACTION IN SUPERIOR COURT WITHIN THIRTY DAYS AFTER THE BOARD'S DECISION HAS BECOME FINAL, TO DETERMINE THE VALIDITY OF ITS DEFICIENCY ASSESSMENT OR DENIAL OF THE TAXPAYER'S CLAIM FOR REFUND.

Sec. 132. Section 42-1417, Arizona Revised Statutes, is amended to read:

42-1417. **Taxpayer's records**

A. Every person subject to the tax imposed by this article shall keep and preserve suitable records and other books and accounts necessary to determine the tax for which such person is liable under this article, and shall keep and preserve for a period of three years such books and records.

B. Such books and other records shall be open for inspection at any time by the ~~commission~~ DEPARTMENT or its duly authorized agent.

Sec. 133. Section 42-1418, Arizona Revised Statutes, is amended to read:

42-1418. **Personal liability for tax; remedies for collection**

Every tax imposed by this article and all increases, interest and penalties thereon shall become, from the time they are due and payable, a personal debt of the taxpayer to the state, and may be collected by action in any superior court instituted in the name of the state by the attorney general upon request of the ~~commission~~ DIRECTOR. Such remedy shall be in addition to other existing remedies or those provided in this article.

Sec. 134. Section 42-1421, Arizona Revised Statutes, is amended to read:

42-1421. **Payment of tax under protest; taxpayer's action; payment of judgment in favor of taxpayer**

A. No injunction, writ of mandamus or other legal or equitable process shall issue in an action in any court in this state against an officer of the state to prevent or enjoin the collection of any tax, penalty or interest due under this article.

B. After payment of any tax, penalty or interest under protest verified by oath and setting forth the grounds of objection to the legality of the tax, a taxpayer may bring action against the ~~commission~~ DEPARTMENT in the superior court in Maricopa county for the recovery of any tax, interest or penalty so paid under protest. Such action shall not be commenced more than thirty days after the order or decision of the ~~commission~~ DEPARTMENT OR STATE BOARD, IF APPEALED TO, becomes final, and failure to bring the action within such thirty days shall

constitute a waiver of the protest and a waiver of all claims against the state arising from the illegality in the tax, penalties and interest so paid. No grounds of illegality of the tax shall be considered by the court other than those set forth in the protest filed at the time payment is made, but payments of taxes made under protest subsequent to the original protested item and prior to commencing the action within the thirty days may be included or incorporated in the same action. Either party to such action may appeal to the supreme court~~,~~ OR COURT OF APPEALS as provided by law. ~~,except that the time in which an appeal may be taken shall be limited to sixty days.~~

C. If a final judgment is rendered in favor of the taxpayer in the action, the amount of the judgment or such portion thereof as may be necessary shall first be credited on any taxes, penalties and interest due from the plaintiff taxpayer under this article, and the amount of the balance remaining due the taxpayer shall be certified by the ~~commission~~ DEPARTMENT to the ~~commissioner of~~ DEPARTMENT OF ADMINISTRATION ASSISTANT DIRECTOR FOR finance, together with a certified copy of the final judgment and a claim for refund authenticated by the ~~commission~~ DEPARTMENT. Upon receipt thereof the ~~commissioner of~~ DEPARTMENT OF ADMINISTRATION ASSISTANT DIRECTOR FOR finance shall draw a warrant directed to the state treasurer in favor of the taxpayer in an amount equal to the amount of the tax found by the judgment to have been collected illegally, less any credit to the ~~commission~~ DEPARTMENT, to be paid from the use tax suspense fund. The ~~commissioner of~~ DEPARTMENT OF ADMINISTRATION ASSISTANT DIRECTOR FOR finance shall draw a separate warrant directed to the state treasurer in favor of the taxpayer in an amount equal to the interest and other costs recovered against the ~~commission~~ DEPARTMENT by the judgment in such action, which shall be paid by the state treasurer from the use tax receipts fund.

Sec. 135. Section 42-1422, Arizona Revised Statutes, is amended to read:

42-1422. **Use tax suspense fund**

A. If a taxpayer, at the time of paying any tax imposed by this article or by the ~~commission~~ DEPARTMENT under color of this article, protests payment of all or any part of the tax, the amount protested shall be deposited by the state treasurer to the credit of a fund designated as the use tax suspense fund. Such amount shall remain in the fund until any of the following occurs:

1. A final judgment has been rendered and the time for appeal has expired.

2. A dismissal of the action commenced by the taxpayer has been entered.

3. Thirty days have elapsed after the order of the ~~commission~~ DEPARTMENT became final and during which time the taxpayer did not commence an action.

B. If a final judgment has been rendered providing that the whole or any part of the amount was due and lawfully payable on the date when paid, the amount found lawfully payable shall be disposed of in the manner provided by this article for other collections made under this article, and shall be deemed a collection as of the date of such final determination.

C. If a refund is granted in the action, the amount of such refund shall be paid as provided by section 42-1421, and the remainder of the monies so credited to the use tax suspense fund shall be treated as other collections under this article as of the date of such refund.

Sec. 136. Section 42-1423, Arizona Revised Statutes, is amended to read:

42-1423. **Disposition of revenue; appropriations**

A. The ~~commission~~ DEPARTMENT shall promptly remit all monies received under the provisions of this article to the state treasurer and the treasurer shall place all such monies in a fund designated as the use tax receipts fund, but taxes, penalties or interest paid under protest, as provided by section 42-1421, shall be placed in the use tax suspense fund.

B. The legislature shall appropriate monies necessary for the enforcement of this article.

C. If no action is commenced by the taxpayer for the recovery of taxes, interest and penalties paid under protest, as authorized by section 42-1421, within the time allowed, or if such action terminates in favor of the ~~commission~~ DEPARTMENT, the monies so paid under protest shall be transferred to the use tax receipts fund and distributed as other receipts of that fund.

D. At the end of each calendar month, all amounts remaining in the use tax receipts fund shall be deposited in the general fund of the state by the state treasurer.

Sec. 137. Section 42-1451, Arizona Revised Statutes, as added by an initiative measure approved by the electors in 1972, is amended to read:

42-1451. **Uniform collection and administration of transaction privilege license tax and use tax**

The ~~Tax Commission~~ DEPARTMENT OF REVENUE may collect and administer any transaction privilege license tax or use tax imposed by any city or town, and the ~~Tax Commission~~ DEPARTMENT OF REVENUE and any city or town may enter into intergovernmental contracts or agreements to provide a uniform method of administration, collection, audit and licensing of transaction privilege license taxes and use taxes imposed by the state or cities and towns pursuant to title 11, chapter 7, article 3.

Sec. 138. Section 42-1501, Arizona Revised Statutes, is amended to read:

42-1501. **Definitions**

In this article, unless the context otherwise requires:

1. "Commissioner" means the ~~estate tax commissioner~~ DEPARTMENT OF REVENUE.

2. "Estate" or "property" means the interest of the decedent passing or transferred, in property, whether the property is located within or without this state.

3. "General power of appointment" means a power which is exercisable in favor of decedent, his estate, his creditors~~,~~ or the creditors of his estate, but a power to consume, invade or appropriate property for the benefit of decedent which is limited by an ascertainable standard relating to the health, education, support or maintenance of decedent, or a power of appointment which is exercisable by decedent only in conjunction with another person shall not be deemed a general power of appointment.

4. "Personal representative" means the executor or administrator of a decedent, or if there is no executor or administrator appointed, qualified and acting within this state, then any person in actual or constructive possession of any property of the decedent.

5. "Such property or any part thereof or interests therein within the state" includes bonds and shares of stock in any company incorporated in this state, whether or not the company has any or all of its capital stock invested in property without this state and is doing business without this state.

6. "Transfer" means the passing of property or any interest therein, in possession or enjoyment, present or future, by distribution or by statute, descent, devise, bequest or gift in contemplation of death.

Sec. 139. **Repeals**

Sections 42-1504 and 42-1505, Arizona Revised Statutes, are repealed.

Sec. 140. Section 42-1519, Arizona Revised Statutes, is amended to read:

42-1519. **Determination of tax; liability of personal representative; appeal to department; compromise of penalties**

A. As soon as practicable after the return is filed, subject to the procedure provided in section 42-1528, the ~~commissioner~~ DEPARTMENT shall examine it. If it then appears that the correct amount of tax is greater or less than shown in the return, the tax shall be recomputed AND THE PERSONAL REPRESENTATIVE SHALL BE NOTIFIED BY CERTIFIED OR REGISTERED MAIL OF ANY AMOUNT IN EXCESS OF THAT SHOWN ON THE RETURN WHICH IS DETERMINED TO BE DUE. If the amount paid exceeds that which should have been paid on the basis of the return so computed, the excess so paid shall be credited or refunded to the taxpayer. If the amount paid is less than the amount which should have been paid, the difference, together with interest or interest and penalties, shall become due and payable upon notice and demand by the ~~commissioner~~ DEPARTMENT, and the personal representative shall be liable to the state personally and on his official bond for any loss to the state accruing by reason of his negligence or willful neglect.

~~B. If upon examination of a return a tax or a deficiency in the tax is disclosed, the personal representative shall be notified thereof by the commissioner by registered mail and given a period of not less than thirty nor more than sixty days after the notice is sent in which to show cause why the tax or deficiency should not be paid.~~

B. ANY PERSON FROM WHOM AN AMOUNT IS DETERMINED TO BE DUE UNDER THIS ARTICLE MAY APPLY TO THE DEPARTMENT BY A PETITION IN WRITING WITHIN THIRTY DAYS AFTER THE NOTICE REQUIRED BY SUBSECTION A IS RECEIVED BY HIM, OR WITHIN SUCH ADDITIONAL TIME AS ALLOWED BY THE DEPARTMENT, FOR A HEARING, CORRECTION OR REDETERMINATION OF THE ACTION TAKEN BY THE DEPARTMENT. THE PETITION SHALL SET FORTH THE REASONS WHY SUCH HEARING,

CORRECTION OR REDETERMINATION SHOULD BE GRANTED AND THE AMOUNT IN WHICH THE TAX SHOULD BE REDUCED. THE DEPARTMENT SHALL PROMPTLY CONSIDER THE PETITION AND SHALL GRANT A HEARING, IF REQUESTED.

~~C. After not less than ten days notice to the personal representative, the commissioner shall hear and determine all questions involving the tax or deficiency, and a final decision thereon shall be made as soon as practicable. Any tax or deficiency in a tax found due after the hearing shall be assessed and paid, together with penalties or interest, within sixty days after notice and demand by the commissioner. In hearings before the commissioner, oral, documentary or other evidence may be introduced.~~

C. IF A PETITION FOR HEARING, CORRECTION OR REDETERMINATION IS NOT FILED WITHIN SUCH THIRTY DAY PERIOD, OR WITHIN SUCH ADDITIONAL TIME ALLOWED BY THE DEPARTMENT, THE AMOUNT DETERMINED TO BE DUE SHALL BECOME FINAL AT THE EXPIRATION THEREOF, AND SUCH PERSON SHALL BE DEEMED TO HAVE WAIVED AND ABANDONED THE RIGHT TO QUESTION THE AMOUNT DETERMINED TO BE DUE.

D. THE ORDERS OR DECISIONS MADE UPON FILING A PETITION FOR A HEARING, CORRECTION OR REDETERMINATION SHALL BECOME FINAL AND ANY ADDITIONAL AMOUNTS SHALL BE ASSESSED AND BECOME DUE THIRTY DAYS AFTER NOTICE THEREOF HAS BEEN RECEIVED BY THE PETITIONER, UNLESS THE PETITIONER APPEALS THE ORDER OR DECISION TO THE STATE BOARD.

~~D.~~ E. The ~~commissioner~~ DEPARTMENT may compromise or remit any penalties imposed pursuant to this section.

Sec. 141. Title 42, chapter 9, article 1, Arizona Revised Statutes, is amended by adding section 42-1519.01, to read:

42-1519.01. **Appeal to state board; finality of order**

A. ANY PERSON AGGRIEVED BY A DECISION OR ORDER OF THE DEPARTMENT PURSUANT TO SECTION 42-1519 MAY APPEAL TO THE STATE BOARD BY FILING A NOTICE OF APPEAL IN WRITING WITHIN THIRTY DAYS AFTER THE RECEIPT OF THE DECISION OR ORDER APPEALED FROM. THE STATE BOARD SHALL TAKE TESTIMONY AND EXAMINE DOCUMENTARY EVIDENCE AS NECESSARY TO DETERMINE THE APPEAL, ALL IN ACCORDANCE WITH RULES AND REGULATIONS TO GOVERN SUCH APPEALS.

B. UPON DETERMINING THE APPEAL, THE STATE BOARD SHALL ISSUE A DECISION CONSISTENT THEREWITH. THE BOARD'S DECISION IS FINAL UPON THE EXPIRATION OF THIRTY DAYS FROM THE DATE WHEN NOTICE OF ITS ACTION IS RECEIVED BY THE PARTIES, UNLESS EITHER THE STATE OR THE PERSONAL REPRESENTATIVE BRINGS AN ACTION IN SUPERIOR COURT AS PROVIDED IN SUBSECTION C.

C. A PERSONAL REPRESENTATIVE MAY BRING AN ACTION IN SUPERIOR COURT TO CHALLENGE THE VALIDITY OF A DEFICIENCY ASSESSMENT, FOR THE RECOVERY OF ANY TAX, INTEREST OR PENALTY PAID UNDER PROTEST OR FOR A REFUND WHICH HAS BEEN PROPERLY CLAIMED AND WHICH WAS DENIED. THE STATE MAY BRING AN ACTION IN SUPERIOR COURT TO DETERMINE THE VALIDITY OF ITS DEFICIENCY ASSESSMENT OR ITS DENIAL OF TAXPAYER'S CLAIM FOR A REFUND. SUCH ACTIONS SHALL NOT BE COMMENCED MORE THAN THIRTY DAYS AFTER THE ORDER OR DECISION OF THE STATE BOARD OF TAX APPEALS GIVING RISE TO THE CAUSE OF ACTION BECOMES FINAL, AND FAILURE TO BRING THE ACTION WITHIN SUCH PERIOD CONSTITUTES A WAIVER OF THE CAUSE OF ACTION.

Sec. 142. **Repeal**

Section 42-1520, Arizona Revised Statutes, is repealed.

Sec. 143. Title 42, chapter 9, article 1, Arizona Revised Statutes, is amended by adding a new section 42-1520, to read:

42-1520. **Action to review**

IN AN ACTION BROUGHT UNDER SECTION 42-1519, SUBSECTION C, IT IS NOT NECESSARY TO JOIN AS PARTIES TO THE ACTION THE HEIRS AT LAW, NEXT OF KIN, DISTRIBUTEES, LEGATEES, OR DEVISEES OF THE DECEDENT, THE COMPLAINT SHALL CONTAIN A CONCISE STATEMENT OF THE FACTS AND THERE SHALL BE ANNEXED THERETO A COPY OF THE RETURN AND THE FINDINGS AND DETERMINATION COMPLAINED OF, AND THE COMPLAINT SHALL PRAY FOR AN ABATEMENT OF THE TAX IN SUCH AMOUNT AND TO SUCH EXTENT, WHOLLY OR IN PART, AND FOR SUCH OTHER RELIEF AS THE PERSONAL REPRESENTATIVE CLAIMS.

Sec. 144. Section 43-101, Arizona Revised Statutes, as amended by Laws 1973, Chapter 7, Section 4, is amended to read:

43-101. **General provisions and definitions**

(a) **Effective date.** The provisions of this title shall apply only to taxable years beginning after December 31, 1953.

(b) **Construction.** Except where the context otherwise requires, the definitions given in this section govern the construction of this title.

(c) **Tax commission.** "Tax commission" or "commission" means the ~~Arizona state tax commission~~ DEPARTMENT OF REVENUE.

(d) **Tax.** "Tax" means the taxes imposed under this title.

(e) **Taxpayer.** "Taxpayer" means any person subject to a tax imposed by this title, but in no case shall it include the United States, the state, counties, cities, villages, school districts, or other political subdivisions or units of the state or federal government.

(f) **Individual.** "Individual" means a natural person.

(g) **Fiduciary.** "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, whether individual or corporate, or any person acting in any fiduciary capacity for any person, estate or trust.

(h) **Person.** "Person" includes individuals, fiduciaries, partnerships, and corporations.

(i) **Partnership.** "Partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on and which is not, within the meaning of this title, a trust or estate or a corporation.

"Partner" includes a member in such a syndicate, group, pool, joint venture, or organization.

(j) **Corporation.** "Corporation" shall mean and include all corporations, joint stock companies, banks, insurance companies, business trusts or so-called "Massachusetts trusts", investment companies, building and loan associations, and other associations whether incorporated or unincorporated.

(k) **Taxable year.** "Taxable year" means the calendar year or the fiscal year (ending during such calendar year) upon the basis of which the net

income is computed under this title. If no fiscal year has been established, "taxable year" means the calendar year.

"Taxable year" means, in the case of a return made for a fractional part of a year under this title or under regulations prescribed by the tax commission, the period for which the return is made.

(l) **Income year.** For the purposes of the tax imposed under this title, wherever "income year" is used throughout this title it means "taxable year" as that term is defined in this section.

(m) **Fiscal year.** "Fiscal year" means an accounting period of twelve months ending on the last day of any month other than December.

(n) **Paid or incurred.** "Paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed under this title.

(o) **Assessment.** "Assessment" includes "proposed additional assessment".

(p) **Resident.** "Resident" includes:

(1) Every individual who is in the state for other than a temporary or transitory purpose.

(2) Every individual domiciled in this state who is outside the state for a temporary or transitory purpose.

Any individual who is a resident of this state continues to be a resident even though temporarily absent from the state.

(q) **Nonresident.** "Nonresident" means every individual other than a resident.

(r) **Presumption of residence.** Every individual who spends in the aggregate more than nine months of the taxable year within this state shall be presumed to be a resident. The presumption may be overcome by competent evidence that the individual is in the state for a temporary or transitory purpose.

(s) **United States.** "United States", when used in a geographical sense, includes the states, the District of Columbia, and the possessions of the United States.

(t) **State.** "State" includes the states of the United States, the District of Columbia, and the possessions of the United States.

(u) **Foreign country.** "Foreign country" means any jurisdiction other than one embraced within the United States.

(v) **Trade or business.** "Trade or business" includes the performance of the functions of a public office.

(w) **Husband and wife.**

(1) As used in section 43-112(e) (1), (2) and (4), section 43-123.23 and section 43-164, and the last paragraph of section 43-127(c), if the husband and wife therein referred to are divorced, the term "wife" shall be read "former wife" and the term "husband" shall be read "former husband". If the payments described in such sections are made by or on behalf of the wife or former wife to the husband or former husband instead of vice versa, wherever appropriate to the meaning of such sections, the term "husband" shall be read "wife" and the term "wife" shall be read "husband".

(2) An individual who is legally separated from his (or her) spouse under a decree of divorce or of separate maintenance shall not be considered as married (or as husband and wife).

(3) A taxpayer shall be considered as married at the close of his (or her) taxable year if his (or her) spouse died during the taxable year.

(x) **Head of household.** For the purposes of this title, an individual shall be considered a head of a household if, and only if, such individual is not married at the close of his taxable year and maintains as his home a household which constitutes for such taxable year the principal place of abode, as a member of such household, of any person who is a dependent of the taxpayer, if the taxpayer is entitled to an exemption for the taxable year for such person under section 43-127(c). An individual may be considered as maintaining a household only if over half of the cost of maintaining the household during the taxable year is furnished by such individual.

(y) **Military or naval forces.** The term "military or naval forces of the United States" includes the army, the navy, the air force, the marine corps, the coast guard, the army nurse corps, female, the women's army auxiliary corps, the navy nurse corps, female, and the women's reserve branch of the naval reserve.

(z) **Counsel for tax commission.** The terms "counsel for tax commission" and "tax commission counsel" as used in this title, means attorney or attorneys acting subject to the approval and under the supervision of the department of law, and the attorney general.

(aa) **Income derived from sources within this state.** Income derived from or attributable to sources within this state includes income from tangible or intangible property located or having a situs in this state and income from any activities carried on in this state, regardless of whether carried on in intrastate, interstate or foreign commerce.

(bb) **Specific definitions.** Definitions, other than general definitions, are set forth in the section to which specifically applicable.

(cc) "BOARD" MEANS THE STATE BOARD OF TAX APPEALS OR WHEN APPLICABLE A DIVISION THEREOF.

(dd) "DEPARTMENT" MEANS THE DEPARTMENT OF REVENUE.

(ee) "DIRECTOR" MEANS THE DIRECTOR OF THE DEPARTMENT OF REVENUE.

Sec. 145. Section 43-175, Arizona Revised Statutes, is amended to read:

43-175. **Administration of tax–powers and duties of department of revenue**

(a) ~~**Tax commission**~~ **DEPARTMENT OF REVENUE, administrator.** The ~~tax commission~~ DEPARTMENT shall administer and enforce this title. For this purpose it may divide the state into a reasonable number of districts, in each of which a branch office or offices may be maintained during all or such part of the time as may be necessary.

(b) **Branch offices, bases of establishing.** In the establishment of the districts and offices the ~~tax commission~~ DEPARTMENT shall give due consideration to the matter of economy of administration and service to the taxpayers.

(c) **Rules and regulations.** The ~~tax commission~~ DEPARTMENT shall prescribe all rules and regulations necessary for the enforcement of this title.

(d) ~~**Tax commission, power of examination.**~~ **DEPARTMENT OF REVENUE, POWERS AND DUTIES.** The ~~tax commission~~

DEPARTMENT OF REVENUE, for the purpose of administering its duties under this title, shall have ALL OF THE POWERS AND DUTIES GRANTED OR ASSIGNED UNDER TITLE 42, CHAPTER 1, ARTICLE 1.1 AND ALL ADDITIONAL POWERS AND DUTIES PROVIDED IN THIS TITLE. ~~the power to examine any books, papers, record or memoranda, bearing upon the matters required to be included in the return of any taxpayer under this title. The tax commission may also require the attendance of the taxpayer or of any other person having knowledge in the premises and may take testimony and require material proof for its information and administer oaths to carry out the provisions of this section. The tax commission may issue subpoenas or subpoenas duces tecum, which subpoenas must be signed by any member of the tax commission and may be served on any person for any such purpose.~~

(e) **Effect of determination by other state agencies, res judicata.**

In the determination of any issue of law or fact under this title, neither the ~~tax commission~~ DEPARTMENT, nor any officer or agency having any administrative duties under this title, nor any court shall be bound by the determination of any other executive officer or administrative agency of the state. In the determination of any case arising under this title, the rule of res judicata is applicable only if the liability involved is for the same year as was involved in another case previously determined under this title.

(f) **Preservation of returns.** Reports and returns shall be preserved as set forth in section 43-145(a).

(g) ~~**Tax commission**~~ **DEPARTMENT, appointment of agents and assistants.** The ~~tax commission~~ DEPARTMENT may appoint and remove, in the manner provided by law, such officers, agents, branch office income tax deputies, and other employees as it deems necessary. They shall have such duties and powers as the ~~tax commission~~ DEPARTMENT from time to time prescribes.

(h) ~~**Tax commission**~~ **DEPARTMENT, appointment of deputies and assistants to conduct hearings and prescribe regulations.** The ~~tax commission~~ DEPARTMENT may appoint one or more deputies or assistants to conduct hearings, prescribe regulations, or perform any other duty imposed by this title or other laws of the state upon the ~~tax commission~~ DEPARTMENT.

(i) ~~**Tax commission**~~ **DEPARTMENT, compensation of assistants.** The compensation of the personnel required by the ~~tax commission~~ DEPARTMENT shall be such as determined pursuant to section 38-611.

(j) ~~Tax commission~~ **DEPARTMENT, bonds of assistants.** The ~~tax commission~~ DEPARTMENT may require officers, agents, deputies, and other employees designated by it to give bond for the faithful performance of their duties in such sum and with such sureties as it may determine. It shall pay all premiums on the bonds out of moneys appropriated for the administration of this title.

(k) ~~Tax commission~~ **DEPARTMENT, assistants to take oaths and acknowledgments.** The ~~tax commission~~ DEPARTMENT and officers and employees designated by it may administer an oath to any person or take the acknowledgment of any person in respect of any return or report required by this title or the rules and regulations of the ~~tax commission~~ DEPARTMENT.

(l) **Closing agreements.**

(1) The ~~tax commission~~ DEPARTMENT or any person authorized in writing by the ~~tax commission~~ DEPARTMENT is authorized to enter into an agreement in writing with any person relating to the liability of such person (or relating to the liability of the person or estate for whom he acts) in respect of any tax levied under this title for any taxable period.

(2) If such agreement is approved by the ~~tax commission~~ DEPARTMENT within the time stated in the agreement, or later agreed to, it shall be final and conclusive, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact.

(A) The case shall not be reopened as to the matters agreed upon or the agreement modified, by any officer, employee, or agent of the state, and

(B) In any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

Sec. 146. Section 43-177, Arizona Revised Statutes, is amended to read:

43-177. **Payments and assessments–deficiency assessments**

(a) **Deficiency assessment, when** ~~tax commission~~ **DEPARTMENT may issue.** The ~~tax commission~~ DEPARTMENT may proceed under this section or section 43-178 whether or not it requires a return as an amended return under section 43-141(c).

(b) **Return, examination by ~~tax commission~~ DEPARTMENT.** As soon as practicable after the return is filed, the ~~tax commission~~ DEPARTMENT shall examine it and shall determine the correct amount of the tax.

(c) **Notice of additional assessment.** If the ~~tax commission~~ DEPARTMENT determines that the tax disclosed by the original return is less than the tax disclosed by its examination, it shall mail notice or notices to the taxpayer of the deficiency proposed to be assessed.

(1) **Notice, contents.** Each notice shall set forth the reasons for the proposed additional assessment and the computation thereof.

(2) **Notice, joint returns.** In the case of a joint return filed by husband and wife, the notice of deficiency may be a single joint notice, except that if the ~~tax commission~~ DEPARTMENT is notified by either spouse that separate residences have been established, it shall mail to each spouse, in lieu of the single joint notice, duplicate originals of the joint notice.

(d) **Proposed assessments, statute of limitations.** Except in the case of a fraudulent return and except as otherwise provided in paragraphs (1), (6) and (8), every notice of a proposed deficiency assessment shall be mailed to the taxpayer within four years after the return was filed. No deficiency shall be assessed or collected with respect to the year for which the return was filed unless the notice is mailed within the four-year period or the period otherwise fixed.

(1) **Omission from gross income.** If the taxpayer omits from gross income an amount properly includible therein which is in excess of twenty-five per cent of the amount of gross income stated in the return, the tax may be assessed at any time within six years after the return was filed.

(2) **Failure to report federal changes, statute of limitations.**If a taxpayer shall fail to report a change or correction by the commissioner of internal revenue or other officer of the United States or other competent authority or shall fail to file an amended return as required by section 43-141(c) any deficiency resulting from such adjustments may be assessed and collected within four years after said change, correction or amended return is reported to or filed with the federal government.

(3) **Additional time for assessment.**If a taxpayer is required to report a change or correction by the commissioner of internal revenue or other officer of the United States or other competent authority or to file an amended return as required by section 43-141(c) and does report such

change or files such return, any deficiency resulting from such adjustments may be assessed within six months from the date when such notice or amended return is filed with the ~~tax commission~~ DEPARTMENT by the taxpayer, or within the period provided in the first paragraph of subsection (d) and subsection (d) (1), whichever period expires the later.

(4) **Deficiency–section 43-152(n) (7).** In case of a deficiency described in section 43-152(n) (7), such deficiency may be assessed at any time prior to the expiration of the time therein provided.

(5) **Statute of limitations–deficiency–section 43-152(f) (3) (C) and (D).** In case of a deficiency described in section 43-152(f) (3) (C) and (D), such deficiency may be assessed at any time prior to the expiration of the time therein provided.

(6) **Proposed assessment, limitation where federal waiver.** If any taxpayer agrees with the United States commissioner of internal revenue for an extension or renewals thereof of the period for proposing and assessing deficiencies in federal income taxes for any year, the period for mailing a notice of a proposed deficiency shall be four years after the return was filed or six months after the date of the expiration of the agreed period for assessing deficiencies in the federal income tax, whichever period expires the later.

(7) **Returns, when deemed filed.** For the purposes of this section a return filed before the last day prescribed by law for filing shall be considered as filed on that day.

(8) **Waiver of statute of limitations.** Where before the expiration of the time prescribed for the mailing of a notice of a proposed deficiency assessment, the taxpayer consents in writing to an assessment after that time, the assessment may be made at any time prior to the expiration of the period agreed upon. The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(e) **Protest, when to be filed.** Within ninety days after the mailing of each notice of additional tax proposed to be assessed the taxpayer may file with the ~~tax commission~~ DEPARTMENT a written protest against the proposed additional tax, specifying in the protest the grounds upon which it is based. Such written protest shall be prepared and verified in the manner prescribed by the ~~tax commission~~ DEPARTMENT.

(1) **Proposed assessments, when final.** If no protest is filed, the amount of the deficiency assessed becomes final upon the expiration of the ninety-day period.

(2) **Protest, action and hearing.** If a protest is filed, the ~~tax commission~~ DEPARTMENT shall reconsider the assessment of the deficiency and, if the taxpayer has so requested in his protest, shall grant the taxpayer or his authorized representatives an oral hearing. Such hearing shall be held within six months from the date of receipt of written request for such hearing from the taxpayer.

(3) AFTER CONSIDERATION OF THE PROTEST AND THE EVIDENCE ADDUCED IN THE EVENT OF SUCH ORAL HEARING, THE DEPARTMENT'S ACTION UPON THE PROTEST IS FINAL UPON THE EXPIRATION OF THIRTY DAYS FROM THE DATE WHEN NOTICE OF ITS ACTION IS RECEIVED BY THE TAXPAYER, UNLESS WITHIN THAT THIRTY-DAY PERIOD THE TAXPAYER FILES A NOTICE OF APPEAL IN WRITING FROM THE ACTION OF THE DEPARTMENT TO THE STATE BOARD OF TAX APPEALS.

~~(3)~~ (4) The provisions of this subsection shall be effective for all years beginning on or after January 1, 1970.

(f) ~~**Appeal to superior court.**~~

~~(1) After consideration of the protest and the evidence adduced in the event of such oral hearing, the tax commission's action upon the protest is final upon the expiration of thirty days from the date when it mails notice of its action to the taxpayer, unless within that thirty-day period the taxpayer appeals from the action of the tax commission to the superior court of the county wherein the taxpayer resides or, if the taxpayer does not reside in Arizona, to the superior court of Maricopa county.~~

~~(2) The superior court shall hear and determine the appeal as a trial de novo. Within sixty days after the entry of judgment either party may appeal to the supreme court in the manner provided for appeals from the judgment of a superior court, and such appeal shall be placed on the calendar of the supreme court and brought to a hearing in the same manner as other state cases.~~

(f) **APPEAL TO STATE BOARD; FINALITY OF ORDER**

(1) ANY PERSON AGGRIEVED BY A DECISION OR ORDER OF THE DEPARTMENT PURSUANT TO SUBSECTION (e) MAY APPEAL TO THE STATE BOARD BY FILING A NOTICE OF APPEAL IN WRITING WITHIN THIRTY DAYS AFTER THE RECEIPT OF THE DECISION OR ORDER APPEALED FROM. THE STATE BOARD SHALL TAKE TESTIMONY AND EXAMINE DOCUMENTARY EVIDENCE AS NECESSARY TO DETERMINE THE APPEAL, ALL IN

ACCORDANCE WITH RULES AND REGULATIONS TO GOVERN SUCH APPEALS.

(2) UPON DETERMINING THE APPEAL, THE STATE BOARD SHALL ISSUE A DECISION CONSISTENT THEREWITH. THE BOARD'S DECISION IS FINAL UPON THE EXPIRATION OF THIRTY DAYS FROM THE DATE WHEN NOTICE OF ITS ACTION IS RECEIVED BY THE PARTIES, UNLESS EITHER THE STATE OR THE TAXPAYER BRINGS AN ACTION IN SUPERIOR COURT AS PROVIDED IN SUBSECTION (g) OR SECTION 43-184.

(g) **ACTIONS IN SUPERIOR COURT BY TAXPAYER OR BY STATE**

A TAXPAYER MAY BRING AN ACTION IN SUPERIOR COURT TO CHALLENGE THE VALIDITY OF A DEFICIENCY ASSESSMENT, FOR THE RECOVERY OF ANY TAX, INTEREST OR PENALTY PAID UNDER PROTEST OR FOR A REFUND WHICH HAS BEEN PROPERLY CLAIMED AND WHICH WAS DENIED. THE STATE MAY BRING AN ACTION IN SUPERIOR COURT TO DETERMINE THE VALIDITY OF ITS DEFICIENCY ASSESSMENT OR ITS DENIAL OF TAXPAYER'S CLAIM FOR A REFUND. SUCH ACTIONS SHALL NOT BE COMMENCED MORE THAN THIRTY DAYS AFTER THE ORDER OR DECISION OF THE STATE BOARD OF TAX APPEALS GIVING RISE TO THE CAUSE OF ACTION BECOMES FINAL, AND FAILURE TO BRING THE ACTION WITHIN SUCH PERIOD CONSTITUTES A WAIVER OF THE CAUSE OF ACTION.

~~(g)~~ (h) **Notice of deficiency, due date.** When a deficiency is determined and the assessment becomes final, the ~~tax commission~~ DEPARTMENT shall mail notice and demand to the taxpayer for the payment thereof. The deficiency assessed is due and payable at the expiration of ten days from the date of the notice and demand, unless the taxpayer has elected to pay the tax in installments, in which case the deficiency shall be prorated to the three installments.

(1) **Deficiency, installment payments.** Except where a jeopardy assessment is made, the part of the deficiency prorated to any installment the date for payments of which has not arrived shall be collected at the same time as, and as part of, the installment.

(2) **Deficiency payments, delinquent installments.** The part of the deficiency prorated to any installment the date for payment of which has arrived is due and payable at the expiration of ten days from the date of the notice.

~~(h)~~ (i) **Certificates, prima facie evidence.** A certificate by the ~~tax commission~~ DEPARTMENT of the mailing of the notices specified in this section is prima facie evidence of the assessment of the deficiency and of the giving of the notices.

~~(i)~~ (j) **Mathematical error, collection of tax due thereon.** Any amount of tax in excess of that disclosed by the return due to a mathematical error or failure of the taxpayer to compute properly the liability based on the net income reported on the return notice of which has been mailed to the taxpayer, is not a deficiency assessment within the meaning of this section. The taxpayer has no right of protest or appeal as in the case of a deficiency assessment, based on such notice, and the assessment or collection of the amount of tax erroneously omitted in the return is not prohibited by any provision of this section.

Sec. 147. Section 43-184, Arizona Revised Statutes, as amended by Laws 1973, chapter 7, section 24, is amended to read:

43-184. **Overpayments and refunds–claim for refund**

(a) **Refund, when.** If the ~~tax commission~~ DEPARTMENT believes that there has been an overpayment of tax, penalty, or interest by a taxpayer for any year for any person, the amount of the overpayment shall be credited against any taxes then due from the taxpayer under this title and the balance refunded to the taxpayer, or its successor through reorganization, merger, or consolidation, or to its shareholders upon dissolution.

(b) **Limitation on allowance of refund**

(1) **Refund claim, when to be filed.** No credit or refund shall be allowed or made after four years from the last day prescribed for filing the return provided such return has been filed in the period prescribed by law or after one year from the date of the overpayment, whichever period expires the later, unless before the expiration of the period a claim therefor is filed by the taxpayer, or unless before the expiration of the period the ~~tax commission~~ DEPARTMENT certifies the overpayment to the assistant director for the division of finance for approval of the refund thereof.

(2) **Refund claim, effect of extension agreements.** The period within which a claim for credit or refund may be filed, or credit or refund allowed or made if no claim is filed, shall be the period within which the ~~tax commission~~ DEPARTMENT may make an assessment under the same circumstances, if:

(A) The taxpayer has, within the period prescribed in the preceding sentence, agreed in writing, under the provisions of section 43-177, to extend the time within which the ~~tax commission~~ DEPARTMENT may propose an additional assessment, or

(B) The taxpayer has agreed with the United States commissioner of internal revenue for an extension (or renewals thereof) of the period for proposing and assessing deficiencies in federal income tax for any year.

(3) **Extended period, when applicable.** The provisions of paragraph (1) shall apply to any claim filed, or credit or refund allowed or made, before the execution of an agreement pursuant to paragraph (2).

(4) **Refund claim, seven-year period in connection with bad debts, etc.** Insofar as the claim for credit or refund relates to an overpayment on account of the deductibility, under section 43-123.13, subsection A, of a debt as one which became worthless, or a loss from worthlessness of a security under section 43-123.13, subsection B, or section 43-123.09 or an erroneous inclusion of an amount attributable to the recovery of a bad debt, prior tax or delinquency amount, under section 43-112(b) (17) to (21), inclusive, due to an adjustment of a bad debt deduction under section 43-123.13, subsection A, or a loss deduction from worthlessness of a security under section 43-123.13, subsection B, or section 43-123.09, in lieu of the period of limitations prescribed in paragraph (1), the period shall be seven years from the date prescribed by law for filing the return for the year with respect to which the claim is made.

(5) **Refund–transfer of items from one year to another.** Notwithstanding any statute of limitations provided in this title, any overpayment due a taxpayer for any year which results from a transfer of items of income or deductions or both to or from another year for the same taxpayer, or for the same year for a related taxpayer described in section 43-181(e), shall be allowed as an offset in computing any deficiency in tax for any year resulting from the transfer of such income or deductions or both, but no refund shall be allowed unless the overpayment is certified to the assistant director for the division of finance, or a claim for refund is filed within the time otherwise provided for in this title.

The offset provided herein, however, shall not be allowed after the expiration of seven years from the due date of the return on which the overpayment is determined.

(c) **Refund claim, effect of denial.** A refund claim upon which action has become final shall not thereafter be considered a refund claim within the meaning of subsection (b) (1), except to the extent it has been allowed.

(d) **Refund claim, form.** Every claim for refund shall be in writing and shall state the specific grounds upon which it is founded.

(e) **Refund claim, notice of denial.** If the ~~tax commission~~ DEPARTMENT disallows any claim for refund, it shall notify the taxpayer accordingly.

(f) **Refund claim, finality of action.** At the expiration of ninety days from the mailing of the notice, the ~~tax commission's~~ DEPARTMENT'S action upon the claim is final unless within the ninety-day period the taxpayer protests in writing to the ~~commission~~ DEPARTMENT setting forth reasons for protest and requesting a hearing.

(g) **Refund claim may be deemed disallowed after six months.** If the ~~tax commission~~ DEPARTMENT fails to mail notice of action on any refund claim within six months after the claim is filed, the taxpayer may prior to mailing of notice of action on the refund claim consider the claim disallowed and appeal to the ~~commission~~ STATE BOARD OF TAX APPEALS.

(h) **Protest to ~~commission~~ DEPARTMENT, form and mailing.** Protest shall be addressed and mailed to the ~~state tax commission~~ DEPARTMENT at Phoenix, Arizona.

~~(i) Appeals. Appeals must be addressed and mailed to the state tax commission at Phoenix, Arizona. The tax commission shall hear and determine the same and thereafter shall forthwith notify the taxpayer of its determination. The commission's determination is final upon the expiration of ninety days from the date of mailing notice of determination unless within said ninety days the taxpayer appeals from the action of the tax commission to the superior court of the county wherein the taxpayer resides or, if the taxpayer does not reside in Arizona, to the superior court of Maricopa county.~~

(i) **HEARINGS AND APPEALS.** UPON THE FILING OF A PROTEST BY THE TAXPAYER, ALL HEARINGS, APPEALS AND OTHER PROCEEDINGS SHALL BE GOVERNED BY THE PROVISIONS OF SECTION 43-177, SUBSECTION (e), SUBSECTION (f) AND SUBSECTION (g).

(j) **Payment of tax–deemed claim for refund.** If, with or after the filing of a protest or an appeal with the ~~tax commission or an appeal to~~ DEPARTMENT OF REVENUE, STATE BOARD OF TAX APPEALS OR the superior court, a taxpayer pays the tax protested or appealed before

the ~~tax commission~~ DEPARTMENT, BOARD OR SUPERIOR COURT acts upon the protest or the appeal, ~~or the superior court upon the appeal, the tax commission or superior court~~ SUCH BODY shall treat the protest or the appeal as a claim for refund or an appeal from the denial of a claim for refund filed under this section.

(k) **Interest on overpayment**

(1) **Refund claims, interest.** Interest shall be allowed and paid on any overpayment in respect to any tax, at the rate of six per cent per annum as follows:

(A) In the case of a credit, from the date of the overpayment to the date of the allowance of the credit. Any interest allowed on any credit shall first be credited on any taxes due from the taxpayer under this title.

(B) In the case of a refund, from the date of the overpayment to a date preceding the date of the refund warrant by not more than thirty days, the date to be determined by the ~~tax commission~~ DEPARTMENT.

(2) **Notice of denial.** If the ~~tax commission~~ DEPARTMENT disallows interest on any claim for refund, it shall notify the taxpayer accordingly, and thereafter such claim shall be treated, for procedural purposes, as a claim for refund.

(3) **Suit, failure of action.** If the ~~tax commission~~ DEPARTMENT fails to mail notice of action of disallowance of interest on any refund claim within six months after the interest was claimed, the taxpayer may, prior to mailing notice of action of disallowance of interest on the refund claim, consider the interest disallowed and ~~bring an action against the tax commission~~ APPEAL TO THE BOARD on the grounds set forth for interest in such claim for the recovery of the interest.

(4) **Payment, not bona fide.** A payment not made incident to a bona fide and orderly discharge of an actual liability or one reasonably assumed to be imposed by law, is not an over payment for the purposes of paragraph (1) and interest is not payable thereon.

(5) **Interest limitation–bad debts.** If a credit or refund of any part of an overpayment would be barred under subsection (b) (1), except for the provisions of subsection (b) (4), no interest shall be allowed or paid with respect to such part of the overpayment for any period beginning after the expiration of the period of limitation provided in subsection (b) (1), for filing claim for credit or refund of such part of the overpayment and

ending at the expiration of six months after the date on which the claim was filed or, in case no claim was filed and the overpayment was found by the ~~tax commission~~ DEPARTMENT, ending at the time the appeal was filed with the ~~tax commission~~ BOARD.

Sec. 148. Section 43-186, Arizona Revised Statutes, is amended to read:

43-186. **Overpayments and refunds–actions against the department**

(a) **Legal or equitable process to enjoin assessment or collection of tax, prohibited.** No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against this state or against any officer of this state to prevent or enjoin the assessment or collection of any tax under this title.

(b) **Action, taxpayer may bring.** ~~Except as provided in subsection (d),~~ After payment of the tax and denial by the ~~tax commission~~ STATE BOARD OF TAX APPEALS of a claim for refund any taxpayer claiming that the tax computed and assessed against him under this title is erroneous in whole or in part, or that the return of interest on any overpayment has been improperly denied, may bring an action upon the grounds set forth in his claim for refund against the ~~tax commission~~ DEPARTMENT in the superior court where he resides, or if he is not a resident of Arizona, in the superior court of Maricopa county, for the recovery of the whole or any part of the amount paid, and for the recovery of such interest as may legally be owing.

(c) **Action, time to be filed.** The action provided by subsection (b) shall be filed within four years from the last date prescribed for filing the return provided the return was filed within the period provided by law or within one year from the date the tax was paid, or within ninety days after ~~(1) notice of action by the tax commission upon any claim for refund, or (2)~~ notice of action by the ~~tax commission~~ BOARD on an appeal from the action of the ~~tax commission~~ DEPARTMENT on a claim for refund, whichever period expires the later.

~~(d) **Action, where tax commission fails to act on refund claim after six months.** If the tax commission fails to mail notice of action on any refund claim within six months after the claim was filed, the taxpayer may, prior to mailing of notice of action on the refund claim, consider the claim disallowed and bring an action against the tax commission in the superior court of the county in which he resides on the grounds set forth in the claim for the recovery of the whole or any part of the amount claimed as an overpayment.~~

~~(e)~~ (d) **Action, service of complaint.** Whenever an action is commenced against the ~~tax commission~~ DEPARTMENT under this title a copy of the complaint and the summons shall be served upon the ~~tax commission or the chairman of the commission~~ DEPARTMENT OR THE DIRECTOR. A second copy of the complaint and the summons shall be furnished to the ~~tax commission~~ DEPARTMENT, but this requirement is not jurisdictional.

(1) **Actions, department of law to defend.** The department of law shall defend the action. In any such action the court may render judgment for plaintiff for any part of the tax, interest, penalties or costs found to be void.

(2) **Action barred by statute of limitations.** Failure to begin an action within the time specified in this section shall be a bar against the recovery of taxes.

(3) **Trial de novo.** The superior court shall hear and determine the appeal as a trial de novo.

(4) **Appeal ~~to supreme court~~ FROM SUPERIOR COURT.** Within sixty days after the entry of judgment either party may appeal ~~to the supreme court~~ in the manner provided for appeals from the judgment of a superior court. ~~, and such appeal shall be placed on the calendar of the supreme court and brought to a hearing in the same manner as other state cases.~~

~~(f)~~ (e) **Actions**

(1) **Interest on judgment.** In any judgment of any court rendered for any overpayment, interest shall be allowed at the rate of six per cent per annum upon the amount of the overpayment, from the date of the payment or collection thereof to the date of allowance of credit on account of such judgment or to a date determined by the ~~tax commission~~ DEPARTMENT preceding the date of the refund warrant by not more than thirty days.

(2) **Payment of judgment.** If judgment is rendered against the ~~tax commission~~ DEPARTMENT, the amount thereof shall first be credited against any taxes and interest due from the taxpayer under this title and the remainder refunded to the taxpayer by the state treasurer on warrants drawn by the ~~commissioner~~ ASSISTANT DIRECTOR FOR THE DIVISION of finance.

Sec. 149. Section 44-351, Arizona Revised Statutes, is amended to read:

44-351. **Definitions and use of terms**

In this chapter, unless the context otherwise requires:

1. "Banking organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company~~,~~ or a private banker engaged in business in this state.

2. "Business association" means any corporation other than a public corporation, joint stock company, business trust, partnership~~,~~ or any association for business purposes of two or more individuals.

~~3. "Commissioner" means estate tax commissioner.~~

3. "DEPARTMENT" MEANS DEPARTMENT OF REVENUE.

4. "Financial Organization" means any savings and loan association, building and loan association, credit union, cooperative bank or investment company, engaged in business in this state.

5. "Holder" means any person in possession of property subject to this chapter belonging to another, or who is trustee in case of a trust, or is indebted to another on an obligation subject to this chapter.

6. "Life insurance corporation" means any association or corporation transacting within this state the business of insurance on the lives of persons or insurance appertaining thereto, including, but not by way of limitation, endowments and annuities.

7. "Owner" means a depositor in case of a deposit, a beneficiary in case of a trust, a creditor, claimant~~,~~ or payee in case of other choses in action, or any person having a legal or equitable interest in property subject to this chapter, or his legal representative.

8. "Person" means any individual, business association, government or political subdivision, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.

9. "Utility" means any person who owns or operates within this state, for public use, any plant, equipment, property, franchise~~,~~ or license for the transmission of communications or the production, storage, transmission, sale, delivery~~,~~ or furnishing of electricity, water, steam or gas.

Sec. 150. Section 44-361, Arizona Revised Statutes, is amended to read:

44-361. **Report of abandoned property**

A. Every person holding funds or other property, tangible or intangible, presumed abandoned under this chapter shall report to the ~~commissioner~~ DEPARTMENT with respect to the property not previously reported as hereinafter provided.

B. The report shall be verified and shall include:

1. The name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of the value of five dollars or more presumed abandoned under this chapter;

2. In case of unclaimed funds of life insurance corporations, the full name of the insured or annuitant and his last known address according to the life insurance corporation's records;

3. The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under five dollars each may be reported in aggregate;

4. The date when the property became payable, demandable~~,~~ or returnable, and the date of the last transaction with the owner with respect to the property.

C. If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner, or if the holder has changed his name while holding the property, he shall file with his report all prior known names and addresses of each holder of the property.

D. The report shall be filed before November 1 of each year as of June 30 next preceding, but the report of life insurance corporations shall be filed before May 1 of each year as of December 31 next preceding. The ~~commissioner~~ DEPARTMENT may postpone the reporting date upon written request by any person required to file a report.

E. Verification, if made by a partnership, shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer.

F. The initial report filed under this chapter shall include all items of property that would have been presumed abandoned if this chapter had been in effect during the seven-year period preceding its effective date and provided that no items of a value of twenty-five dollars or less shall be included in such initial report.

Sec. 151. Section 44-362, Arizona Revised Statutes, is amended to read:

44-362. **Notice and publication of lists of abandoned property**

A. Within one hundred twenty days from the filing of the report required by section 44-361, the ~~commissioner~~ DEPARTMENT shall cause notice to be published at least once each week for two successive weeks in an English language newspaper of general circulation in the county in this state in which is located the last known address of any person to be named in the notice. If no address is listed or if the address is outside this state, the notice shall be published in the county in which the holder of the abandoned property has his principal place of business within this state.

B. The published notice shall be entitled "Notice of Names of Persons Appearing to be Owners of Abandoned Property", and shall contain:

1. The names in alphabetical order and last known addresses, if any, of persons listed in the report and entitled to notice within the county as hereinbefore specified.

2. A statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any persons possessing an interest in the property by addressing an inquiry to the ~~commissioner~~ DEPARTMENT.

3. A statement that if proof of claim is not presented by the owner to the holder and if the owner's right to receive the property is not established to the holder's satisfaction within sixty-five days from the date of the second published notice, the abandoned property will be placed not later than eighty-five days after such publication date in the custody of the ~~commissioner~~ DEPARTMENT to whom all further claims must thereafter be directed.

C. The ~~commissioner~~ DEPARTMENT is not required to publish in such notice any item of less than twenty-five dollars unless he deems such publication to be in the public interest.

D. Within one hundred twenty days from the receipt of the report required by section 44-361, the ~~commissioner~~ DEPARTMENT shall mail a

notice to each person having an address listed therein who appears to be entitled to property of the value of twenty-five dollars or more presumed abandoned under this chapter. The mailed notice shall contain:

1. A statement that, according to a report filed with the ~~commissioner~~ DEPARTMENT, property is being held to which the addressee appears entitled.

2. The name and address of the person holding the property and any necessary information regarding changes of name and address of the holder.

3. A statement that, if satisfactory proof of claim is not presented by the owner to the holder by the date specified in the published notice, the property will be placed in the custody of the ~~commissioner~~ DEPARTMENT to ~~whom~~ WHICH all further claims must be directed.

Sec. 152. Section 44-363, Arizona Revised Statutes, is amended to read:

44-363. **Payment or delivery of abandoned property**

Every person who has filed a report as provided by section 44-361 shall within twenty days after the time specified in section 44-362 for claiming the property from the holder pay or deliver to the ~~commissioner~~ DEPARTMENT all abandoned property specified in the report, except that, if the owner establishes his right to receive the abandoned property to the satisfaction of the holder within the time specified in section 44-362, or if it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property, which will no longer be presumed abandoned, to the ~~commissioner~~ DEPARTMENT, but in lieu thereof shall file a verified written explanation of the proof of claim or of the error in the presumption of abandonment.

Sec. 153. Section 44-364, Arizona Revised Statutes, is amended to read:

44-364. **Relief from liability by payment or delivery**

The payment of money or the delivery of property to the ~~commissioner~~ DEPARTMENT by any holder shall terminate any legal relationship between the holder and the owner and shall release and discharge such holder from any and all liability to the owner, his heirs or assigns by reason of such delivery or payment, and such delivery and payment may be pleaded as a bar to recovery and be a conclusive defense in any suit or

action brought by such owner, his heirs or assigns or any claimant against the holder by reason of such delivery. The state shall reimburse any holder who cannot be relieved of such liability by this section for all liability to the owner, his heirs and assigns incurred by reason of compliance with this chapter, but nothing contained in this section shall be deemed or construed as an assumption by the state or the ~~commissioner~~ DEPARTMENT of any liability of the holder to the owner upon a cause of action arising prior to ~~said~~ SUCH delivery, nor as depriving such owner, his heirs or assigns of the right of redemption provided for in this chapter.

Sec. 154. Section 44-365, Arizona Revised Statutes, is amended to read:

44-365. **Income accruing after payment or delivery**

When property is paid or delivered to the ~~commissioner~~ DEPARTMENT under this chapter, the owner is not entitled to receive income or other increments accruing thereafter.

Sec. 155. Section 44-365.01, Arizona Revised Statutes, is amended to read:

44-365.01. **Periods of limitation not a bar**

The expiration of any period of time specified by statute or court order, during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property, shall not prevent the money or property from being presumed abandoned property, nor affect any duty to file a report required by this chapter or to pay or deliver abandoned property to the ~~commissioner~~ DEPARTMENT.

Sec. 156. Section 44-366, Arizona Revised Statutes, is amended to read:

44-366. **Sale of abandoned property**

A. All abandoned property other than money delivered to the ~~commissioner~~ DEPARTMENT under this chapter shall within one year after delivery be sold by ~~him~~ IT to the highest bidder at public sale in whatever city in the state affords in ~~his~~ ITS judgment the most favorable market for the property involved. The ~~commissioner~~ DEPARTMENT may decline the highest bid and reoffer the property for sale if ~~he~~ IT considers the price bid insufficient. ~~He~~ IT need not offer any property for sale if, in ~~his~~ ITS opinion, the probable cost of sale exceeds the value of the property.

B. Any sale held under this section shall be preceded by a single publication of notice thereof, at least three weeks in advance of sale in an

English language newspaper of general circulation in the county where the property is to be sold.

C. The purchaser at any sale conducted by the ~~commissioner~~ DEPARTMENT pursuant to this chapter shall receive title to the property purchased, free from all claims of the owner or prior holder thereof and of all persons claiming through or under them. The ~~commissioner~~ DEPARTMENT shall execute all documents necessary to complete the transfer of title.

Sec. 157. Section 44-367, Arizona Revised Statutes, is amended to read:

44-367. **Deposit of funds**

A. All funds received under this chapter, excepting funds provided for by section 8, article 11, constitution of Arizona, but including the proceeds from the sale of abandoned property under section 44-366, shall forthwith be deposited with the state treasurer to be credited to a clearing account from which he shall make prompt payment of claims duly allowed by him as hereinafter provided. Before making the deposit he shall record the name and last known address of each person appearing from the holders' reports to be entitled to the abandoned property and of the name and last known address of each insured person or annuitant, and with respect to each policy or contract listed in the report of a life insurance corporation, its number, the name of the corporation~~,~~ and the amount due. The record shall be available for public inspection at all reasonable business hours. The funds remaining in the clearing account shall be credited to the general fund of the state at the end of each fiscal year unless the constitution or some other law specifically provides otherwise for the disposition of the particular proceeds.

B. Before making any deposit to the credit of the general fund or other fund, the ~~commissioner~~ DEPARTMENT may deduct:

1. Any costs in connection with sale of abandoned property,

2. Any costs of mailing and publication in connection with any abandoned property, and

3. Reasonable service charges.

Sec. 158. Section 44-368, Arizona Revised Statutes, is amended to read:

44-368. **Claim for abandoned property paid or delivered**

Any person claiming an interest in any property delivered to the state under this chapter may file a claim thereto or to the proceeds from the sale thereof on the form prescribed by the ~~commissioner~~ DEPARTMENT.

Sec. 159. Section 44-369, Arizona Revised Statutes, is amended to read:

44-369. **Determination of claims**

A. The ~~commissioner~~ DEPARTMENT shall consider any claim filed under this chapter and may hold a hearing and receive evidence concerning it. If a hearing is held, ~~he~~ IT shall prepare a finding and a decision in writing on each claim filed, stating the substance of any evidence heard by ~~him~~ IT and the reasons for ~~his~~ ITS decision. The decision shall be a public record.

B. If the claim is allowed, the ~~commissioner~~ DEPARTMENT shall make payment forthwith. The claim shall be paid without deduction for costs of notices or sale or for service charges.

Sec. 160. Section 44-370, Arizona Revised Statutes, is amended to read:

44-370. **Judicial action upon determinations**

Any person aggrieved by a decision of the ~~commissioner~~ DEPARTMENT or as to whose claim the ~~commissioner~~ DEPARTMENT has failed to act within ninety days after the filing of the claim, may commence an action in the superior court to establish his claim. The proceeding shall be brought within ninety days after the decision of the ~~commissioner~~ DEPARTMENT or within one hundred eighty days from the filing of the claim if the ~~commissioner~~ DEPARTMENT fails to act.

Sec. 161. Section 44-371, Arizona Revised Statutes, is amended to read:

44-371. **Election to take payment or delivery**

The ~~commissioner~~ DEPARTMENT, after receiving reports of property deemed abandoned pursuant to this chapter, may decline to receive any property reported which ~~he~~ IT deems to have a value less than the cost of giving notice and holding sale, or ~~he~~ IT may, if ~~he~~ IT deems it desirable because of the small sum involved, postpone taking possession until a sufficient sum accumulates. Unless the holder of the property is notified to the contrary within one hundred twenty days after filing the report required under section 44-361, the ~~commissioner~~ DEPARTMENT shall be deemed to have elected to receive the custody of the property.

Sec. 162. Section 44-372, Arizona Revised Statutes, is amended to read:

44-372. **Examination of records**

A. The ~~Commissioner~~ DEPARTMENT may at reasonable times and upon reasonable notice examine the records of any person that relate to property that has been reported pursuant to this chapter.

B. If any person refuses to permit the ~~commissioner~~ DEPARTMENT to examine such records, the ~~commissioner~~ DEPARTMENT may request the attorney general to commence an action in the superior court to enforce the examination.

Sec. 163. Section 44-373, Arizona Revised Statutes, is amended to read:

44-373. **Proceeding to compel delivery of abandoned property**

If any person refuses to deliver property to the ~~commissioner~~ DEPARTMENT as required under this chapter, ~~he~~ IT shall request the attorney general to bring an action in the superior court to enforce such delivery.

Sec. 164. Section 44-374, Arizona Revised Statutes, is amended to read:

44-374. **Penalties**

A. Any person who wilfully fails to render any report or perform other duties required under this chapter shall be punished by a fine of not less than twenty-five nor more than three hundred dollars.

B. Any person who wilfully refuses to pay or deliver abandoned property to the ~~commissioner~~ DEPARTMENT as required under this chapter shall be punished by a fine of not less than twenty-five dollars nor more than one thousand dollars, or imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

Sec. 165. Section 44-375, Arizona Revised Statutes, is amended to read:

44-375. **Administration; rules and regulations**

A. ~~There shall be a division of unclaimed property which shall be administered by the estate tax commissioner.~~ The ~~commissioner together with the assistant estate tax commissioner~~ DEPARTMENT OF REVENUE shall administer this chapter~~.~~

~~B. The commissioner is hereby authorized to~~ AND SHALL make necessary rules and regulations to carry out the provisions of this chapter.

Sec. 166. Section 45-2202, Arizona Revised Statutes, is amended to read:

45-2202. **Voluntary contributions of district funds; method of determining valuations; properties included; credits against gross payment; time of payment**

A. In the exercise of the powers granted them by law, districts, acting through their respective boards of directors, shall have the additional power to make voluntary contributions of money to the state of Arizona and to any county, incorporated city or town, or school district in which district properties or facilities are located in accordance with the provisions of this section, provided that the deductions provided for in paragraphs 1, 2, and 4 of subsection C of this section and the taxes excluded as a deduction under paragraph 3 of subsection C of this section shall not reduce the contribution below an amount which is less than the following percentages of the preceding calendar year's gross revenue of the district derived from direct sales of electricity classified as "residential" and "commercial and industrial" for the following years:

YEAR:	RATE
1973 and prior years	7.5%
1974	8.0%
1975	8.5%
1976	9.0%
1977	9.5%
1978 and succeeding years	10.0%

The minimum contribution limit provided by this subsection shall not apply to any district which derives less than thirty per cent of its total gross revenues from direct sales of electricity classified as "residential" and "commercial and industrial".

B. Each district electing to make voluntary contributions shall, on or before the first day of April of each year, after the effective date of this article, notify the county assessor of the county in which such properties are located of its election to make a contribution under this article. The department of ~~property valuation~~ REVENUE shall determine the full cash value of all of the properties related to the generation, transmission and distribution of electric energy of such district within the state utilizing as nearly as practicable the same procedures and methods of determining the full cash value as are applied to properties of like character and devoted to

the same use. The department of ~~property valuation~~ REVENUE shall, on or before the third Monday in June, transmit to the several boards of supervisors such determination. The county assessor of each county where district electric facilities are located, with such assistance as may be required from the department of ~~property valuations~~ REVENUE and the district, shall on or before the third Monday in August of each year compute the gross contribution to be made, based upon the valuation determined by the department of ~~property valuation~~ REVENUE and the method of assessment applied in assessing ad valorem taxes of properties of like character and devoted to the same use in such county for the current taxable year.

C. There shall be deducted from the statewide gross contribution of the district the following:

1. That portion of the contribution related to plant for pumping.

2. Ten thousand dollars.

3. Any tax or assessment paid to the state of Arizona or any political subdivision thereof during the preceding calendar year other than transaction privilege taxes, highway taxes, unemployment taxes, equipment weight fees, improvement district assessments and any other taxes paid by the district prior to the effective date of this article.

4. The annual average of the total water costs devoted to municipal use during the latest three calendar years. The district shall submit to the county assessor of each county where district electric facilities are located on or before May 1 of every year factors necessary to compute each county's proportion of the total deductions provided for herein. The district shall also submit to the ~~state~~ department of ~~property valuation~~ REVENUE on or before May 1 of every year such information as may be necessary to enable the ~~state~~ department of ~~proeprty valuation~~ REVENUE to verify the factors necessary to compute the total deductions provided for herein and to compute the minimum amount prescribed under the provisions of subsection A of this section. On or before July 15 the department of ~~property valuation~~ REVENUE shall submit to the county assessors its calculation of such factors, with the methods of computing such factors, and such factors shall be utilized by the county assessors.

D. The county assessor shall, at the time he submits to the board of supervisors the assessment roll, and with such assistance as may be required from the department of ~~property valuation~~ REVENUE, the district and the county superintendent of schools, also submit to such board his estimate of the net contributions which will be received by the

county treasurer during the ensuing fiscal year. The county assessor shall supply to the county superintendent of schools information concerning such estimate of net contributions needed in the preparation of county school district budgets.

E. One half of such contribution shall be paid to the county treasurer of the county in which such property is located, on the first Monday in November of each year, and one half thereof on the first Monday of May of the succeeding year.

Sec. 167. Section 45-2204, Arizona Revised Statutes, is amended to read:

45-2204. **Right of appeal and civil action**

A. Any district, public official, person or political subdivision not satisfied with a determination made by the department of ~~property valuation~~ REVENUE pursuant to this article shall be entitled to the same remedies provided for under title 42.

B. Any district, public official, person or political subdivision not satisfied with a determination made by a county assessor pursuant to this article may file a civil action to determine the correct amount due; in such action the only issue shall be the correctness of the computation of the amount due, and when said determination is finally adjudicated it shall be payable as hereinbefore provided. Any such action shall have precedence over all other civil actions, both in the superior court and in the supreme court. Should the court determine that additional sums are due, said sums shall bear interest at the legal rate from and after the date upon which the same are due and payable.

Sec. 168. **Repeal**

Section 45-2206, Arizona Revised Statutes, is repealed.

Sec. 169. Title 45, chapter 9, article 8, Arizona Revised Statutes, is amended by adding a new section 45-2206, to read:

45-2206. **Powers of department and director**

IN THE PERFORMANCE OF ALL DUTIES AND FUNCTIONS UNDER THIS ARTICLE THE DEPARTMENT OF REVENUE AND ITS DIRECTOR SHALL HAVE ALL THE POWERS GRANTED UNDER TITLE 42, CHAPTER 1, ARTICLE 1.1.

Sec. 170. **Transfer of personnel, equipment and funds**

A. There are transferred to the department of revenue all persons employed on the effective date of this act in the department of property valuation, the division of unclaimed property and the office of the estate tax commissioner and all persons employed in performing the functions of the state tax commission transferred to the department of revenue pursuant to this act.

B. There are transferred to the department of revenue by the assistant director for the division of finance all records, furnishings, equipment and unexpended and unencumbered funds of:

1. The department of property valuation.

2. The estate tax commissioner.

3. The state tax commission retained by the commission for use in direct relation to the powers and duties transferred from the state tax commission pursuant to this act.

4. The division of unclaimed property.

Sec. 171. **Effective date**

The provisions of this act shall become effective July 1, 1974, unless the governor by executive order declares that the department of revenue shall become operative at an earlier date.

Approved by the Governor–May 4, 1973

Filed in the Office of the Secretary of State–May 4, 1973

CHAPTER 124

Senate Bill 1024

AN ACT

RELATING TO MOTOR VEHICLES; PROVIDING FOR THE LICENSING OF MOTOR VEHICLE MANUFACTURERS, IMPORTERS, DISTRIBUTORS AND DEALERS; PROVIDING

FOR THE SUSPENSION OR REVOCATION OF LICENSES; PROVIDING FOR HEARINGS AND APPEALS; AMENDING SECTIONS 28-205, AS AMENDED BY LAWS 1972, CHAPTER 127, SECTION 1, 28-1301 THROUGH 28-1304, 28-1322, 28-1323 AND 28-1325, ARIZONA REVISED STATUTES; AMENDING TITLE 28, CHAPTER 8, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 28-1304.01, 28-1304.02 AND 28-1323.01; REPEALING SECTION 28-205, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1972, CHAPTER 170, SECTION 1, AND MAKING AN APPROPRIATION.

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

Section 1. Section 28-205, as amended by Laws 1972, chapter 127, section 1, Arizona Revised Statutes, is amended to read:

28-205. **Motor vehicle fees**

The following motor vehicle fees shall be paid:

1. For each certificate of title, four dollars.

2. For a duplicate registration card, two dollars.

3. For a duplicate of any permit, two dollars.

4. For filing each application for dealer's, MANUFACTURER'S, IMPORTER'S, DISTRIBUTOR'S, FACTORY BRANCH'S, DISTRIBUTOR BRANCH'S or wrecker's license, ~~ten~~ FIFTEEN dollars.

5. For each dealer's, MANUFACTURER'S, DISTRIBUTOR'S, FACTORY BRANCH'S, DISTRIBUTOR BRANCH'S or wrecker's license when issued annually, ~~five~~ TEN dollars.

6. For filing each application for a chauffeur's license, two dollars and fifty cents.

7. For filing each application for an operator's license, two dollars and fifty cents.

8. For filing each application for a license to operate a motorcycle and a motor driven cycle, two dollars and fifty cents.

9. For filing each application for an instruction permit under subsection A of section 28-415, two dollars, and fifty cents for each instruction permit issued under subsection B of section 28-415.

10. For each identification plate bearing serial or identification number to be affixed to any vehicle, two dollars.

11. For each number plate or pair of number plates to replace lost, destroyed or mutilated plates, two dollars.

12. For each number plate or pair of plates issued to a dealer other than a dealer in motorcycles, twenty dollars, and for each number plate or pair of plates issued to a dealer in motorcycles, ten dollars.

13. For each pair of original personalized number plates, twenty-five dollars in addition to the registration fee required by paragraph 15 of this section.

14. For each annual renewal of personalized number plates, ten dollars in addition to the registration fee required by paragraph 15 of this section.

15. For the registration of any motor vehicle, trailer or semitrailer, six dollars and twenty-five cents.

16. For filing each application for dismantling permit, one dollar.

17. For each special registration issued under the provisions of subsection E of section 28-302, ten dollars.

Sec. 2. Section 28-1301, Arizona Revised Statutes, is amended to read:

28-1301. **Definitions**

In this article, unless the context otherwise requires:

1. "Bona fide consumer use" means actual operation directly or indirectly by an owner who acquired a new motor vehicle for use in his business or for pleasure or otherwise and as to which a certificate of title has been issued and the vehicle registered as provided by law.

2. "COMMUNITY" MEANS THE RELEVANT MARKET AREA OF THE FRANCHISE. FOR THE PURPOSES OF THIS ARTICLE THE RELEVANT MARKET AREA OF A FRANCHISE SHALL BE THE COUNTY OR COUNTIES IN WHICH THE FRANCHISE IS LOCATED.

3. "DISTRIBUTOR" OR "WHOLESALER" MEANS A PERSON WHO SELLS OR DISTRIBUTES NEW MOTOR VEHICLES TO NEW MOTOR VEHICLE DEALERS IN THIS STATE OR WHO MAINTAINS DISTRIBUTOR REPRESENTATIVES IN THIS STATE.

4. "DISTRIBUTOR BRANCH" MEANS A BRANCH OFFICE MAINTAINED OR AVAILED OF BY A DISTRIBUTOR OR WHOLESALER FOR THE SALE OF NEW MOTOR VEHICLES TO NEW MOTOR VEHICLE DEALERS IN THIS STATE OR FOR DIRECTING OR SUPERVISING ITS REPRESENTATIVES IN THIS STATE.

~~2.~~ 5. "Established place of business" means a permanent enclosed building or structure owned either in fee or leased with sufficient space to display two or more motor vehicles of a kind and type which the dealer is licensed to sell and which is devoted principally to the use of a motor vehicle dealer in the conduct of the business of the dealer. In the case of a used motor vehicle dealer, trailer dealer or semitrailer dealer an established place of business need not be a permanent building or structure or part thereof, but may be a vacant lot or part thereof, but the term shall not mean or include a residence, tent, temporary stand or temporary quarters or permanent quarters occupied pursuant to a temporary arrangement. In the case of a motor dealer or wrecker an established place of business means a permanent site or location at which the business of a motor dealer or wrecker is or will be conducted.

6. "FACTORY BRANCH" MEANS A BRANCH OFFICE MAINTAINED OR AVAILED OF BY A MANUFACTURER FOR THE SALE OF NEW MOTOR VEHICLES TO DISTRIBUTORS OR FOR THE SALE OF NEW MOTOR VEHICLES TO NEW MOTOR VEHICLE DEALERS IN THIS STATE OR FOR DIRECTING OR SUPERVISING ITS REPRESENTATIVES IN THIS STATE.

7. "FRANCHISE" MEANS A CONTRACT BETWEEN TWO OR MORE PERSONS WHEN ALL OF THE FOLLOWING CONDITIONS ARE INCLUDED:

(a) A COMMERCIAL RELATIONSHIP OF DEFINITE DURATION OR CONTINUING INDEFINITE DURATION IS INVOLVED.

(b) THE FRANCHISEE IS GRANTED THE RIGHT TO OFFER, SELL AND SERVICE IN THIS STATE NEW MOTOR VEHICLES MANUFACTURED OR DISTRIBUTED BY THE FRANCHISOR.

(c) THE FRANCHISEE, AS A SEPARATE BUSINESS, CONSTITUTES A COMPONENT OF FRANCHISOR'S DISTRIBUTION SYSTEM.

(d) THE OPERATION OF THE FRANCHISEE'S BUSINESS IS SUBSTANTIALLY ASSOCIATED WITH THE FRANCHISOR'S TRADEMARK, SERVICE MARK, TRADE NAME, ADVERTISING OR OTHER COMMERCIAL SYMBOL DESIGNATING THE FRANCHISOR.

(e) THE OPERATION OF THE FRANCHISEE'S BUSINESS IS SUBSTANTIALLY RELIANT ON THE FRANCHISOR FOR THE CONTINUED SUPPLY OF NEW MOTOR VEHICLES, PARTS AND ACCESSORIES.

8. "FRANCHISEE" MEANS A PERSON WHO RECEIVES NEW MOTOR VEHICLES FROM THE FRANCHISOR UNDER A FRANCHISE AND WHO OFFERS, SELLS AND SERVICES SUCH NEW MOTOR VEHICLES TO THE GENERAL PUBLIC.

9. "FRANCHISOR" MEANS A PERSON WHO MANUFACTURES OR DISTRIBUTES NEW MOTOR VEHICLES AND WHO MAY ENTER INTO A FRANCHISE.

10. "IMPORTER" MEANS A PERSON WHO TRANSPORTS OR ARRANGES FOR THE TRANSPORTATION OF ANY FOREIGN MANUFACTURED NEW MOTOR VEHICLE INTO THE UNITED STATES FOR SALE IN THIS STATE.

11. "MANUFACTURER" MEANS ANY PERSON WHO MANUFACTURES OR ASSEMBLES NEW MOTOR VEHICLES OR WHO MANUFACTURES OR INSTALLS ON PREVIOUSLY ASSEMBLED TRUCK CHASSIS SPECIAL BODIES OR EQUIPMENT WHICH WHEN INSTALLED FORM AN INTEGRAL PART OF THE NEW MOTOR VEHICLE AND WHICH CONSTITUTES A MAJOR MANUFACTURING ALTERATION, BUT DOES NOT INCLUDE THE INSTALLATION OF A CAMPER ON A PICKUP TRUCK.

~~3.~~ 12. "Motor dealer" means a person, other than a new motor vehicle dealer or used motor vehicle dealer, who buys, sells, exchanges or offers or attempts to negotiate a sale or exchange of any interest in, or who is engaged in the business of selling new, used or reconditioned motor vehicle motors.

~~4.~~ 13. "Motor vehicle" means an automobile, motor bus, motorcycle, truck, truck tractor, or any other self-propelled vehicle, trailer or semitrailer.

~~5.~~ 14. "Motor vehicle dealer" means a new motor vehicle dealer or a used motor vehicle dealer.

~~6.~~ 15. "New house trailer dealer" means a person who buys, sells, exchanges or offers or attempts to negotiate a sale or exchange of any interest in, or who is engaged in the business of selling new house trailers

or used house trailers taken in trade on new house trailers. "House trailer" means a vehicle, other than a motor vehicle, built on a chassis designed for being drawn upon the highways by a motor vehicle and designed for human habitation. All sections of this article which refer to "motor vehicle dealer" shall apply to "new house trailer dealer".

~~7.~~ 16. "New motor vehicle dealer" means a person who buys, sells, exchanges or offers or attempts to negotiate a sale or exchange of any interest in, or who is engaged in the business of selling, new motor vehicles or used motor vehicles taken in trade on new motor vehicles.

~~8.~~ 17. "Used house trailer dealer" means a person, other than a new house trailer dealer, who buys, sells, exchanges or offers or attempts to negotiate a sale or exchange of any interest in, or who is engaged in the business of selling used house trailers. "House trailer" means a vehicle other than a motor vehicle, built on a chassis designed for being drawn upon the highways by a motor vehicle and designed for human habitation. All sections of this article which refer to "motor vehicle dealer" shall apply to "used house trailer dealer".

~~9.~~ 18. "Used motor vehicle" means every motor vehicle which has been sold, bargained, exchanged, given away or the title thereto transferred from the person who first acquired the vehicle from the manufacturer, or importer, dealer or agent of the manufacturer or importer, and which has been placed in bona fide consumer use.

~~10.~~ 19. "Used motor vehicle dealer" means a person, other than a new motor vehicle dealer, who buys, sells, exchanges or offers or attempts to negotiate a sale or exchange of any interest in, or who is engaged in the business of selling, used motor vehicles.

~~11.~~ 20. "Wrecker" means a person who buys or otherwise acquires a motor vehicle solely for the purpose of dismantling the vehicle and selling or otherwise disposing of the parts or accessories thereof.

Sec. 3. Section 28-1302, Arizona Revised Statutes, is amended to read:

28-1302. **Persons subject to article**

A. No MANUFACTURER, DISTRIBUTOR, FACTORY BRANCH, DISTRIBUTOR BRANCH, motor vehicle dealer, motor dealer or wrecker shall engage in business except in accordance with the requirements of law. The provisions of this article shall not apply to a public officer engaged in the discharge of his official duties or to a trustee, receiver or other officer acting under the jurisdiction of any court, TO FINANCIAL

INSTITUTIONS DISPOSING OF REPOSSESSED VEHICLES OR TO PERSONS DISPOSING OF THEIR PERSONAL VEHICLES. THE PROVISIONS OF THIS ARTICLE REGULATING AND LICENSING MANUFACTURERS, DISTRIBUTORS, FACTORY BRANCHES, DISTRIBUTOR BRANCHES AND FRANCHISORS SHALL ONLY BE APPLICABLE TO THOSE MANUFACTURERS, DISTRIBUTORS, FACTORY BRANCHES, DISTRIBUTOR BRANCHES AND FRANCHISORS OF PASSENGER CARS, TRUCKS AND BUSES.

B. NO NEW MOTOR VEHICLE SHALL BE SOLD IN THIS STATE UNLESS EITHER THE MANUFACTURER ON DIRECT DEALERSHIPS OF DOMESTIC VEHICLES, THE IMPORTER OF FOREIGN MANUFACTURED VEHICLES ON DIRECT DEALERSHIPS OR THE DISTRIBUTOR ON INDIRECT DEALERSHIPS OF EITHER DOMESTIC OR FOREIGN VEHICLES IS LICENSED AS PROVIDED IN THIS ARTICLE. THE OBTAINING OF SUCH LICENSE CONCLUSIVELY ESTABLISHES THAT SUCH MANUFACTURER, DISTRIBUTOR OR IMPORTER IS SUBJECT TO THE LAWS OF THIS STATE REGULATING MANUFACTURERS, IMPORTERS AND DISTRIBUTORS.

Sec. 4. Section 28-1303, Arizona Revised Statutes, is amended to read:

28-1303. **Administration by vehicle superintendent**

The vehicle superintendent shall supervise and regulate all ~~motor vehicle dealers, motor dealers and wreckers.~~ PERSONS REQUIRED BY THIS ARTICLE TO BE LICENSED. In the supervision and regulation thereof the vehicle superintendent may:

1. Make investigations he deems necessary and, for that purpose, require the aid and assistance of the highway patrol division.

2. Conduct hearings.

3. Compel attendance of witnesses at the hearings.

4. Prescribe rules and regulations he determines necessary to carry out the provisions of this article.

Sec. 5. Section 28-1304, Arizona Revised Statues, is amended to read:

28-1304. **Procedure for licensing dealers and wreckers**

A. No person shall engage in ~~the~~ ANY business ~~of a motor vehicle dealer, motor dealer or wrecker~~ REGULATED BY THIS ARTICLE except from

an established place of business, and without first having obtained from the vehicle superintendent a license authorizing him to engage in the business. A licensee may use unimproved lots and premises or parts thereof for the display, storage or sale of motor vehicles, or parts or accessories thereof, if the lots or premises are located in the county in which the licensee has an established place of business.

B. Applications for licenses shall be made to the vehicle superintendent in writing upon forms prescribed and furnished by the superintendent AND SHALL BE ACCOMPANIED BY ALL DOCUMENTS AND BONDS REQUIRED AND BY THE FILING AND ANNUAL LICENSE FEES PRESCRIBED BY SECTION 28-205. The application shall be verified and shall contain:

1. The name and residence of the applicant, or the name and residence of each partner if the applicant is a partnership, or the name and residence of each principal officer if the applicant is a corporation, and the name of the state in which the corporation was organized.

2. The principal place of business of applicant.

3. The established place of business at or from which the business is to be conducted.

4. The make or makes of new motor vehicles, if any, which applicant will sell or offer for sale within this state.

5. Such other information as the vehicle superintendent requires.

C. Upon filing of the application, the superintendent shall forthwith make an investigation concerning the matters and things set forth in the application, shall inspect the place from which the applicant proposes to transact business and make further investigation as he deems necessary.

D. Within twenty days from filing the application, if the superintendent determines that the application is made in good faith, that no representation made therein is false or untrue and that the applicant has met the requirements of law, he shall grant the application. If the superintendent determines that the application is not made in good faith, that any false or untrue statement has been made in the application or that the applicant has not met the requirements of law, he shall deny the application and advise the applicant in writing of such denial and the grounds therefor.

E. The applicant may, within thirty days after receipt of the notice of denial, petition the superintendent in writing for a hearing on the

application. Upon filing the petition, a date for the hearing shall be fixed, and the applicant shall have the right to be present at the hearing and testify in his own behalf and to have such other persons as he desires present and testify at the hearing. The superintendent shall issue subpoenas to such persons as the applicant requests, requiring them to be present and to testify at the hearing. A transcript of the testimony of all witnesses taken at the hearing shall be made and preserved. Within ten days after the hearing, the superintendent shall make written findings of fact and conclusions and shall either grant or finally deny the application.

F. If the application is finally denied, the applicant may, within thirty days from the date of final denial, appeal to the superior court of Maricopa county. The action shall be tried as other civil actions, and shall be conducted as a trial de novo.

Sec. 6. Title 28, chapter 8, article 1, Arizona Revised Statutes, is amended by adding sections 28-1304.01 and 28-1304.02, to read:

28-1304.01. **Filing agreement; product liability**

A. EVERY FRANCHISEE SHALL AT THE TIME HE APPLIES FOR A LICENSE FILE WITH THE SUPERINTENDENT A CERTIFIED COPY OF HIS WRITTEN AGREEMENT WITH THE MANUFACTURER AND A CERTIFICATE OF APPOINTMENT AS DEALER OR DISTRIBUTOR. THE CERTIFICATE OF APPOINTMENT SHALL BE SIGNED BY AN AUTHORIZED AGENT OF THE MANUFACTURER OF DOMESTIC VEHICLES ON DIRECT MANUFACTURER-DEALER AGREEMENTS OR, WHERE THE MANUFACTURER IS WHOLESALING THROUGH AN APPOINTED DISTRIBUTORSHIP, BY AN AUTHORIZED AGENT OF THE DISTRIBUTOR ON INDIRECT DISTRIBUTOR-DEALER AGREEMENTS. THE CERTIFICATE SHALL BE SIGNED BY AN AUTHORIZED AGENT OF THE IMPORTER ON DIRECT IMPORTER-DEALER AGREEMENTS OF FOREIGN MADE VEHICLES OR BY AN AUTHORIZED AGENT OF THE DISTRIBUTOR ON INDIRECT DISTRIBUTOR-DEALER AGREEMENTS. THE DISTRIBUTOR'S CERTIFICATE OF APPOINTMENT SHALL BE SIGNED BY AN AUTHORIZED AGENT OF THE MANUFACTURER OF DOMESTICALLY MANUFACTURED VEHICLES OR BY AN AUTHORIZED AGENT OF THE MANUFACTURER OR IMPORTER OF FOREIGN MADE VEHICLES.

B. A FRANCHISEE NEED NOT FILE A WRITTEN AGREEMENT OR CERTIFICATE OF APPOINTMENT IF THE MANUFACTURER ON DIRECT DEALERSHIPS OR DISTRIBUTOR ON INDIRECT DEALERSHIPS OR IMPORTER ON DIRECT DEALERSHIPS UTILIZES THE

IDENTICAL BASIC AGREEMENT FOR ALL ITS FRANCHISED DEALERS OR DISTRIBUTORS IN THIS STATE AND CERTIFIES IN THE CERTIFICATE OF APPOINTMENT THAT SUCH BLANKET AGREEMENT IS ON FILE AND SUCH WRITTEN AGREEMENT WITH SUCH DEALER OR DISTRIBUTOR, RESPECTIVELY, IS IDENTICAL WITH THE FILED BLANKET AGREEMENT, AND HAS FILED WITH THE SUPERINTENDENT ONE SUCH AGREEMENT TOGETHER WITH A LIST OF FRANCHISED DEALERS OR DISTRIBUTORS.

C. SUCH MANUFACTURER, DISTRIBUTOR OR IMPORTER SHALL NOTIFY THE SUPERINTENDENT WITHIN THIRTY DAYS OF ANY REVISIONS OF OR ADDITIONS TO THE BASIC AGREEMENT ON FILE OR OF ANY FRANCHISEE SUPPLEMENTS TO SUCH AGREEMENT. ANNUAL RENEWAL OF CERTIFICATES FILED AS PROVIDED IN THIS SECTION IS NOT NECESSARY.

D. ANY MANUFACTURER ON DIRECT DEALERSHIPS OR DISTRIBUTOR ON INDIRECT DEALERSHIPS OR IMPORTER ON DIRECT DEALERSHIPS WHO HAS FILED WITH THE SUPERINTENDENT AN AGREEMENT USED BY ALL ITS FRANCHISEES IN THIS STATE TOGETHER WITH A LIST OF ALL SUCH FRANCHISEES WHO FAILS TO NOTIFY THE SUPERINTENDENT WITHIN THIRTY DAYS OF ANY REVISIONS, CHANGES OR ADDITIONS THERETO IS GUILTY OF A MISDEMEANOR.

E. EVERY MANUFACTURER SHALL FILE WITH THE VEHICLE SUPERINTENDENT A COPY OF THE DELIVERY AND PREPARATION OBLIGATIONS REQUIRED TO BE PERFORMED BY A DEALER PRIOR TO DELIVERY OF NEW MOTOR VEHICLES TO BUYERS WHICH DELIVERY AND PREPARATION OBLIGATIONS SHALL CONSTITUTE THE DEALERS ONLY RESPONSIBILITY FOR PRODUCT LIABILITY AS BETWEEN THE DEALERS AND THE MANUFACTURER. ANY MECHANICAL, BODY OR PARTS DEFECTS ARISING FROM ANY EXPRESS OR IMPLIED WARRANTIES OF THE MANUFACTURER SHALL CONSTITUTE THE MANUFACTURER'S PRODUCT OR WARRANTY LIABILITY. THE MANUFACTURER SHALL REASONABLY COMPENSATE ANY AUTHORIZED DEALER WHO PERFORMS WORK TO RECTIFY THE MANUFACTURER'S PRODUCT OR WARRANTY DEFECTS OR DELIVERY AND PREPARATION OBLIGATIONS.

F. THE DEALER SHALL FURNISH THE PURCHASER OF ANY NEW VEHICLE WITH A SIGNED COPY OF THE MANUFACTURER'S DELIVERY AND PREPARATION REQUIREMENTS INDICATING

THAT EACH AND ALL OF SAID REQUIREMENTS HAVE IN FACT BEEN PERFORMED. THE COST OF THE MANUFACTURER'S DELIVERY AND PREPARATION REQUIREMENTS SHALL BE PAID BY THE MANUFACTURER.

28-1304.02. **Limitations on cancellation, termination**

A. NOTWITHSTANDING THE TERMS, PROVISIONS OR CONDITIONS OF ANY AGREEMENT OR FRANCHISE, NO FRANCHISOR SHALL CANCEL, TERMINATE OR REFUSE TO CONTINUE ANY FRANCHISE UNLESS THE FRANCHISOR HAS GOOD CAUSE FOR TERMINATION OR NONCONTINUANCE.

B. NO FRANCHISOR SHALL ENTER INTO ANY FRANCHISE FOR THE PURPOSE OF ESTABLISHING AN ADDITIONAL NEW MOTOR VEHICLE DEALERSHIP IN ANY COMMUNITY IN WHICH THE SAME LINE-MAKE IS THEN REPRESENTED, UNLESS THERE IS GOOD CAUSE FOR SUCH ADDITIONAL NEW MOTOR VEHICLE DEALERSHIP UNDER SUCH FRANCHISE AND THAT IT IS IN THE PUBLIC INTEREST.

C. IF A FRANCHISOR SEEKS TO TERMINATE OR NOT CONTINUE ANY FRANCHISE, OR SEEKS TO ENTER INTO A FRANCHISE ESTABLISHING AN ADDITIONAL NEW MOTOR VEHICLE DEALERSHIP OF THE SAME LINE-MAKE, THE FRANCHISOR SHALL, AND THE FRANCHISEE AT ANY TIME MAY, FILE A NOTICE WITH THE SUPERINTENDENT OF INTENTION TO TERMINATE OR NOT CONTINUE THE FRANCHISE OR TO ENTER INTO A FRANCHISE FOR ADDITIONAL REPRESENTATION OF THE SAME LINE-MAKE; PROVIDED THAT NO NOTICE OF INTENTION TO TERMINATE OR NOT CONTINUE A FRANCHISE SHALL BE REQUIRED FROM ANY FRANCHISOR UNTIL THE CONCLUSION OF ANY REVIEW PROCEEDINGS OF SUCH INTENTION OFFERED TO THE FRANCHISEE UNDER THE FRANCHISE; PROVIDED FURTHER THAT THIS SECTION SHALL NOT APPLY TO ANY INTENDED TERMINATION OR NONCONTINUANCE OF A FRANCHISE WHICH THE FRANCHISEE ELECTS VOLUNTARILY, PURSUANT TO A PLAN ESTABLISHED BY THE FRANCHISOR, TO SUBMIT TO BINDING ARBITRATION.

D. UPON RECEIVING A NOTICE OF INTENTION UNDER THE PROVISIONS OF SUBSECTION C OF THIS SECTION, THE SUPERINTENDENT SHALL WITHIN FIVE DAYS OF RECEIPT OF A NOTICE OF INTENTION SEND BY CERTIFIED OR REGISTERED MAIL, WITH RETURN RECEIPT REQUESTED, A COPY OF THE NOTICE TO THE

FRANCHISOR AND TO THE FRANCHISEE WHOSE FRANCHISE THE FRANCHISOR SEEKS TO ESTABLISH, TERMINATE OR NOT CONTINUE. IF THE NOTICE STATES AN INTENT TO ESTABLISH AN ADDITIONAL NEW MOTOR VEHICLE DEALERSHIP, A COPY OF THE NOTICE SHALL BE SENT WITHIN FIVE DAYS OF RECEIPT TO ALL FRANCHISEES IN THE COMMUNITY WHO ARE THEN ENGAGED IN THE BUSINESS OF OFFERING TO SELL OR SELLING THE SAME LINE-MAKE. COPIES OF NOTICES SHALL BE ADDRESSED TO THE PRINCIPAL PLACE OF BUSINESS OF EACH RECIPIENT AND TO THE STATUTORY AGENT OF EACH CORPORATE RECIPIENT. THE SUPERINTENDENT MAY ALSO GIVE A COPY OF THE FRANCHISOR'S NOTICE TO ANY OTHER PARTIES WHOM THE SUPERINTENDENT MAY DEEM INTERESTED PERSONS, SUCH COPY TO BE IN THE FORM AND SUBSTANCE AND GIVEN IN THE MANNER THE SUPERINTENDENT DEEMS APPROPRIATE.

E. ANY PERSON WHO RECEIVED OR IS ENTITLED TO RECEIVE A COPY OF ANY NOTICE PROVIDED FOR IN SUBSECTION D OF THIS SECTION MAY OBJECT TO THE APPROVAL OF ANY SUCH NOTICE BY FILING A WRITTEN OBJECTION TO THE SUPERINTENDENT WITHIN FIFTEEN DAYS FROM THE DATE THE NOTICE WAS RECEIVED BY THE SUPERINTENDENT. IF NO OBJECTION IS FILED WITHIN FIFTEEN DAYS FROM THE DATE THE NOTICE WAS RECEIVED BY THE SUPERINTENDENT, SUCH NOTICE SHALL BE APPROVED.

F. IF A TIMELY OBJECTION HAS BEEN FILED, THE SUPERINTENDENT SHALL ENTER AN ORDER FIXING THE TIME, WHICH SHALL BE WITHIN THIRTY DAYS OF THE DATE OF SUCH ORDER, AND PLACE OF A HEARING ON THE OBJECTION AND SHALL SEND BY CERTIFIED OR REGISTERED MAIL WITH RETURN RECEIPT REQUESTED A COPY OF THE ORDER TO THE SAME PERSONS ENTITLED TO RECEIVE A COPY OF THE NOTICE PROVIDED FOR IN SUBSECTION D OF THIS SECTION.

G. THE SUPERINTENDENT MAY UPON REQUEST CONTINUE THE DATE OF HEARING FOR A PERIOD OF THIRTY DAYS AND MAY UPON APPLICATION, BUT NOT EX PARTE, CONTINUE THE DATE OF HEARING FOR AN ADDITIONAL PERIOD OF THIRTY DAYS.

H. UPON HEARING, THE FRANCHISOR HAS THE BURDEN OF PROOF TO ESTABLISH THAT GOOD CAUSE EXISTS TO TERMINATE OR NOT CONTINUE THE FRANCHISE. WHEN THERE IS AN OBJECTION TO THE ESTABLISHMENT OF A NEW MOTOR VEHICLE

DEALERSHIP, THE BURDEN OF PROOF THAT GOOD CAUSE DOES NOT EXIST SHALL BE WITH THE OBJECTOR OR OBJECTORS.

I. EVIDENCE WHICH WOULD BE ADMISSIBLE UNDER THE ISSUES IN SUCH AN ACTION IN A STATE OR FEDERAL COURT IS ADMISSIBLE IN A HEARING HELD BY THE SUPERINTENDENT. THE SUPERINTENDENT SHALL REASONABLY APPORTION ALL COSTS BETWEEN THE PARTIES.

J. NOTWITHSTANDING THE TERMS, PROVISIONS OR CONDITIONS OF ANY AGREEMENT OR FRANCHISE, THE FOLLOWING DO NOT CONSTITUTE GOOD CAUSE FOR THE TERMINATION OR NONCONTINUANCE OF A FRANCHISE:

1. THE CHANGE OF OWNERSHIP OF THE FRANCHISEE'S DEALERSHIP. THIS PARAGRAPH DOES NOT AUTHORIZE ANY CHANGE IN OWNERSHIP WHICH WOULD HAVE THE EFFECT OF THE SALE OF THE FRANCHISE WITHOUT THE MANUFACTURER'S OR DISTRIBUTOR'S CONSENT. SUCH CONSENT SHALL NOT BE UNREASONABLY WITHHELD. THE BURDEN OF ESTABLISHING THE REASONABLENESS IS ON THE FRANCHISOR.

2. THE FACT THAT THE FRANCHISEE REFUSED TO PURCHASE OR ACCEPT DELIVERY OF ANY NEW MOTOR VEHICLE, PARTS, ACCESSORIES OR ANY OTHER COMMODITY OR SERVICE NOT ORDERED BY THE FRANCHISEE.

K. NOTWITHSTANDING THE TERMS, PROVISIONS OR CONDITIONS OR ANY AGREEMENT OR FRANCHISE, SUBJECT TO THE PROVISION OF SUBSECTION O, PARAGRAPH 2 OF THIS SECTION IN THE EVENT OF THE SALE OR TRANSFER OF OWNERSHIP OF THE FRANCHISEE'S DEALERSHIP BY SALE OR TRANSFER OF THE BUSINESS OR BY STOCK TRANSFER TO THE DEALER'S SPOUSE, SON OR DAUGHTER THE FRANCHISOR SHALL GIVE EFFECT TO SUCH A CHANGE IN THE FRANCHISE UNLESS THE TRANSFER OF THE FRANCHISEE'S LICENSE UNDER THIS ARTICLE IS DENIED OR THE NEW OWNER IS UNABLE TO OBTAIN A LICENSE UNDER THIS ARTICLE AS THE CASE MAY BE.

L. THE SUPERINTENDENT MAY ISSUE SUBPOENAS, ADMINISTER OATHS, COMPEL THE ATTENDANCE OF WITNESSES AND PRODUCTION OF BOOKS, PAPERS, DOCUMENTS AND ALL OTHER EVIDENCE. THE SUPERINTENDENT MAY APPLY TO THE SUPERIOR COURT OF THE COUNTY IN WHICH THE HEARING IS HELD FOR A COURT ORDER ENFORCING THIS SECTION.

M. IF A FRANCHISOR ENTERS INTO OR ATTEMPTS TO ENTER INTO A FRANCHISE, WHETHER UPON TERMINATION OR REFUSAL TO CONTINUE ANOTHER FRANCHISE OR UPON THE ESTABLISHMENT OF AN ADDITONAL NEW MOTOR VEHICLE DEALERSHIP IN A COMMUNITY WHERE THE SAME LINE-MAKE IS THEN REPRESENTED, WITHOUT FIRST COMPLYING WITH THE PROVISIONS OF THIS ARTICLE, NO LICENSE UNDER THIS ARTICLE SHALL BE ISSUED TO THAT FRANCHISEE OR PROPOSED FRANCHISEE TO ENGAGE IN THE BUSINESS OF SELLING NEW MOTOR VEHICLES, MANUFACTURED OR DISTRIBUTED BY THAT FRANCHISOR.

N. IN DETERMINING WHETHER GOOD CAUSE HAS BEEN ESTABLISHED FOR TERMINATING OR NOT CONTINUING A FRANCHISE, THE SUPERINTENDENT SHALL TAKE INTO CONSIDERATION THE EXISTING CIRCUMSTANCES, INCLUDING, BUT NOT LIMITED TO:

1. AMOUNT OF BUSINESS TRANSACTED BY THE FRANCHISEE.

2. INVESTMENT NECESSARILY MADE AND OBLIGATIONS INCURRED BY THE FRANCHISEE IN THE PERFORMANCE OF HIS PART OF THE FRANCHISE.

3. PERMANENCY OF THE INVESTMENT.

4. WHETHER IT IS INJURIOUS TO THE PUBLIC WELFARE FOR THE BUSINESS OF THE FRANCHISEE TO BE DISCONTINUED.

5. WHETHER THE FRANCHISEE HAS ADEQUATE NEW MOTOR VEHICLE FACILITIES, EQUIPMENT, PARTS AND QUALIFIED MANAGEMENT, SALES AND SERVICE PERSONNEL TO REASONABLY PROVIDE CONSUMER CARE FOR THE NEW MOTOR VEHICLES SOLD AT RETAIL BY THE FRANCHISEE AND ANY OTHER NEW MOTOR VEHICLE OF THE SAME LINE-MAKE.

6. WHETHER THE FRANCHISEE REFUSES TO HONOR WARRANTIES OF THE FRANCHISOR TO BE PERFORMED BY THE FRANCHISEE IF THE FRANCHISOR REIMBURSES THE FRANCHISEE FOR SUCH WARRANTY WORK PERFORMED BY THE FRANCHISEE.

7. EXCEPT AS PROVIDED IN SUBSECTION J OF THIS SECTION, FAILURE BY THE FRANCHISEE TO SUBSTANTIALLY COMPLY WITH THOSE REQUIREMENTS OF THE FRANCHISE WHICH ARE DETERMINED BY THE SUPERINTENDENT TO BE REASONABLE AND MATERIAL.

8. EXCEPT AS PROVIDED IN SUBSECTION J OF THIS SECTION, BAD FAITH BY THE FRANCHISEE IN COMPLYING WITH THOSE TERMS OF THE FRANCHISE WHICH ARE DETERMINED BY THE SUPERINTENDENT TO BE REASONABLE AND MATERIAL.

O. IN DETERMINING WHETHER GOOD CAUSE HAS BEEN ESTABLISHED FOR ENTERING INTO AN ADDITIONAL FRANCHISE FOR THE SAME LINE-MAKE THE SUPERINTENDENT SHALL TAKE INTO CONSIDERATION THE EXISTING CIRCUMSTANCES, INCLUDING, BUT NOT LIMITED TO:

1. AMOUNT OF BUSINESS TRANSACTED BY OTHER FRANCHISEES OF THE SAME LINE-MAKE IN THAT COMMUNITY.

2. INVESTMENT NECESSARILY MADE AND OBLIGATIONS INCURRED BY OTHER FRANCHISEES OF THE SAME LINE-MAKE IN THAT COMMUNITY IN THE PERFORMANCE OF THEIR PART OF THEIR FRANCHISES.

3. WHETHER THE FRANCHISEES OF THE SAME LINE-MAKE IN THAT COMMUNITY ARE PROVIDING ADEQUATE CONSUMER CARE FOR THE NEW MOTOR VEHICLE PRODUCTS OF THE LINE-MAKE WHICH SHALL INCLUDE THE ADEQUACY OF NEW MOTOR VEHICLE DEALER SALES AND SERVICE FACILITIES, EQUIPMENT, SUPPLY OF PARTS AND QUALIFIED MANAGEMENT, SALES AND SERVICE PERSONNEL.

P. A TRANSCRIPT OF THE TESTIMONY OF ALL WITNESSES TAKEN AT THE HEARING SHALL BE MADE AND PRESERVED. WITHIN TEN DAYS AFTER THE HEARING THE SUPERINTENDENT SHALL MAKE WRITTEN FINDINGS OF FACT AND CONCLUSIONS AND ENTER A FINAL ORDER.

Q. ANY PARTY TO THE HEARING BEFORE THE SUPERINTENDENT MAY APPEAL PURSUANT TO TITLE 12, CHAPTER 7, ARTICLE 6.

Sec. 7. Section 28-1322, Arizona Revised Statutes, is amended to read:

28-1322. **Notice of vehicle transfer by manufacturer or dealer**

Every manufacturer, DEALER, DISTRIBUTOR, FACTORY BRANCH, DISTRIBUTOR BRANCH, FIELD REPRESENTATIVE, OFFICER, AGENT OR ANY REPRESENTATIVE THEREOF, UPON ~~or dealer, upon~~

transferring a motor vehicle, whether by sale, lease or otherwise, to any person other than a manufacturer or dealer, shall immediately give written notice of the transfer to the division upon an official form, which shall contain the date of the transfer, the names and addresses of the transferor and transferee, and such description of the vehicle as is provided in the form.

Sec. 8. Section 28-1323, Arizona Revised Statutes, is amended to read:

28-1323. **Cancellation or suspension of licenses; grounds; procedure; appeal**

A. The license of any licensee shall be SUSPENDED OR cancelled by the vehicle superintendent when he determines that the licensee:

1. Has made a material misrepresentation or misstatement in his application for license.

2. Has violated or is violating any law of the state, the enforcement or administration of which is vested in the superintendent, or has or is violating any rule or regulation adopted by him pursuant to law.

3. Has failed or is failing to keep and maintain records required to be kept and maintained by him.

4. Has no established place of business.

5. Has knowingly dealt in stolen motor vehicles or parts or accessories thereof.

6. Has failed or is failing, by himself or his manager, agents or representatives, to devote a substantial portion of his time to the business for which he is licensed, or to be actively or principally engaged therein.

7. HAS REFUSED TO SERVICE AND FULFILL THE MANUFACTURER'S WARRANTY.

8. AS A MANUFACTURER, FACTORY BRANCH, DISTRIBUTOR, FIELD REPRESENTATIVE, OFFICER, AGENT OR ANY REPRESENTATIVE THEREOF WITHOUT GOOD CAUSE HAS CANCELLED OR FAILED TO RENEW THE FRANCHISE OF ANY NEW MOTOR VEHICLE DEALER. ALL EXISTING DEALERS' FRANCHISES SHALL CONTINUE IN FULL FORCE AND OPERATION UNDER A NEWLY

APPOINTED DISTRIBUTOR ON THE TERMINATION OF AN EXISTING DISTRIBUTOR UNLESS OTHERWISE BY MUTUAL AGREEMENT OF SUCH NEWLY APPOINTED DISTRIBUTOR AND SUCH DEALER.

B. The superintendent, upon determining that grounds for cancellation of a license exist, shall give notice thereof to the licensee in writing, and by the notice shall require the licensee to appear before him at a specified time and place, then and there to show cause why his license should not be cancelled. At the time and place fixed by the superintendent, which shall be not less than ten days after notice, the licensee shall appear and be heard and may have other persons he desires present and testify at the hearing.

C. IF THE LICENSE OF ANY LICENSEE IS SUBJECT TO SUSPENSION OR REVOCATION FOR VIOLATION OF SUBSECTION A, PARAGRAPH 8 OF THIS SECTION, SUCH SUSPENSION OR REVOCATION SHALL BE EFFECTIVE FOR NOT MORE THAN ONE YEAR AND SHALL BE EFFECTIVE ONLY IN THE TERRITORY FORMERLY SERVED BY THE UNFAIRLY CANCELLED DEALER, EXCEPT THAT IN A METROPOLITAN AREA SERVED BY SEVERAL DEALERS ENFRANCHISED TO SELL THE SAME MAKE OF NEW MOTOR VEHICLES, THE SUSPENSION OR REVOCATION ORDER SHALL NOT AFFECT THE RELATIONSHIP OF THE MANUFACTURER WITH THE REMAINING DEALERS IN SUCH AREA.

~~C.~~ D. The superintendent shall issue subpoenas to such persons as the licensee requests, requiring them to be present and testify at the hearing. A transcript of the testimony of witnesses taken at the hearing shall be made and preserved. Within ten days after the hearing, the superintendent shall make written findings of fact and conclusions and shall by order either cancel or decline to cancel the license.

~~D.~~ E. If the license is cancelled, the licensee may, within thirty days from the date of cancellation, appeal to the superior court of Maricopa County from the order of cancellation. The action shall be tried as other civil actions, and the trial shall be conducted as a trial de novo. The order of cancellation shall not be suspended during pendency of the appeal.

Sec. 9. Title 28, chapter 8, article 1, Arizona Revised Statutes, is amended by adding section 28-1323.01, to read:

28-1323.01. **Coercion prohibited; penalties**

A. A MANUFACTURER OF NEW MOTOR VEHICLES, FACTORY BRANCH, DISTRIBUTOR, DISTRIBUTOR BRANCH, FIELD

REPRESENTATIVE, OFFICER, AGENT OR ANY REPRESENTATIVE THEREOF SHALL NOT COERCE OR ATTEMPT TO COERCE ANY NEW MOTOR VEHICLE DEALER TO ACCEPT DELIVERY OF ANY NEW MOTOR VEHICLE OR VEHICLES, PARTS OR ACCESSORIES THEREFOR OR ANY OTHER COMMODITIES WHICH HAVE NOT BEEN ORDERED BY SUCH DEALER.

B. A MANUFACTURER, FACTORY BRANCH, DISTRIBUTOR, DISTRIBUTOR BRANCH, FIELD REPRESENTATIVE, OFFICER, AGENT OR ANY REPRESENTATIVE THEREOF SHALL NOT ATTEMPT TO COERCE OR COERCE ANY NEW MOTOR VEHICLE DEALER TO ENTER INTO ANY AGREEMENT WITH SUCH MANUFACTURER, FACTORY BRANCH, DISTRIBUTOR, DISTRIBUTOR BRANCH OR REPRESENTATIVE THEREOF OR DO ANY OTHER ACT UNFAIR TO SUCH DEALER BY THREATENING TO CANCEL OR NOT RENEW ANY FRANCHISE EXISTING BETWEEN SUCH MANUFACTURER, FACTORY BRANCH, DISTRIBUTOR, DISTRIBUTOR BRANCH OR REPRESENTATIVE THEREOF AND SUCH DEALER.

Sec. 10. Section 28-1325, Arizona Revised Statutes, is amended to read:

28-1325. **Cease and desist orders**

When the superintendent has reasonable cause to believe, from information furnished to him or from an investigation made by him, that any person is engaged in ~~the~~ ANY business ~~of a motor vehicle dealer, motor dealer or wrecker~~ REGULATED BY THIS ARTICLE without being licensed as required by law, he shall forthwith issue and serve upon such person, by registered mail, a cease and desist order, requiring him forthwith, upon the receipt of the notice, to cease and desist from further engaging in such business. Upon failure of such person to comply with the order, the superintendent shall file an action in the superior court of Maricopa County restraining and enjoining the person from engaging in such business. The court in the action shall proceed as in other actions for injunctions.

Sec. 11. **Repeal**

Section 28-205, Arizona Revised Statutes, as amended by Laws 1972, chapter 170, section 1, is repealed.

Sec. 12. **Appropriation; purpose**

The sum of five thousand dollars is appropriated from the state highway

fund to the Arizona highway department for the use of the motor vehicle division for the purposes of this act.

Sec. 13. **Effective date**

This act shall become effective on January 1, 1974.

Approved by the Governor–May 3, 1973

Filed in the Office of the Secretary of State–May 4, 1973

CHAPTER 125

Senate Bill 1087

AN ACT

RELATING TO TAXATION OF INCOME; AUTHORIZING DEDUCTION OF COST OF ADDITIONAL EDUCATION OR TRAINING REQUIRED FOR SATISFACTION OF UPGRADED PROFESSIONAL OR OCCUPATIONAL REQUIREMENTS, AND AMENDING SECTION 43-123.03, ARIZONA REVISED STATUTES.

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

Section 1. Section 43-123.03, Arizona Revised Statutes, is amended to read:

43-123.03. **Deductions for expenses**

A. In computing net income there shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered; traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business; and rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity:

1. In the case of a taxpayer engaged in the business of farming, expenditures made for the purpose of soil and water conservation and the prevention of erosion of land used in farming shall be allowed as deductions under this section. For the purposes of this paragraph, the term "expenditures made for the purpose of soil and water conservation and the prevention of erosion" means expenditures for the treatment, moving, or cultivation of earth, including (but not limited to) leveling, grading and terracing, contour furrowing, the construction of diversion channels and drainage ditches, the control and protection of water courses, outlets and ponds, the planting and cultivation of cover and protective crops or windbreaks, the control of weeds and brush and other special or emergency cultivation and tillage; but such term does not include the purchase, construction, installation, or improvement of structures, appliances, and facilities made of masonry, concrete, tile, metal, or wood, such as tanks, reservoirs, pipes, conduits, canals, dams, wells, and pumps, which are subject to the allowance for depreciation provided in section 43-123.14. For the purposes of this paragraph the term "land used in farming" means land used (prior to the expenditure for conservation made by the taxpayer) by the taxpayer or his tenant or the predecessor owner or his tenant for the production of crops, fruits, and similar agricultural products or for the sustenance of livestock.

2. No deduction shall be allowable under this subsection, to a corporation for any contribution or gift which would be allowable as a deduction under section 43-123.19, subsection A, were it not for the five per cent limitation therein contained and for the requirements therein that payment must be made within the income year.

B. In computing net income there shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year for the production or collection of income, or for the management, conservation, or maintenance of property held for the production of income.

C. The deductions permitted by subsection A of this section shall not be allowed to the extent that they are connected with the production of income not taxable under this title. Proper apportionment and allocation of such deductions with respect to taxable and nontaxable income shall be determined under rules and regulations prescribed by the tax commission.

D. IN COMPUTING NET INCOME THERE SHALL BE ALLOWED AS A DEDUCTION A REASONABLE AMOUNT FOR ORDINARY AND NECESSARY EXPENSES PAID OR INCURRED DURING THE TAXABLE YEAR FOR ADDITIONAL EDUCATION OR TRAINING

REQUIRED FOR THE SATISFACTION OF UPGRADED PROFESSIONAL OR OCCUPATIONAL REQUIREMENTS. TO BE ELIGIBLE TO CLAIM THE DEDUCTION PROVIDED BY THIS PARAGRAPH, THE TAXPAYER SHALL BE ACTIVELY ENGAGED IN THE TAXPAYER'S TRADE, PROFESSION OR OCCUPATION IN THE STATE OF ARIZONA AND THE PURPOSE OF SUCH EDUCATION MUST BE TO MAINTAIN OR IMPROVE A TAXPAYER'S SKILLS OR MEET THE EXPRESS REQUIREMENTS OF THE TAXPAYER'S EMPLOYER. NOTHING IN THIS SECTION SHALL BE CONSTRUED AS TO ALLOW ANY EDUCATIONAL EXPENSES PAID OR INCURRED IN REGARD TO SABBATICAL LEAVE ABROAD OR WITHIN THE UNITED STATES, OR TO MEET THE MINIMUM EDUCATIONAL REQUIREMENTS TO QUALIFY FOR THE TRADE, PROFESSION OR OCCUPATION OR TO QUALIFY FOR A NEW TRADE, PROFESSION OR OCCUPATION.

Approved by the Governor–May 4, 1973

Filed in the Office of the Secretary of State–May 7, 1973

CHAPTER 126

Senate Bill 1201

AN ACT

RELATING TO CRIMES; PROVIDING AUTHORITY FOR PERSONS WRONGFULLY ARRESTED, INDICTED OR CHARGED TO PETITION COURT FOR NOTATION OF CLEARANCE ON CERTAIN AGENCY RECORDS; PROVIDING LIABILITY FOR NONCOMPLIANCE WITH COURT ORDER; AMENDING SECTION 8-247, ARIZONA REVISED STATUTES, AND AMENDING TITLE 13, CHAPTER 6, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 13.

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

Section 1. **Purpose**

The purpose of this act is to prescribe authority for destruction of juvenile arrest records and the removal of the names of persons wrongfully arrested or indicted from police and court records.

Sec. 2. Section 8-247, Arizona Revised Statutes, is amended to read:

8-247. **Destruction of records**

A. On application of a person who has been adjudicated delinquent or incorrigible or on the court's own motion, and after a hearing, the juvenile court shall order the destruction of the files and records, INCLUDING ARREST RECORDS, in the proceeding, if the court finds:

1. The person has attained his ~~twenty first~~ EIGHTEENTH birthday.

2. No proceeding is pending seeking his conviction of a crime~~;~~ . ~~and~~

3. He has been rehabilitated to the satisfaction of the juvenile court.

4. HE IS NOT UNDER THE JURISDICTION OF THE JUVENILE COURT, NOR UNDER COMMITMENT TO THE DEPARTMENT OF CORRECTIONS FROM THE JUVENILE COURT.

B. Reasonable notice of the hearing shall be given to:

1. The county attorney.

2. The authority granting the discharge if the final discharge was from an institution or from parole.

Sec. 3. Title 13, chapter 6, Arizona Revised Statutes, is amended by adding article 13, section 13-1761, to read:

ARTICLE 13. ENTRY OF CLEARANCE ON RECORDS

13-1761. **Entry on records; stipulation; court order**

A. ANY PERSON WHO IS WRONGFULLY ARRESTED, INDICTED OR OTHERWISE CHARGED FOR ANY CRIME MAY UPON OBTAINING A WRITTEN STATEMENT FROM THE PROSECUTING ATTORNEY THAT SUCH PERSON WILL NOT BE PROSECUTED IN CONNECTION WITH SUCH CRIME, PETITION THE SUPERIOR COURT FOR ENTRY UPON ALL COURT RECORDS, POLICE RECORDS AND ANY OTHER RECORDS OF ANY OTHER AGENCY RELATING TO SUCH ARREST OR INDICTMENT A NOTATION THAT THE PERSON HAS BEEN CLEARED.

B. AFTER A HEARING ON THE PETITION, IF THE JUDGE BELIEVES THAT JUSTICE WILL BE SERVED BY SUCH ENTRY, THE

JUDGE SHALL ISSUE THE ORDER REQUIRING THE ENTRY THAT THE PERSON HAS BEEN CLEARED ON SUCH RECORDS, WITH ACCOMPANYING JUSTIFICATION THEREFOR, AND SHALL CAUSE A COPY OF SUCH ORDER TO BE DELIVERED TO ALL LAW ENFORCEMENT AGENCIES AND COURTS. THE ORDER SHALL FURTHER REQUIRE THAT ALL LAW ENFORCEMENT AGENCIES AND COURTS SHALL NOT RELEASE COPIES OF SUCH RECORDS TO ANY PERSON EXCEPT UPON ORDER OF THE COURT.

C. ANY PERSON WHO HAS NOTICE OF SUCH ORDER AND FAILS TO COMPLY WITH THE COURT ORDER ISSUED PURSUANT TO THIS SECTION SHALL BE LIABLE TO THE PERSON FOR DAMAGES FROM SUCH FAILURE.

Approved by the Governor–May 7, 1973

Filed in the Office of the Secretary of State–May 7, 1973

CHAPTER 127

House Bill 2008

AN ACT

RELATING TO PUBLIC HEALTH; PROVIDING THAT THE ARIZONA HEALTH PLANNING AUTHORITY SHALL PRESCRIBE UNIFORM ACCOUNTING PROCEDURES FOR AND EXAMINE THE FINANCIAL RECORDS OF HEALTH CARE INSTITUTIONS; PROVIDING FOR DISCLOSURE OF INFORMATION; PROVIDING FOR COMPARATIVE STUDIES AND REVIEW AND INCREASE OF RATES; AMENDING TITLE 36, CHAPTER 1, ARTICLE 1.1, ARIZONA REVISED STATUTES, BY ADDING SECTION 36-125.03; AMENDING SECTIONS 36-404, 36-405, 36-426, 36-436, 36-436.01, 36-436.02 AND 36-436.03; ARIZONA REVISED STATUTES, AND MAKING AN APPROPRIATION.

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

Section 1. Title 36, chapter 1, article 1.1, Arizona Revised Statutes, is amended by adding section 36-125.03, to read:

36-125.03. **Uniformity of accounting; form and content; public disclosure; financial audit; classification of health care institutions**

A. THE ARIZONA HEALTH PLANNING AUTHORITY SHALL PRESCRIBE UNIFORM ACCOUNTING PRACTICES AND SYSTEMS OF ACCOUNTS FOR EACH CLASS OR SUBCLASS OF HEALTH CARE INSTITUTIONS ESTABLISHED PURSUANT TO THIS SECTION. SUCH ACCOUNTING PRACTICES AND SYSTEMS OF ACCOUNTS SHALL BE IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES AND PRACTICES IN THE HEALTH CARE INDUSTRY. THE AUTHORITY SHALL USE THE CURRENT EDITION OF THE AMERICAN HOSPITAL ASSOCIATION CHART OF ACCOUNTS, OR UPDATED EDITIONS THEREOF, AS A GUIDE FOR PRESCRIBING UNIFORM ACCOUNTING PRACTICES AND SYSTEMS OF ACCOUNT FOR SUCH INSTITUTIONS CLASSIFIED AS HOSPITALS.

B. THE AUTHORITY SHALL PRESCRIBE AND FURNISH FORMS OF FINANCIAL STATEMENTS, SCHEDULES AND REPORTS TO BE SUBMITTED BY HEALTH CARE INSTITUTIONS TO THE AUTHORITY AND THE AUTHORIZED LOCAL AGENCY.

C. THE AUTHORITY MAY REQUIRE ANY HEALTH CARE INSTITUTION TO SUBMIT TO THE AUTHORITY AN ANNUAL FINANCIAL REPORT. THOSE INSTITUTIONS CLASSIFIED AS HOSPITALS, PURSUANT TO THIS SECTION, SHALL BE REQUIRED TO FILE WITH THE AUTHORITY AN ANNUAL FINANCIAL REPORT CERTIFIED TO BY AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT PERFORMED IN ACCORDANCE WITH GENERALLY ACCEPTED AUDITING STANDARDS.

D. WHEN UPON THE RECOMMENDATION OF THE DIRECTOR, AND THE APPROVAL CERTIFIED IN WRITING OF TWO-THIRDS OF THE AUTHORITY, FURTHER INVESTIGATION IS DEEMED NECESSARY AND DESIRABLE TO VERIFY THE ACCURACY OF THE INFORMATION SUBMITTED BY ANY HEALTH CARE INSTITUTION, THE DIRECTOR MAY MAKE ANY NECESSARY EXAMINATION OF SUCH INSTITUTIONS' RECORDS AND ACCOUNTS. THE COSTS INCURRED IN CONNECTION WITH SUCH EXAMINATION SHALL BE BORNE BY THE AUTHORITY.

E. FOR PURPOSES OF THIS SECTION, AND IN ORDER TO MAKE MEANINGFUL COMPARISONS AS REQUIRED BY SECTION 36-436, THE AUTHORITY SHALL BY REGULATION CLASSIFY AND

SUBCLASSIFY HEALTH CARE INSTITUTIONS ACCORDING TO CHARACTER, SIZE, RANGE OF SERVICES PROVIDED, SPECIAL SERVICES OFFERED, DURATION OF CARE AND STANDARDS OF PATIENT CARE. SUCH CLASSIFICATION OR SUBCLASSIFICATION SHALL BE CONSISTENT WITH LICENSING CLASSIFICATIONS ESTABLISHED BY THE DEPARTMENT OF HEALTH.

Sec. 2. Section 36-404, Arizona Revised Statutes, is amended to read:

36-404. **Limitation of disclosure of information**

Information received and records kept by the department for the purpose of administering this chapter ~~are confidential and shall not be disclosed except as provided by article 3 of this chapter and as may be required to carry out the purpose of this chapter and as may be reasonably required to cooperate with the Arizona health planning authority and any authorized local agency.~~ SHALL BE AVAILABLE TO THE PUBLIC EXCEPT:

1. INFORMATION OBTAINED FOR PURPOSES OF ARTICLE 4 AND 5 OF THIS CHAPTER.

2. PATIENT RECORDS, INCLUDING CLINICAL RECORDS, MEDICAL REPORTS, LABORATORY STATEMENTS AND REPORTS, ANY FILE, FILM, RECORD OR REPORT OR ORAL STATEMENT RELATING TO DIAGNOSTIC FINDINGS AND TREATMENT OF PATIENTS, OR ANY INFORMATION FROM WHICH A PATIENT OR HIS FAMILY MIGHT BE IDENTIFIED.

3. SOURCES OF INFORMATION WHICH CAUSE THE DEPARTMENT TO BELIEVE THAT AN INSPECTION IS NEEDED TO DETERMINE WHETHER AN INSTITUTION IS IN COMPLIANCE WITH THE PROVISIONS OF THIS CHAPTER AND THE REGULATIONS THEREUNDER.

4. SOURCES OF FINANCIAL RESOURCES SUBMITTED TO THE DEPARTMENT BY AN APPLICANT FOR THE PURPOSE OF SECTION 36-421, SUBSECTION B, PARAGRAPH 2, SUBDIVISION (c).

Sec. 3. Section 36-405, Arizona Revised Statutes, is amended to read:

36-405. **Powers and duties of the board**

A. The board shall, after thirty days' written notice to all licensees affected, adopt, repeal and amend rules and regulations which shall

establish minimum standards and requirements for the licensure of health care institutions. In addition the board shall make reasonable rules and regulations, including but not limited to, providing for sanitation and physical plant construction.

B. The board may, by regulation, classify and subclassify health care institutions according to character, size, range of services provided, medical or dental specialty offered, duration of care and standard of patient care required for the purposes of licensure. Classes of health care institutions may include but not be limited to hospitals, infirmaries, diagnostic and treatment centers and nursing homes and health care facilities. Whenever the board reasonably deems distinctions in its regulations and standards to be appropriate among different classes or subclasses of health care institutions it may make such distinctions.

~~C. The board may, by regulation, prescribe the information to be filed with the authorized local agency for the purpose of review of the schedule of rates and charges pursuant to article 3 of this chapter. Such information shall include a schedule of the direct and indirect costs of each of the revenue producing departments shown on the schedule and shall provide such information as provided in section 36-426.~~

Sec. 4. Section 36-426, Arizona Revised Statutes, is amended to read:

36-426. **Submittal of operating and financial statements**

Every health care institution licensed under this chapter shall submit to the ~~commissioner~~ ARIZONA HEALTH PLANNING AUTHORITY not later than one hundred and twenty days following completion of the calendar or fiscal year such operating statements and reports for the preceding calendar or fiscal year in such forms and containing such details as the ~~commissioner~~ AUTHORITY shall reasonably prescribe PURSUANT TO SECTION 36-125.03. THE AUTHORITY SHALL REIMBURSE SUCH INSTITUTION FOR REASONABLE COSTS, AS DETERMINED BY THE AUTHORITY, INCURRED IN THE COLLECTION OR REPORTING OF SUCH INFORMATION WHEN THE INFORMATION IS NOT READILY AVAILABLE AND ITS COLLECTION, AT THE SPECIFIC REQUEST OF THE AUTHORITY, REQUIRES AN EXPENDITURE THAT WOULD NOT HAVE BEEN INCURRED FOR OTHER PURPOSES. ~~In prescribing forms and contents of statements and reports to be submitted under this section the commissioner shall follow as a guide financial and operating statements customarily prepared within the health care industry.~~

Sec. 5. Section 36-436, Arizona Revised Statutes, is amended to read:

36-436. **Filing and review of rates, rules and regulations as prerequisite to operation; findings; comparative studies**

A. A new health care institution shall not engage in business within this state until its schedule on rates, charges and rules and regulations pertaining thereto are filed with and reviewed by the ~~commissioner~~ ARIZONA HEALTH PLANNING AUTHORITY. THE SCHEDULES OF RATES AND CHARGES SHALL BE IN THE FORM AND CONTAIN SUCH INFORMATION AS PRESCRIBED BY THE AUTHORITY PURSUANT TO SECTION 36-125.03.

~~B. A health care institution existing on the effective date of this section shall file its schedule of rates and charges as required by this chapter on or before thirty days after such effective date.~~

B. THE AUTHORITY SHALL ADOPT OR ESTABLISH REASONABLE GUIDELINES FOR REVIEW OF RATES AND CHARGES FOR HEALTH CARE INSTITUTIONS. THOSE HEALTH CARE INSTITUTIONS WHICH ARE CLASSIFIED BY THE AUTHORITY AS HOSPITALS PURSUANT TO SECTION 36-125.03 SHALL USE THE CURRENT EDITION OF THE STATEMENT ON THE FINANCIAL REQUIREMENTS OF HEALTH CARE INSTITUTIONS AND SERVICES, AS ADOPTED BY THE AMERICAN HOSPITAL ASSOCIATION, OR AMENDED EDITIONS THEREOF IF APPLICABLE, AS A GUIDE FOR ESTABLISHING HOSPITAL RATES AND CHARGES. IN SUCH CASES, THE AUTHORITY SHALL INCLUDE, BUT NOT BE LIMITED TO, USE OF THE STATEMENT ON THE FINANCIAL REQUIREMENTS OF HEALTH CARE INSTITUTIONS AND SERVICES, AS ADOPTED BY THE AMERICAN HOSPITAL ASSOCIATION, AS A GUIDE FOR REVIEW OF HOSPITAL RATES AND CHARGES.

C. Promptly after THE filing of such schedule, the ~~commissioner~~ AUTHORITY shall review such schedule and make public ~~his~~ ITS findings in connection therewith. Such findings shall include information on:

1. How the rates and charges relate to the operating income and expenses of the institution; and

2. The source and application of funds available to the institution.

D. At least annually the ~~commissioner~~ AUTHORITY shall publish an in-depth comparative study of ~~selected~~ rates and charges of all institutions. THE AUTHORITY SHALL CONSULT WITH REPRESENTATIVES OF EACH CLASS OR SUBCLASS OF HEALTH CARE INSTITUTION BEFORE SUCH COMPARATIVE STUDIES ARE PUBLISHED.

Sec. 6. Section 36-436.01, Arizona Revised Statutes, is amended to read:

36-436.01. **Contents of schedules; public notice; copies to be available**

A. The schedule shall be ~~plainly~~ printed in legible type and shall contain a listing of all services performed and commodities furnished for which a separate charge is made, together with the charges for each. They shall plainly state all rules or regulations which may in any way change, affect or determine any part or the aggregate of the rates or charges therein or the value of the services ~~of~~ OR commodities covered by the schedule.

B. After review by the ~~commissioner~~ ARIZONA HEALTH PLANNING AUTHORITY a copy of the schedule shall be posted in a conspicuous place in the reception area of each health care institution using the schedule. Another copy also shall be kept in such reception area available for inspection by the public at all times upon request.

Sec. 7. Section 36-436.02, Arizona Revised Statutes, is amended to read:

36-436.02. **Increases of rates or charges; notice; filing**

A. No increase shall be made by any health care institution in any rate or charge unless and until the proposed increase has been filed with the ~~commissioner~~ ARIZONA HEALTH PLANNING AUTHORITY and reviewed in the same manner as the schedule as set forth in section 36-436. The ~~commissioner~~ AUTHORITY shall make public ~~his~~ ITS findings within sixty days after the schedule is filed.

B. A copy of any proposed reduction in any rate or charge shall be filed with the ~~commissioner~~ AUTHORITY for informational purposes prior to the effective date of such reduction.

Sec. 8. Section 36-436.03, Arizona Revised Statutes, is amended to read:

36-436.03. **Review by authorized local agency**

A. The health care institution shall also file a copy of its existing rate schedule and any proposed new schedule with the authorized local agency.

B. The authorized local agency shall within ~~fifteen~~ THIRTY days hold a public hearing on any proposed new schedule containing any increase in rates or charges and shall make public the time and place of such hearing at least ~~one week~~ TEN DAYS in advance. THE AUTHORIZED LOCAL AGENCY SHALL GIVE THE HEALTH CARE INSTITUTION AFFECTED TEN DAYS' WRITTEN NOTICE OF THE PROPOSED PUBLIC HEARING. THE NOTICE SHALL INCLUDE:

1. A STATEMENT OF THE TIME AND PLACE FOR THE PUBLIC HEARING.

2. EITHER AN INFORMATIVE SUMMARY OR A WRITTEN AGENDA OF ALL MATTERS TO BE DISCUSSED.

C. The authorized local agency shall review any proposed new schedule containing any increase in rates or charges and file a report with the ~~commissioner~~ ARIZONA HEALTH PLANNING AUTHORITY with respect to its findings within thirty days after completion of its review. The ~~commissioner~~ AUTHORITY may elect to adopt the findings of the authorized local agency or conduct a separate review of any proposed new schedule containing any increase in rates or charges, as ~~he~~ IT deems appropriate. In any case, the ~~commissioner~~ AUTHORITY shall make public ~~his~~ ITS actions on the findings of the authorized local agency.

Sec. 9. **Appropriation; purpose; exemption**

A. The sum of twenty-five thousand dollars is appropriated to the Arizona health planning authority for the purpose of implementing the provisions of this act.

B. The appropriation made by this act is exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations.

Sec. 10. **Emergency**

To preserve the public peace, health and safety it is necessary that this act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.

Approved by the Governor–May 7, 1973

Filed in the Office of the Secretary of State–May 7, 1973

LAWS OF ARIZONA

CHAPTER 128

House Bill 2043

AN ACT

RELATING TO INSURANCE; PROVIDING FOR AUTHORIZATION OF HEALTH CARE SERVICES ORGANIZATIONS AND REGULATION THEREOF; PRESCRIBING REQUIREMENTS FOR ISSUANCE OF CERTIFICATE OF AUTHORITY TO OPERATE HEALTH CARE SERVICES ORGANIZATION; PRESCRIBING DEPOSIT REQUIREMENTS FOR HEALTH CARE SERVICES ORGANIZATIONS; PROVIDING FOR AN ANNUAL REPORT AND IMPOSING A TAX FOR TRANSACTING A HEALTH CARE PLAN; PERMITTING LIMITED SOLICITATION; PRESCRIBING PROHIBITED PRACTICES, AND AMENDING TITLE 20, CHAPTER 4, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 9.

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

Section 1. Title 20, chapter 4, Arizona Revised Statutes, is amended by adding article 9, sections 20-1051 through 20-1068 to read:

ARTICLE 9. HEALTH CARE SERVICES ORGANIZATIONS

20-1051. **Definitions**

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "BASIC HEALTH CARE SERVICES" MEANS THOSE HEALTH CARE SERVICES WHICH AN ENROLLEE MIGHT REASONABLY REQUIRE IN ORDER TO BE MAINTAINED IN GOOD HEALTH WHICH SHALL INCLUDE AT LEAST THE FOLLOWING:

(a) EMERGENCY CARE.

(b) INPATIENT HOSPITAL AND PHYSICIAN CARE.

(c) OUTPATIENT MEDICAL SERVICES, WHICH SHALL INCLUDE LABORATORY, RADIOLOGICAL AND OTHER SPECIAL DIAGNOSTIC EXAMINATIONS, AND SUITABLE ALTERNATIVES TO ACTIVE CARE IN A GENERAL HOSPITAL SUCH AS IN SKILLED NURSING

HOMES OR ORGANIZED HOME CARE PROGRAMS, BUT NOT INCLUDING CARE WHICH IS SOLELY CUSTODIAL IN PURPOSE.

2. "DIRECTOR" MEANS THE DIRECTOR OF THE DEPARTMENT OF INSURANCE.

3. "ENROLLEE" MEANS AN INDIVIDUAL WHO HAS BEEN ENROLLED IN A HEALTH CARE PLAN.

4. "EVIDENCE OF COVERAGE" MEANS ANY CERTIFICATE, AGREEMENT, OR CONTRACT ISSUED TO AN ENROLLEE SETTING OUT THE COVERAGE TO WHICH HE IS ENTITLED.

5. "HEALTH CARE PLAN" MEANS ANY CONTRACTUAL ARRANGEMENT WHEREBY ANY HEALTH CARE SERVICES ORGANIZATION UNDERTAKES TO PROVIDE DIRECTLY OR TO ARRANGE FOR ALL OR A PORTION OF DESIGNATED BASIC HEALTH CARE SERVICES AND TO PAY OR MAKE REIMBURSEMENT FOR ANY REMAINING PORTION OF SUCH BASIC HEALTH CARE SERVICES ON A PREPAID BASIS THROUGH INSURANCE OR OTHERWISE. A HEALTH CARE PLAN SHALL INCLUDE BASIC HEALTH CARE SERVICES.

6. "HEALTH CARE SERVICES" MEANS ANY SERVICES FOR THE PURPOSE OF PREVENTING, ALLEVIATING, CURING, OR HEALING HUMAN ILLNESS OR INJURY.

7. "HEALTH CARE SERVICES ORGANIZATION" MEANS ANY PERSON WHICH UNDERTAKES TO CONDUCT ONE OR MORE HEALTH CARE PLANS.

8. "PERSON" MEANS ANY NATURAL OR ARTIFICIAL PERSON INCLUDING, BUT NOT LIMITED TO, INDIVIDUALS, PARTNERSHIPS, ASSOCIATIONS, PROVIDERS OF HEALTH CARE, TRUSTS, INSURERS, HOSPITAL OR MEDICAL SERVICE CORPORATIONS OR OTHER CORPORATIONS, PREPAID GROUP PRACTICE PLANS, FOUNDATIONS FOR MEDICAL CARE AND HEALTH MAINTENANCE ORGANIZATIONS.

9. "PROVIDER" MEANS ANY PHYSICIAN, HOSPITAL, OR OTHER PERSON WHICH IS LICENSED OR OTHERWISE AUTHORIZED TO FURNISH HEALTH CARE SERVICES IN THIS STATE.

20-1052. **Establishment of health care services organizations**

A. NO PERSON SHALL ESTABLISH OR OPERATE A HEALTH CARE SERVICES ORGANIZATION IN THIS STATE, OR SELL OR OFFER TO SELL, OR SOLICIT OFFERS TO PURCHASE, OR RECEIVE ADVANCE OR PERIODIC CONSIDERATION IN CONJUNCTION WITH A HEALTH CARE PLAN WITHOUT OBTAINING AND MAINTAINING A CERTIFICATE OF AUTHORITY THEREFOR PURSUANT TO THIS ARTICLE.

B. WITHIN NINETY DAYS AFTER THE EFFECTIVE DATE OF THIS ARTICLE, EVERY HEALTH CARE SERVICES ORGANIZATION OPERATING IN THIS STATE SHALL SUBMIT AN APPLICATION FOR A CERTIFICATE OF AUTHORITY AS PRESCRIBED IN SECTION 20-1053. EACH SUCH APPLICANT MAY CONTINUE TO OPERATE AS AN ORGANIZATION UNTIL THE DIRECTOR ACTS UPON THE APPLICATION. IN THE EVENT ITS APPLICATION IS DENIED, THE APPLICANT SHALL BE SUBJECT TO SECTION 20-1065, SUBSECTIONS B, C AND D.

20-1053. **Application for certificate of authority**

A. AN APPLICATION FOR A CERTIFICATE OF AUTHORITY TO OPERATE AS A HEALTH CARE SERVICES ORGANIZATION SHALL BE FILED WITH THE DIRECTOR IN A FORM PRESCRIBED BY THE DIRECTOR, SHALL BE VERIFIED BY AN OFFICER OR AUTHORIZED REPRESENTATIVE OF THE APPLICANT AND SHALL SET FORTH, OR BE ACCOMPANIED BY, THE FOLLOWING:

1. A COPY OF THE BASIC ORGANIZATIONAL DOCUMENT, IF ANY, OF THE APPLICANT SUCH AS THE ARTICLES OF INCORPORATION, ARTICLES OF ASSOCIATION, PARTNERSHIP AGREEMENT, TRUST AGREEMENT, OR OTHER APPLICABLE DOCUMENTS, AND ALL AMENDMENTS THERETO.

2. A COPY OF THE BYLAWS, RULES AND REGULATIONS, OR SIMILAR DOCUMENT, IF ANY, REGULATING THE CONDUCT OF THE INTERNAL AFFAIRS OF THE APPLICANT.

3. A LIST OF THE NAMES, ADDRESSES, AND OFFICIAL POSITIONS OF THE PERSONS WHO ARE TO BE RESPONSIBLE FOR THE CONDUCT OF THE AFFAIRS OF THE APPLICANT, INCLUDING ALL MEMBERS OF THE BOARD OF DIRECTORS, BOARD OF TRUSTEES, EXECUTIVE COMMITTEE, OR OTHER GOVERNING BOARD OR COMMITTEE, THE PRINCIPAL OFFICERS IN THE CASE OF A CORPORATION, AND THE PARTNERS OR MEMBERS IN THE CASE OF A PARTNERSHIP OR ASSOCIATION.

4. A COPY OF ANY CONTRACT MADE OR TO BE MADE BETWEEN ANY PROVIDERS OR PERSONS LISTED IN PARAGRAPH 3 OF THIS SUBSECTION AND THE APPLICANT.

5. A STATEMENT GENERALLY DESCRIBING THE HEALTH CARE SERVICES ORGANIZATION, ITS HEALTH CARE PLAN OR PLANS, FACILITIES, AND PERSONNEL.

6. A COPY OF THE FORM OF EVIDENCE OF COVERAGE TO BE ISSUED TO THE ENROLLEES.

7. A COPY OF THE FORM OF THE GROUP CONTRACT, IF ANY, WHICH IS TO BE ISSUED TO EMPLOYERS, UNIONS, TRUSTEES, OR OTHER ORGANIZATIONS.

8. FINANCIAL STATEMENTS SHOWING THE APPLICANT'S ASSETS, LIABILITIES, AND SOURCES OF FINANCIAL SUPPORT. IF THE APPLICANT'S FINANCIAL AFFAIRS ARE AUDITED BY INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS, A COPY OF THE APPLICANT'S MOST RECENT REGULAR CERTIFIED FINANCIAL STATEMENT SHALL BE DEEMED TO SATISFY THIS REQUIREMENT UNLESS THE DIRECTOR DETERMINES THAT ADDITIONAL OR MORE RECENT FINANCIAL INFORMATION IS REQUIRED FOR THE PROPER ADMINISTRATION OF THIS ARTICLE.

9. A DESCRIPTION OF THE PROPOSED METHOD OF MARKETING THE PLAN, A FINANCIAL PLAN WHICH INCLUDES A THREE-YEAR PROJECTION OF THE INITIAL OPERATING RESULTS ANTICIPATED, AND A STATEMENT AS TO THE SOURCES OF WORKING CAPITAL AS WELL AS ANY OTHER SOURCES OF FUNDING.

10. A POWER OF ATTORNEY DULY EXECUTED BY SUCH APPLICANT, IF NOT DOMICILED IN THIS STATE, APPOINTING THE DIRECTOR AND HIS SUCCESSORS IN OFFICE, AND DULY AUTHORIZED DEPUTIES, AS THE TRUE AND LAWFUL ATTORNEY OF SUCH APPLICANT IN AND FOR THIS STATE, UPON WHOM ALL LAWFUL PROCESS IN ANY LEGAL ACTION OR PROCEEDING AGAINST THE HEALTH CARE SERVICES ORGANIZATION ON A CAUSE OF ACTION ARISING IN THIS STATE MAY BE SERVED.

11. A STATEMENT REASONABLY DESCRIBING THE GEOGRAPHIC AREA OR AREAS TO BE SERVED.

12. THE FEE PRESCRIBED BY SECTION 20-167 RESPECTING ISSUANCE OF A CERTIFICATE OF AUTHORITY TO A HOSPITAL OR MEDICAL SERVICE CORPORATION.

13. SUCH OTHER INFORMATION AS THE DIRECTOR MAY REQUIRE.

B. WITHIN TEN DAYS FOLLOWING ANY SIGNIFICANT MODIFICATION OF INFORMATION PREVIOUSLY FURNISHED PURSUANT TO SUBSECTION A, A HEALTH CARE SERVICES ORGANIZATION SHALL FILE NOTICE THEREOF WITH THE DIRECTOR.

20-1054. **Issuance of certificate of authority**

A. ISSUANCE OF A CERTIFICATE OF AUTHORITY SHALL BE GRANTED BY THE DIRECTOR IF HE IS SATISFIED THAT THE FOLLOWING CONDITIONS ARE MET:

1. THE PERSONS RESPONSIBLE FOR CONDUCTING THE AFFAIRS OF THE HEALTH CARE SERVICES ORGANIZATION ARE COMPETENT AND TRUSTWORTHY.

2. THE HEALTH CARE SERVICES ORGANIZATION CONSTITUTES AN APPROPRIATE MECHANISM TO ACHIEVE AN EFFECTIVE HEALTH CARE PLAN, WHICH SHALL INCLUDE AT LEAST THE BASIC HEALTH CARE SERVICES.

3. THE HEALTH CARE SERVICES ORGANIZATION IS FINANCIALLY RESPONSIBLE AND MAY REASONABLY BE EXPECTED TO MEET ITS OBLIGATIONS TO ENROLLEES AND PROSPECTIVE ENROLLEES. IN MAKING THIS DETERMINATION, THE DIRECTOR MAY CONSIDER:

(a) THE FINANCIAL SOUNDNESS OF THE HEALTH CARE PLAN'S ARRANGEMENTS FOR HEALTH CARE SERVICES AND THE SCHEDULE OF CHARGES USED IN CONNECTION THEREWITH.

(b) ANY AGREEMENT WITH AN INSURER, A HOSPITAL OR A MEDICAL SERVICE CORPORATION, A GOVERNMENT, OR ANY OTHER ORGANIZATION FOR INSURING THE PAYMENT OF THE COST OF HEALTH CARE SERVICES OR THE PROVISION FOR AUTOMATIC APPLICABILITY OF AN ALTERNATIVE COVERAGE IN THE EVENT OF DISCONTINUANCE OF THE PLAN.

(c) ANY AGREEMENT WITH PROVIDERS FOR THE PROVISION OF HEALTH CARE SERVICES.

4. EACH OFFICER RESPONSIBLE FOR CONDUCTING THE AFFAIRS OF THE HEALTH CARE SERVICES ORGANIZATION HAS

FILED WITH THE DIRECTOR, SUBJECT TO THE DIRECTOR'S APPROVAL, A FIDELITY BOND IN THE AMOUNT OF FIFTY THOUSAND DOLLARS.

B. A CERTIFICATE OF AUTHORITY PRESCRIBED BY SUBSECTION A SHALL EXPIRE AT MIDNIGHT ON JUNE 30 NEXT FOLLOWING DATE OF ISSUANCE OR PREVIOUS RENEWAL. IF THE HEALTH CARE SERVICES ORGANIZATION REMAINS IN COMPLIANCE WITH THIS ARTICLE AND HAS PAID THE FEE PRESCRIBED BY SECTION 20-167 RESPECTING RENEWAL OF A CERTIFICATE OF AUTHORITY TO A HOSPITAL AND MEDICAL SERVICE CORPORATION, ITS CERTIFICATE SHALL BE RENEWED.

20-1055. **Deposit requirement; exception**

A. A HEALTH CARE SERVICES ORGANIZATION AT ALL TIMES SHALL MAINTAIN ON DEPOSIT WITH THE STATE TREASURER THROUGH THE DIRECTOR'S OFFICE A SURETY BOND GUARANTEEING SERVICES UNDER THE HEALTH CARE PLAN, OR CASH, OR SECURITIES ELIGIBLE FOR THE INVESTMENT OF CAPITAL FUNDS OF DOMESTIC INSURERS UNDER THIS TITLE, IN AN AMOUNT NOT LESS THAN FIFTY THOUSAND DOLLARS.

B. THE DEPOSIT PRESCRIBED BY SUBSECTION A SHALL BE HELD BY THE STATE TREASURER IN TRUST FOR THE BENEFIT AND PROTECTION OF PERSONS COVERED BY A HEALTH CARE PLAN.

C. ANY SECURITIES WITHIN THE DESCRIPTION OF SUBSECTION A, WITH THE APPROVAL OF THE DIRECTOR, MAY BE EXCHANGED FOR SIMILAR SECURITIES OR CASH OF EQUAL AMOUNT. INTEREST ON SECURITIES SO DEPOSITED SHALL BE PAYABLE TO THE HEALTH CARE SERVICES ORGANIZATION DEPOSITING THEM.

D. AN UNSETTLED FINAL JUDGMENT ARISING UPON AN EVIDENCE OF COVERAGE SHALL BE A LIEN ON THE DEPOSIT PRESCRIBED BY SUBSECTION A, SUBJECT TO EXECUTION AFTER THIRTY DAYS FROM THE ENTRY OF FINAL JUDGMENT. IF THE DEPOSIT IS REDUCED THEREBY, IT SHALL BE REPLENISHED WITHIN NINETY DAYS BY THE HEALTH CARE SERVICES ORGANIZATION.

E. UPON LIQUIDATION OR DISSOLUTION OF A HEALTH CARE SERVICES ORGANIZATION AND THE SATISFACTION OF ALL ITS

DEBTS AND LIABILITIES, ANY BALANCE REMAINING OF THE CASH OR SECURITIES DEPOSIT PRESCRIBED IN SUBSECTION A TOGETHER WITH ANY OTHER ASSETS OF THE HEALTH CARE SERVICES ORGANIZATION SHALL BE RETURNED BY THE DIRECTOR TO THE HEALTH CARE SERVICES ORGANIZATION.

F. THE DEPOSIT PRESCRIBED BY SUBSECTION A SHALL NOT APPLY WITH RESPECT TO A HEALTH CARE SERVICES ORGANIZATION WHICH IS FUNDED BY THE FEDERAL, STATE OR A MUNICIPAL GOVERNMENT OR ANY POLITICAL SUBDIVISION OR BODY THEREOF TO THE EXTENT AND FOR SUCH PERIOD OF TIME THAT THE HEALTH CARE SERVICES ORGANIZATION CAN DEMONSTRATE TO THE DIRECTOR THE PRESENCE OF OPERATIONAL COMMITMENTS FROM SUCH SOURCES EQUIVALENT TO SUCH DEPOSIT.

20-1056. **Reserve requirement; exception**

A. A HEALTH CARE SERVICES ORGANIZATION AT ALL TIMES SHALL MAINTAIN FOR PROTECTION OF ENROLLEES A FINANCIAL RESERVE CONSISTING OF TWO PER CENT OF CHARGES COLLECTED FROM ENROLLEES FOR THE HEALTH CARE PLAN, UNTIL SAID RESERVE TOTALS $100,000. SUCH RESERVE SHALL BE IN ADDITION TO THE DEPOSIT PRESCRIBED BY SECTION 20-1055.

B. THE RESERVE PRESCRIBED BY SUBSECTION A SHALL NOT APPLY WITH RESPECT TO A HEALTH CARE SERVICES ORGANIZATION WHICH IS FUNDED BY THE FEDERAL, STATE OR A MUNICIPAL GOVERNMENT OR ANY POLITICAL SUBDIVISION OR BODY THEREOF AND MEETS THE REQUIREMENTS OF SUBSECTION F OF SECTION 20-1055.

20-1057. **Evidence of coverage by health care services organizations**

A. EVERY ENROLLEE IN A HEALTH CARE PLAN SHALL BE ISSUED AN EVIDENCE OF COVERAGE BY THE RESPONSIBLE HEALTH CARE SERVICES ORGANIZATION.

B. NO EVIDENCE OF COVERAGE, AMENDMENT THERETO, ADVERTISING MATTER OR SALES MATERIAL SHALL BE ISSUED OR DELIVERED TO ANY PERSON IN THIS STATE UNTIL A COPY OF THE FORM OF THE EVIDENCE OF COVERAGE, OR AMENDMENT THERETO, HAS BEEN FILED WITH AND APPROVED BY THE DIRECTOR. SUCH FILING SHALL BE ACCOMPANIED BY FEES PRESCRIBED BY SECTION 20-167.

C. AN EVIDENCE OF COVERAGE SHALL CONTAIN A CLEAR AND COMPLETE STATEMENT IF A CONTRACT, OR A REASONABLY COMPLETE SUMMARY IF A CERTIFICATE OF CONTRACT, OF:

1. THE HEALTH CARE SERVICES AND THE INSURANCE OR OTHER BENEFITS, IF ANY, TO WHICH THE ENROLLEE IS ENTITLED UNDER THE HEALTH CARE PLAN.

2. ANY LIMITATIONS OF THE SERVICES, KIND OF SERVICES, BENEFITS, OR KIND OF BENEFITS TO BE PROVIDED, INCLUDING ANY DEDUCTIBLE OR CO-PAYMENT FEATURE.

3. WHERE AND IN WHAT MANNER INFORMATION IS AVAILABLE AS TO HOW SERVICES MAY BE OBTAINED.

4. THE ENROLLEE'S OBLIGATION, IF ANY, RESPECTING CHARGES FOR THE HEALTH CARE PLAN.

D. AN EVIDENCE OF COVERAGE SHALL CONTAIN NO PROVISIONS OR STATEMENTS WHICH ARE UNJUST, UNFAIR, INEQUITABLE, MISLEADING, OR DECEPTIVE, OR WHICH ENCOURAGE MISREPRESENTATION, OR WHICH ARE UNTRUE OR MISLEADING.

E. THE DIRECTOR SHALL APPROVE ANY FORM OF EVIDENCE OF COVERAGE IF THE REQUIREMENTS OF SUBSECTIONS C AND D ARE MET. IT SHALL BE UNLAWFUL TO ISSUE SUCH FORM UNTIL APPROVED. IF THE DIRECTOR DOES NOT DISAPPROVE ANY SUCH FORM WITHIN THIRTY DAYS AFTER THE FILING THEREOF, IT SHALL BE DEEMED APPROVED. IF THE DIRECTOR DISAPPROVES A FORM OF EVIDENCE OF COVERAGE, ADVERTISING MATTER OR SALES MATERIAL, HE SHALL NOTIFY THE HEALTH CARE SERVICES ORGANIZATION. IN THE NOTICE, THE DIRECTOR SHALL SPECIFY THE REASONS FOR HIS DISAPPROVAL. THE DIRECTOR SHALL GRANT A HEARING ON SUCH DISAPPROVAL WITHIN FIFTEEN DAYS AFTER A REQUEST THEREFOR IN WRITING IS RECEIVED FROM THE HEALTH CARE SERVICES ORGANIZATION.

20-1058. **Examination of health care services organizations**

A. THE DIRECTOR MAY ONCE IN EACH SIX MONTHS FOR THE FIRST THREE YEARS AFTER ORGANIZATION AND ONCE EACH YEAR THEREAFTER, OR MORE OFTEN IF DEEMED NECESSARY

BY THE DIRECTOR, VISIT EACH HEALTH CARE SERVICES ORGANIZATION ORGANIZED UNDER THE LAWS OF THIS STATE AND EXAMINE ITS FINANCIAL CONDITION AND ITS ABILITY TO MEET ITS LIABILITIES, AND ITS COMPLIANCE WITH THE LAWS OF THIS STATE AFFECTING THE CONDUCT OF ITS BUSINESS. THE DIRECTOR MAY ANNUALLY SIMILARLY VISIT AND EXAMINE, EITHER ALONE OR JOINTLY WITH REPRESENTATIVES OF THE INSURANCE SUPERVISING DEPARTMENTS OF OTHER STATES, EACH HEALTH CARE SERVICES ORGANIZATION NOT ORGANIZED UNDER THE LAWS OF THIS STATE BUT AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE.

B. THE DIRECTOR MAY IN LIKE MANNER EXAMINE EACH HEALTH CARE SERVICES ORGANIZATION APPLYING FOR AN INITIAL CERTIFICATE OF AUTHORITY TO DO BUSINESS IN THIS STATE.

C. IN LIEU OF MAKING HIS OWN EXAMINATION, THE DIRECTOR MAY ACCEPT A FULL REPORT OF THE LAST RECENT EXAMINATION OF A FOREIGN OR ALIEN HEALTH CARE SERVICES ORGANIZATION, CERTIFIED TO BY THE INSURANCE SUPERVISORY OFFICIAL OF ANOTHER STATE, TERRITORY, COMMONWEALTH OR DISTRICT OF THE UNITED STATES.

20-1059. **Annual report to director**

A. EVERY HEALTH CARE SERVICES ORGANIZATION ANNUALLY ON OR BEFORE THE FIRST DAY OF MARCH SHALL FILE WITH THE DIRECTOR A REPORT COVERING ITS ACTIVITIES FOR THE PRECEDING CALENDAR YEAR, VERIFIED BY AT LEAST TWO PRINCIPAL OFFICERS OF THE CORPORATION.

B. SUCH REPORTS SHALL BE ON FORMS PRESCRIBED BY THE DIRECTOR AND SHALL INCLUDE:

1. A FINANCIAL STATEMENT OF THE ORGANIZATION, INCLUDING ITS BALANCE SHEET AND RECEIPTS AND DISBURSEMENTS FOR THE PRECEDING YEAR CERTIFIED BY AN INDEPENDENT PUBLIC ACCOUNTANT.

2. ANY MATERIAL CHANGES IN THE INFORMATION SUBMITTED PURSUANT TO SECTION 20-1053.

3. THE NUMBER OF PERSONS ENROLLED DURING THE YEAR, THE NUMBER OF ENROLLEES AS OF THE END OF THE YEAR AND

THE NUMBER OF ENROLLMENTS TERMINATED DURING THE YEAR.

4. SUCH OTHER INFORMATION RELATING TO THE PERFORMANCE OF THE HEALTH CARE SERVICES ORGANIZATION AS IS NECESSARY TO ENABLE THE DIRECTOR TO CARRY OUT HIS DUTIES UNDER THIS ARTICLE.

20-1060. **Taxes**

COINCIDENT WITH THE FILING OF THE ANNUAL REPORT PRESCRIBED BY SECTION 20-1059, EACH HEALTH CARE SERVICES ORGANIZATION SHALL PAY TO THE STATE TREASURER THROUGH THE DIRECTOR A TAX FOR TRANSACTING A HEALTH CARE PLAN. THE OBLIGATION SHALL BE DETERMINED AS FOLLOWS:

1. IF A DOMESTIC ORGANIZATION, ONE PER CENT OF NET CHARGES RECEIVED FROM ENROLLEES.

2. IF A FOREIGN OR ALIEN ORGANIZATION, TWO PER CENT OF NET CHARGES RECEIVED FROM ENROLLEES.

20-1061. **Prohibited practices**

SECTIONS 20-441 THROUGH 20-459, RELATING TO UNFAIR TRADE PRACTICES AND FRAUDS, SHALL APPLY TO HEALTH CARE SERVICES ORGANIZATIONS, EXCEPT TO THE EXTENT THE DIRECTOR DETERMINES THAT THE NATURE OF HEALTH CARE SERVICES ORGANIZATIONS RENDER PARTICULAR PROVISIONS THEREOF INAPPROPRIATE.

20-1062. **Regulation of agents**

THE DIRECTOR MAY, AFTER NOTICE AND HEARING, PROMULGATE SUCH REASONABLE RULES AND REGULATIONS AS ARE NECESSARY TO PROVIDE FOR THE LICENSING OF AGENTS WHICH SHALL INCLUDE PROVISIONS FOR EXAMINATION, LICENSING, ANNUAL FEES AND DISCIPLINARY PROCEDURES SIMILAR TO THOSE PROPOSED IN CHAPTER 2, ARTICLE 3 OF THIS TITLE.

20-1063. **Powers of insurers and hospital and medical service corporations**

A. AN INSURER, OR A HOSPITAL OR MEDICAL SERVICE CORPORATION, AUTHORIZED TO DO BUSINESS IN THIS STATE EITHER DIRECTLY OR THROUGH A SUBSIDIARY OR AN AFFILIATE MAY ORGANIZE AND OPERATE A HEALTH CARE SERVICES ORGANIZATION UNDER THE PROVISIONS OF THIS ARTICLE. NOTWITHSTANDING ANY OTHER LAW TO THE CONTRARY, ANY TWO OR MORE SUCH INSURERS, HOSPITAL OR MEDICAL SERVICE CORPORATIONS, OR SUBSIDIARIES OR AFFILIATES THEREOF, MAY JOINTLY ORGANIZE AND OPERATE A HEALTH CARE SERVICES ORGANIZATION.

B. ANY SUCH INSURER OR HOSPITAL OR MEDICAL SERVICE CORPORATION MAY CONTRACT WITH A HEALTH CARE SERVICES ORGANIZATION TO PROVIDE COVERAGE IN THE EVENT OF THE FAILURE OF THE HEALTH CARE SERVICES ORGANIZATION TO MEET ITS OBLIGATIONS.

C. ANY SUCH INSURER OR HOSPITAL OR MEDICAL SERVICE CORPORATION WHICH IS IN COMPLIANCE WITH TITLE 20 GENERALLY AND WHICH IN THE JUDGMENT OF THE DIRECTOR SHALL HAVE COMPLIED WITH PROVISIONS OF THIS TITLE THAT ARE COMPARABLE TO OR MORE RESTRICTIVE THAN THE PROVISIONS OF THIS ARTICLE SHALL BE DEEMED TO HAVE SATISFIED ALL PROVISIONS OF THIS ARTICLE AND SHALL NOT BE REQUIRED TO COMPLY ALSO IN ANY SPECIFIC MANNER WITH THIS ARTICLE EXCEPT SECTIONS 20-1051 THROUGH 20-1054 AS THE DIRECTOR SHALL DEEM APPROPRIATE, AND EXCEPT AS PER RULES OR REGULATIONS THE DIRECTOR MAY PROMULGATE TO SAFEGUARD PUBLIC HEALTH OR SAFETY.

20-1064. **Examination**

THE DIRECTOR MAY CONDUCT AN EXAMINATION OF THE AFFAIRS OF ANY HEALTH CARE SERVICES ORGANIZATION AS OFTEN AS HE DEEMS IT NECESSARY FOR THE PROTECTION OF THE INTERESTS OF THE PEOPLE OF THIS STATE AND FOR THIS PURPOSE SHALL HAVE THE POWERS SET FORTH IN THIS TITLE WITH RESPECT TO EXAMINATIONS OF INSURERS.

20-1065. **Suspension or revocation of certificate of authority**

A. THE DIRECTOR MAY SUSPEND OR REVOKE ANY CERTIFICATE OF AUTHORITY ISSUED TO A HEALTH CARE SERVICES ORGANIZATION UNDER THIS ARTICLE IF HE FINDS THAT ANY OF THE FOLLOWING CONDITIONS EXIST:

1. THE HEALTH CARE SERVICES ORGANIZATION IS OPERATING SIGNIFICANTLY IN CONTRAVENTION OF ITS BASIC ORGANIZATIONAL DOCUMENTS OR IN A MANNER CONTRARY TO THAT DESCRIBED IN, AND REASONABLY INFERRED FROM, ANY OTHER INFORMATION SUBMITTED UNDER SECTION 20-1053.

2. THE HEALTH CARE SERVICES ORGANIZATION ISSUES EVIDENCES OF COVERAGE WHICH DO NOT COMPLY WITH THE REQUIREMENTS OF SECTION 20-1057.

3. THE HEALTH CARE PLAN DOES NOT PROVIDE OR ARRANGE FOR BASIC HEALTH CARE SERVICES.

4. THE HEALTH CARE SERVICES ORGANIZATION CAN NO LONGER BE EXPECTED TO MEET ITS OBLIGATIONS TO ENROLLEES OR PROSPECTIVE ENROLLEES.

5. THE HEALTH CARE SERVICES ORGANIZATION, OR ANY AUTHORIZED PERSON ON ITS BEHALF, HAS ADVERTISED OR MERCHANDISED ITS SERVICES IN AN UNTRUE, MISLEADING, DECEPTIVE OR UNFAIR MANNER.

6. THE HEALTH CARE SERVICES ORGANIZATION HAS FAILED TO SUBSTANTIALLY COMPLY WITH THIS ARTICLE.

B. WHEN THE CERTIFICATE OF AUTHORITY OF A HEALTH CARE SERVICES ORGANIZATION IS SUSPENDED THE HEALTH CARE SERVICES ORGANIZATION SHALL NOT, DURING THE PERIOD OF SUCH SUSPENSION, ENROLL ANY ADDITIONAL ENROLLEES EXCEPT NEWBORN CHILDREN OR OTHER NEWLY ACQUIRED DEPENDENTS OF EXISTING ENROLLEES AND SHALL NOT ENGAGE IN ANY ADVERTISING OR SOLICITATION WHATSOEVER.

C. WHEN THE CERTIFICATE OF AUTHORITY OF A HEALTH CARE SERVICES ORGANIZATION IS REVOKED, SUCH ORGANIZATION SHALL PROCEED, IMMEDIATELY FOLLOWING THE EFFECTIVE DATE OF THE ORDER OF REVOCATION, TO CONCLUDE ITS AFFAIRS AND SHALL CONDUCT NO FURTHER BUSINESS EXCEPT AS MAY BE ESSENTIAL TO THE ORDERLY CONCLUSION OF THE AFFAIRS OF SUCH ORGANIZATION. IT SHALL ENGAGE IN NO FURTHER ADVERTISING OR SOLICITATION. THE DIRECTOR, BY WRITTEN ORDER, MAY PERMIT SUCH FURTHER OPERATION OF THE ORGANIZATION AS HE MAY FIND TO BE IN THE BEST INTEREST OF ENROLLEES, TO THE END THAT ENROLLEES SHALL BE AFFORDED THE GREATEST PRACTICAL OPPORTUNITY TO OBTAIN CONTINUING HEALTH CARE COVERAGE.

D. NOTWITHSTANDING THE PROVISIONS OF SUBSECTIONS B AND C, A HEALTH CARE SERVICES ORGANIZATION WHICH HAS HAD ITS CERTIFICATE OF AUTHORITY DENIED, SUSPENDED OR REVOKED SHALL BE ENTITLED TO A HEARING PURSUANT TO TITLE 41, CHAPTER 6, ARTICLE 1, AND TO JUDICIAL REVIEW PURSUANT TO TITLE 12, CHAPTER 7, ARTICLE 6.

20-1066. **Rehabilitation, liquidation, or conservation of health maintenance organization**

ANY REHABILITATION, LIQUIDATION, OR CONSERVATION OF A HEALTH CARE SERVICES ORGANIZATION SHALL BE DEEMED TO BE THE REHABILITATION, LIQUIDATION, OR CONSERVATION OF AN INSURER AND SHALL BE CONDUCTED AS PROVIDED IN CHAPTER 2, ARTICLE 4 OF THIS TITLE.

20-1067. **Solicitation**

SOLICITATION BY HEALTH CARE SERVICES ORGANIZATIONS TO EDUCATE MEMBERS AND POTENTIAL MEMBERS ON THE COVERAGE AND OPERATION OF THE ORGANIZATION'S HEALTH PLAN SHALL NOT BE CONSTRUED TO BE A VIOLATION OF ANY PROVISIONS OF LAW RELATING TO SOLICITATION OR ADVERTISING BY HEALTH CARE PROVIDERS, PROVIDED SUCH SOLICITATION: (1) IS APPROVED IN ADVANCE BY THE DIRECTOR; (2) DOES NOT IDENTIFY THE HEALTH PROVIDERS NOR DESCRIBE THEIR PROFESSIONAL QUALIFICATIONS, EXCEPT UPON THE REQUEST OF THE PERSON BEING SOLICITED; (3) DOES NOT DESCRIBE THE PROFESSIONAL EXPERIENCE OR ATTAINMENTS OF SUCH PROVIDERS INDIVIDUALLY OR AS A GROUP OR CONTAIN LANGUAGE THAT DIRECTLY OR INDIRECTLY STATES, EVALUATES OR LAUDS THE PROFESSIONAL COMPETENCE, SKILLS OR REPUTATIONS OF SUCH PROVIDERS; AND (4) SHALL NOT OTHERWISE CAUSE ANY OF SUCH PROVIDERS TO VIOLATE ANY PROFESSIONAL ETHICS OR LAWS PROHIBITING THE SOLICITATION OF PATIENTS.

20-1068. **Statutory construction and relationship to other laws**

EXCEPT AS THEY RELATE TO AN INSURER OR A HOSPITAL OR MEDICAL SERVICE CORPORATION, THE PROVISIONS OF THIS TITLE ARE APPLICABLE TO HEALTH CARE SERVICES ORGANIZATIONS ONLY AS PROVIDED IN THIS ARTICLE AND CHAPTER ONE.

Sec. 2. **Emergency**

To preserve the public peace, health and safety it is necessary that this act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.

Approved by the Governor–May 7, 1973

Filed in the Office of the Secretary of State–May 7, 1973

CHAPTER 129

House Bill 2061

AN ACT

RELATING TO PROFESSIONS AND OCCUPATIONS; DEFINING "FRACTIONAL INTEREST" IN CERTAIN LANDS; REQUIRING PERMANENT ACCESS TO SUBDIVIDED LANDS; AND AMENDING SECTIONS 32-2101, 32-2181 AND 32-2185.02, ARIZONA REVISED STATUTES.

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

Section 1. Section 32-2101, Arizona Revised Statutes, is amended to read:

32-2101. **Definitions**

In this chapter, unless the context otherwise requires:

1. "Associate broker" means a person who has qualified as a broker and whose license permits him to act only on behalf of and in the employ of a licensed corporation or partnership qualified under the provisions of this chapter.

2. "Blanket encumbrance" means any mortgage, deed of trust or any other encumbrance or lien, securing or evidencing the payment of money and affecting more than one lot or parcel of subdivided land, or an agreement affecting more than one such lot or parcel by which the subdivider holds such subdivision under an option, contract to sell or trust agreement. Blanket encumbrance does not include taxes and assessments levied by public authority.

3. "Broker", when used without modification, means a person licensed as a broker under any of the provisions of this chapter.

4. "Cemetery" or "cemetery property" means any one, or combination of more than one, of the following, in a place used, or intended to be used, and dedicated for cemetery purposes:

(a) A burial park, for earth interments.

(b) A mausoleum, for crypt or vault entombments.

(c) A crematory, or a crematory and columbarium, for cinerary interments.

5. "Cemetery broker" means a person other than a real estate broker or real estate salesman who, for another, for compensation:

(a) Sells, leases or exchanges cemetery property or interment services of or for another, or on his own account.

(b) Offers for another or for his own account to buy, sell, lease or exchange cemetery property or interment services.

(c) Negotiates the purchase and sale, lease or exchange of cemetery property or interment services.

(d) Negotiates the purchase or sale, lease or exchange, or lists or solicits, or negotiates a loan on or leasing of cemetery property or interment services.

6. "Cemetery salesman" means a natural person, other than a real estate broker or real estate salesman, engaged by or on behalf of a licensed broker to perform any act or transaction included in the definition of cemetery broker.

7. "Commission" means the state real estate commission.

8. "Commissioner" means the state real estate commissioner.

9. "Compensation" means any fee, commission, salary, money or other valuable consideration for services rendered or to be rendered as well as the promise of consideration whether contingent or not.

10. "Department" means the state real estate department.

11. "Designated broker" means the officer or member of a corporation or partnership licensed under any of the provisions of this chapter designated under the provisions of section 32-2125 by such corporation or partnership to act in its behalf as broker. A DESIGNATED BROKER MAY ONLY ACT AS A BROKER FOR OR ON BEHALF OF THE CORPORATION OR PARTNERSHIP BY WHOM HE HAS BEEN DESIGNATED AS A BROKER. HE MAY NOT HOLD ANY OTHER LICENSE AS A BROKER.

12. "Fractional interest" means an undivided interest in improved or unimproved land, lots or parcels of any size ~~in which,~~ CREATED for the purpose of sale or lease~~, such interest is created and such interest is~~ AND evidenced by a receipt, certificate, deed or other document conveying such interest. UNDIVIDED INTERESTS IN LAND, LOTS OR PARCELS CREATED IN THE NAMES OF A HUSBAND AND WIFE AS COMMUNITY PROPERTY, JOINT TENANTS OR TENANTS IN COMMON, OR IN THE NAMES OF OTHER PERSONS WHO, ACTING IN CONCERT TOGETHER AS PART OF A SINGLE TRANSACTION, ACQUIRE SUCH INTERESTS WITHOUT A PURPOSE TO DIVIDE SUCH INTERESTS FOR PRESENT OR FUTURE SALE OR LEASE SHALL BE DEEMED TO CONSTITUTE ONLY ONE FRACTIONAL INTEREST.

13. "Improved lot or parcel" means a lot or parcel of a subdivision upon which lot or parcel there is a residential, commercial or industrial building or concerning which a contract has been executed to erect such an improvement.

14. "Inactive license" means a license which has been returned to the commissioner and is being held by the commissioner on an inactive status during the current license year.

15. "Lease" or "leasing" includes any lease, whether it is the sole, the principal or any incidental part of a transaction.

16. "Licensee" means a person to whom a license for the current license year as broker or salesman has been granted under any provision of this chapter.

17. "License year" means the twelve-month period beginning with the date of original issue or renewal of a particular license.

18. "Member" means a member of the real estate commission.

19. "Perpetual or endowed-care cemetery" means a cemetery wherein lots or other burial spaces are sold or transferred under the representation

that the cemetery will receive "perpetual" or "endowed" care as herein defined, free of further cost to the purchaser after payment of the original purchase price for the lot or burial space.

20. "Perpetual-care" or "endowed-care" means the maintenance and care of all places where interments have been made, of the trees, shrubs, roads, streets and other improvements and embellishments contained within or forming a part of the cemetery. This shall not include the maintenance or repair of monuments, tombs, copings or other man-made ornaments as associated with individual burial spaces.

21. "Person" means any individual, corporation, partnership, company and any other form of multiple organization for carrying on business, foreign or domestic.

22. "Real estate" includes leasehold-interests and any other interests or estates in land, whether corporeal, incorporeal, freehold or nonfreehold, regardless of whether located in this state.

23. "Real estate broker" means a person, other than a salesman, who, for another and for compensation:

(a) Sells, exchanges, purchases, rents or leases real estate.

(b) Offers to sell, exchange, purchase, rent or lease real estate.

(c) Negotiates, offers, attempts or agrees to negotiate the sale, exchange, purchase, rental or leasing of real estate.

(d) Lists, offers, attempts or agrees to list real estate for sale, lease or exchange.

(e) Auctions, offers, attempts or agrees to auction real estate.

(f) Buys, sells, offers to buy or sell or otherwise deals in options on real estate or improvements thereon.

(g) Collects, offers, attempts or agrees to collect rent for the use of real estate.

(h) Advertises or holds himself out as being engaged in the business of buying, selling, exchanging, rental or leasing real estate or counseling or advising thereon.

(i) Assists or directs in the procuring of prospects, calculated to result in the sale, exchange, leasing or rental of real estate.

(j) Assists or directs in the negotiation of any transaction calculated or intended to result in the sale, exchange, leasing or rental of real estate.

(k) Negotiates, or offers, attempts or agrees to negotiate a loan secured or to be secured by a mortgage or other encumbrance upon or transfer of real estate subject to the provisions of subsection C of section 32-2155. The provisions of this subdivision do not apply to mortgage brokers as defined in and subject to the provisions of title 6, chapter 9, article 1.

(l) Engages in the business of assisting or offering to assist another in filing an application for the purchase or lease of, or in locating or entering upon lands owned by the state or federal government.

(m) Claims, demands, charges, receives, collects or contracts for the collection of an advance fee in connection with any employment enumerated in this section, or selling kits connected therewith.

(n) Performing any of the foregoing acts as an employee of, or in behalf of, the owner of real estate, or interest therein, or improvements affixed thereon, for compensation.

24. "Real estate sales contract" means an agreement in which one party agrees to lease or convey title to real estate to another party upon the satisfaction of specified conditions set forth in the contract.

25. "Real estate salesman" means a natural person engaged by or on behalf of a licensed real estate broker to perform any act or participate in any transaction in a manner included in the definition of real estate broker subject to the provisions of subsection C of section 32-2155.

26. "Sale" or "lease" includes every disposition, transfer or offer or attempt to dispose of or transfer land in a subdivision, or an interest or estate therein, by a subdivider or his agent, including the offering of such property as a prize or gift if a monetary charge or consideration for whatever purpose is required by the subdivider or his agent.

27. "Salesman", when used without modification, means a natural person licensed as a salesman under any of the provisions of this chapter.

28. "Subdivider" means any person who causes land to be subdivided into a subdivision for himself or for others, or who undertakes to develop a subdivision, but does not include a public agency or officer authorized by law to create subdivisions.

29. "Subdivision" or "subdivided lands" means improved or unimproved land or lands divided or proposed to be divided for the purpose of sale, lease, or for cemetery purposes, whether immediate or future, into four or more lots, parcels or fractional interests. This paragraph shall not apply to the division or proposed division of land located in the state of Arizona into lots or parcels each of which is, or will be, thirty-six acres or more in area including to the center line of dedicated roads or easements, if any, contiguous to the lot or parcel.

30. "Trustee" means:

(a) A person designated under section 32-2194.11 to act as a trustee for an endowment-care cemetery fund.

(b) A person holding bare legal title to real property under a subdivision trust. A trustee shall not be deemed to be a developer, subdivider, broker or salesman within the provisions of this chapter.

31. "Unimproved lot or parcel" means a lot or parcel of a subdivision which is not an improved lot or parcel.

Sec. 2. Section 32-2181, Arizona Revised Statutes, is amended to read:

32-2181. **Notice to commissioner of intention to subdivide lands; fractional interests; exceptions**

A. Before offering subdivided lands for sale or lease, the owner, agent or subdivider shall notify the commissioner in writing of his intention. The notice shall contain:

1. Name and address of owner.

2. Name and address of subdivider.

3. Legal description and area of land.

4. A true statement of the condition of the title to the land, including all encumbrances thereon.

5. The terms and conditions on which it is intended to dispose of the land, together with copies of any real estate sales contract, conveyance, lease, assignment or other instrument intended to be used, and such other information the owner, his agent or subdivider desires to present.

6. A map of the subdivision which has been filed in the office of the county recorder in the county in which the subdivision is located.

7. A brief but comprehensive statement describing the land on and the locality in which the subdivision is located.

8. A statement of the provisions that have been made for ~~legal~~ PERMANENT access and provisions, if any, for health department approved sewage and solid waste collection and disposal and public utilities in the proposed subdivision, including water, electricity, gas and telephone facilities.

9. A statement as to the location of the nearest public common and high schools available for the attendance of school age pupils residing on the subdivision property.

10. A statement of the use or uses for which the proposed subdivision will be offered.

11. A statement of the provisions, if any, limiting the use or occupancy of the parcels in the subdivision.

12. The name and business address of the principal broker selling or leasing, within this state, lots or parcels in the subdivision.

13. A true statement of the approximate amount of indebtedness which is a lien on the subdivision or any part thereof and which was incurred to pay for the construction of any on-site or off-site improvement, or any community or recreational facility.

14. A true statement or reasonable estimate, if applicable, of the amount of any indebtedness which has been or is proposed to be incurred by an existing or proposed special district, entity, taxing area or assessment district, within the boundaries of which, the subdivision, or any part thereof is located, and which is to pay for the construction or installation of any improvement or to furnish community or recreational facilities to such subdivision, and which amounts are to be obtained by ad valorem tax or assessment, or by a special assessment or tax upon the subdivision or any part thereof.

15. A true statement as to the approximate amount of annual taxes, special assessments or fees to be paid by the buyer for the proposed annual maintenance of common facilities in the subdivision.

16. A STATEMENT OF THE PROVISIONS FOR EASEMENTS FOR PERMANENT ACCESS FOR IRRIGATION WATER WHERE APPLICABLE.

B. A person or a group of persons acting in concert may not avoid the provisions of this chapter by offering for sale or lease land designated or advertised as a common unit or by a common name in individual offerings. Any such offering as a part of a common promotional plan is subject to the provisions of this article.

C. A creation of four or more fractional interests in improved or unimproved land, lots or parcels of any size shall subject such land to the provisions of this article except when:

1. EACH OF THE FRACTIONAL INTERESTS REPRESENTS, ON A PARTITION BASIS, THIRTY-SIX ACRES OR MORE IN AREA OF LAND LOCATED IN THIS STATE INCLUDING TO THE CENTER LINE OF DEDICATED ROADS OR EASEMENTS, IF ANY, CONTIGUOUS TO THE LAND IN WHICH SUCH INTERESTS ARE HELD.

~~1.~~ 2. The fractional interests are the result of a foreclosure sale, THE EXERCISE BY A TRUSTEE UNDER A DEED OF TRUST OF A POWER OF SALE OR THE GRANT OF A DEED IN LIEU OF FORECLOSURE.

~~2.~~ 3. The fractional interests are created by a valid order or decree of a court OR BY OPERATION OF LAW.

~~3.~~ 4. The fractional interests ~~consists of interest~~ CONSIST OF INTERESTS in any oil, gas or mineral lease, permit, claim or right therein and such interests are regulated as securities by the United States or by this state.

~~4.~~ 5. The fractional interests are registered as securities under the laws of the United States or the laws of this state or are exempt transactions under the provisions of sections 44-1844, 44-1845, or 44-1846.

~~5.~~ 6. The commissioner by special order exempts offerings or dispositions of any fractional interests from compliance with the provisions of this article upon written petition and upon a showing satisfactory to the commissioner that compliance is not essential to the public interest or for the protection of buyers.

D. IF THE ARIZONA WATER COMMISSION, PURSUANT TO SECTION 45-513, REPORTS AN INADEQUATE ON-SITE SUPPLY OF WATER TO MEET THE NEEDS PROJECTED BY THE DEVELOPER OR IF NO WATER IS AVAILABLE THE STATE REAL ESTATE COMMISSIONER SHALL REQUIRE THAT ALL PROMOTIONAL MATERIAL AND CONTRACTS FOR SALE OF LOTS IN SUBDIVISIONS APPROVED BY THE COMMISSIONER ADEQUATELY DISPLAY THE ARIZONA WATER COMMISSION'S REPORT OR THE DEVELOPER'S BRIEF SUMMARY THEREOF AS APPROVED BY THE COMMISSIONER ON THE PROPOSED WATER SUPPLY FOR THE SUBDIVISION.

~~D.~~ E. The commissioner may require additional information he deems necessary by submitting a questionnaire to the owner, his agent or subdivider.

Sec. 3. Section 32-2185.02, Arizona Revised Statutes, is amended to read:

32-2185.02. **Permanent access to subdivided land**

A. No subdivided land may be sold without provision for ~~legal~~ PERMANENT access to the land.

B. Any sale of subdivided land which is without ~~legal~~ PERMANENT access is voidable by the purchaser.

Approved by the Governor–May 7, 1973

Filed in the Office of the Secretary of State–May 7, 1973

CHAPTER 130

House Bill 2112

AN ACT

RELATING TO PROFESSIONS AND OCCUPATIONS; PROVIDING FOR MEMBERSHIP AND QUALIFICATIONS OF BOARD OF ACCOUNTANCY; AMENDING LAWS RELATING TO CERTIFIED PUBLIC ACCOUNTANTS, AND AMENDING SECTIONS 32-701, 32-721, 32-723, 32-727, 32-729, 32-730, 32-733, 32-734, 32-741, 32-742 AND 32-747, ARIZONA REVISED STATUTES.

LAWS OF ARIZONA

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

Section 1. Section 32-701, Arizona Revised Statutes, is amended to read:

32-701. **Board of accountancy; membership**

A. There shall be a state board of accountancy which shall consist of ~~five members~~ FOUR CERTIFIED PUBLIC ACCOUNTANTS AND ONE PUBLIC MEMBER appointed by the governor. One member shall be appointed each year for a term of five years, to begin and end July 3, or until his successor is appointed and qualified. Not less than three members shall be in active public practice as certified public accountants. No more than one member shall be from any one accounting firm.

B. Members of the board shall be citizens and residents of the state, and FOUR shall be certified public accountants certified under the provisions of this chapter.

C. Vacancies occurring from any cause other than expiration of a term shall be filled by appointment by the governor for the unexpired term. No person who has served a complete term shall be eligible for reappointment until after the lapse of one year. Appointment to fill an unexpired term shall not be considered as a complete term.

D. THE VACANCY OCCURING BY EXPIRATION OF TERM ON JULY 3, 1974, SHALL BE FILLED BY APPOINTMENT OF A PUBLIC MEMBER WHO IS NOT A CERTIFIED PUBLIC ACCOUNTANT.

Sec. 2. Section 32-721, Arizona Revised Statutes, is amended to read:

32-721. **Certified public accountant; qualifications**

A. A certificate of certified public accountant shall be issued by the board to any person who:

1. HAS ATTAINED THE AGE OF EIGHTEEN YEARS, is of good moral character, and who is a resident of this state.

2. Has not been convicted of a violation of this chapter.

3. Has met the requirements to take the examination provided in section 32-723.

4. Has, within a period of time specified in the rules of the board, obtained a grade of seventy-five per cent in each subject of the examination for certified public accountant in this state, or in any state, territory or possession, which uses the questions and grading facilities of the American institute of certified public accountants.

~~5. Further qualifies under one of the following:~~

~~(a)~~ 5. Has been employed as a full-time staff accountant, ~~in the office of a certified public accountant,~~ either before or after passing the examination for certified public accountant, for a MINIMUM period of two years ~~or has had experience determined by the board to be the equivalent thereof and under regulations which shall be adopted by the board~~ IN THE OFFICE OF A CERTIFIED PUBLIC ACCOUNTANT OR PUBLIC ACCOUNTANT, WITHIN PRIVATE INDUSTRY OR A GOVERNMENT AGENCY, WHICH EMPLOYMENT SHALL HAVE EXPOSED THE APPLICANT TO AND PROVIDED HIM WITH EXPERIENCE IN THE PRACTICE OF ACCOUNTING, INCLUDING EXAMINATIONS OF FINANCIAL STATEMENTS AND REPORTING THEREON, OR

~~(b) Has been employed as a full time staff accountant in the office of a public accountant in this state either before or after passing the examination for certified public accountant for a period of four years or has had experience determined by the board to be the equivalent thereof and under regulations which shall be adopted by the board.~~

~~(c)~~ Has completed one year of the experience AS SET FORTH HEREIN ~~required in subsection A, paragraph 5, subdivision (a), of this section, or two years of the experience required in subsection A, paragraph 5, subdivision (b), of this section,~~ and holds a master's, or more advanced~~,~~ degree in accounting or business administration from a college or university recognized by the board, provided that the academic transcript showing completion of the degree program shall include a minimum of thirty semester hours in accounting, business administration, economics and such related subjects as the board shall determine to be appropriate, of which a minimum of twelve semester hours of credit shall be in graduate-level accounting courses.

B. The provisions of subsection A of this section shall not apply to a reinstatement, as provided in section 32-748.

Sec. 3. Section 32-723, Arizona Revised Statutes, is amended to read:

32-723. **Certified public accountant examination; qualifications**

A. Examination of persons applying for certificates under this chapter shall be held within the state, as the board decides, at least once each year. The time and place for holding an examination shall be advertised for not less than three consecutive days, not less than thirty days prior to the date of the examination, in at least one daily newspaper of general circulation published in the state.

B. No person shall be permitted to take the examination unless he qualifies under one of the following:

1. He presents ~~an academic transcript showing the successful completion of the work~~ SATISFACTORY EVIDENCE THAT HE HAS SUCCESSFULLY COMPLETED, OR WILL SUCCESSFULLY COMPLETE WITHIN A PERIOD OF NINETY DAYS AFTER THE EXAMINATION, THE COURSES required for a bachelor's degree from the universities or state colleges of this state, or from a college or university maintaining standards comparable to those of the universities or state colleges of this state. The academic transcript presented shall include a minimum of twenty-four semester hours in accounting courses of which twelve semester hours must be in intermediate accounting theory, or advanced accounting, or cost accounting, or auditing theory and practice, or income taxes, or any combination thereof, or advanced accounting courses equivalent thereof, and shall include an additional eighteen semester hours in related economics and business administration courses, or courses satisfactory to the board of accountancy. As used in this paragraph, related courses refer to economics, corporation finance, business law, mathematics and advanced English composition, or other courses closely related to the subject of accounting and satisfactory to the board.

2. He presents ~~an academic transcript showing the successful completion of~~ SATISFACTORY EVIDENCE THAT HE HAS SUCCESSFULLY COMPLETED, OR WILL SUCCESSFULLY COMPLETE WITHIN A PERIOD OF NINETY DAYS AFTER THE EXAMINATION, the courses required for a bachelor's degree and passes an examination prepared by the accounting or other faculties of the state universities, under the supervision of the board. Such examination shall be in the subjects of elementary and intermediate accounting theory and the related subjects of principles of economics, business law, English composition and business mathematics. The examinations shall have a difficulty equivalent to the final examinations prepared for these respective courses in the universities and state colleges.

3. HE IS THE HOLDER OF A VALID AND UNREVOKED CERTIFICATE AS A PUBLIC ACCOUNTANT ISSUED BY THE STATE OF

ARIZONA AND MAKES APPLICATION TO TAKE ANY OF THE EXAMINATIONS OFFERED PRIOR TO DECEMBER 31, 1976.

C. The subjects in which applicants may be examined are:

1. Theory of accounts.

2. Accounting practice.

3. Auditing.

4. Commercial law.

5. Such other subjects as the board may adopt.

D. All examinations provided for in this section shall be in writing upon forms provided by the board and may be held under the joint auspices and control of the board and the American institute of certified public accountants. The board may make such use of all or any part of the uniform certified public accountants' examination and advisory grading service, or both, as it deems appropriate to assist it in performing its duties hereunder.

E. All examination papers shall be graded by a majority of the board or by the board of examiners of the American institute of certified public accountants. Each subject shall be graded separately. Within a reasonable time after the examination the board shall notify each candidate of his grading. All examination papers shall be preserved for one year after the candidates have been notified of their grading and any candidate shall, upon written request to the board within such year, have access to his examination papers.

F. A candidate who successfully passes an examination in the subject of accounting practice in its entirety or in any two OR MORE subjects shall be deemed to have received a "condition" and shall have the right to be re-examined in the remaining subjects at subsequent examinations held by the board, and if he passes in the remaining subjects within a period of time specified in the rules of the board he shall be considered to have passed the examination in its entirety, except that examinations held during the time a candidate is temporarily in the armed forces shall not be counted unless the candidate sits for such examinations.

G. Any candidate who has successfully passed AN EXAMINATION IN THE SUBJECT OF ACCOUNTING PRACTICE IN ITS ENTIRETY OR

ANY two or more subjects ~~in the examination for certified public accountant~~ in any state which uses the questions and grading facilities of the American institute of certified public accountants and whose requirements to take the examination are as high as those required in this state shall be deemed to have received a "condition" and may be given credit in his Arizona examination for those subjects in which he has ~~so~~ passed, provided such credits are still in effect ~~and are recognized as a "condition" by the state in which they were obtained,~~ AS DETERMINED BY THE RULES OF THE BOARD, and he may have the right to be re-examined only in the remaining subjects at subsequent examinations held by the board and if he passes in the remaining subjects within a period of time specified in the rules of the board he shall be considered to have passed the examination in its entirety.

H. Any candidate who has taken two examinations and has failed to receive a "condition" may be required, before being accepted for further examinations, to furnish evidence satisfactory to the board that he has made further diligent study in the failed subject or subjects.

I. The board may permit an Arizona applicant for the Arizona examination to take the examination for certified public accountant outside of this state under the auspices and control of any other state board of accountancy and the American institute of certified public accountants giving an examination for certified public accountants.

J. The board may make rules and regulations regarding the scope of the examinations, the method and time of filing applications and all other rules and regulations necessary to carry into effect the purposes of this section.

Sec. 4. Section 32-727, Arizona Revised Statutes, is amended to read:

32-727. **Certified public accountant or public accountant; reciprocity; qualifications**

A. The board may waive the examination of and may issue a certificate of certified public accountant or public accountant to any person who is the holder of a valid and unrevoked certificate, from the state or foregin country of original issue, as a certified public accountant or public accountant issued by a state or foregin country which extends the same privilege of reciprocity to certified public accountants or public accountants of this state, PROVIDED THAT THE APPLICANT MEETS THE REQUIREMENTS SET FORTH IN SECTION 32-721, SUBSECTION A, PARAGRAPHS 1, 2 AND 5.

B. Nothing in this section shall be construed as invalidating the certificate to practice as a certified public accountant or the certificate of authority to practice as a public accountant issued under prior laws of this state.

Sec. 5. Section 32-729, Arizona Revised Statutes, is amended to read:

32-729. **Examination and certificate fee**

The board shall establish and collect a uniform fee from each applicant for each examination held pursuant to section 32-723, such fees to be determined by the board to cover reasonable costs of the examination, and from each applicant for a certificate to be issued under section 32-727. No additional fee shall be required from an applicant entitled to a certificate after having successfully passed the examination. If an applicant for examination is refused permission to take the examination, or if an application for a certificate by reciprocity is rejected by the board, ONE-HALF OF the fee shall be returned to the applicant.

Sec. 6. Section 32-730, Arizona Revised Statutes, is amended to read:

32-730. **Annual registration**

A. Except for the provisions set forth in subsection B ~~of this section~~, the board shall ~~in December~~ each year require every certified public accountant, every public accountant, ~~and~~ every partnership ~~thereof,~~ AND EVERY PROFESSIONAL CORPORATION to register with the board and pay a registration fee of not less than five nor more than fifty dollars NOT LATER THAN DECEMBER 31. ~~for the privilege of practicing in this state for the following year.~~ In the administration of this section, registrants for less than one year shall be charged on a pro rata quarterly basis for the remainder of the year registered.

B. The registration fee for certified public accountants and public accountants may be reduced or waived by the board for registrants who have attained the age of sixty-five or who have become totally disabled to a degree precluding the continuance of their practice for six months or more prior to the due date of any renewal fee.

Sec. 7. Section 32-733, Arizona Revised Statutes, is amended to read:

32-733. **Registration of offices**

Each office established or maintained in this state for the practice of public accounting in this state by a certified public accountant, ~~or~~

partnership OR PROFESSIONAL CORPORATION COMPOSED of certified public accountants, or by a public accountant, ~~or a~~ partnership OR PROFESSIONAL CORPORATION COMPOSED of public accountants, shall be registered annually under this chapter with the board but no fee shall be charged for such registration. The board shall by regulation prescribe the procedure to be followed in effecting such registrations.

Sec. 8. Section 32-734, Arizona Revised Statutes, is amended to read:

32-734. **Professional corporations; qualifications**

Professional corporations COMPOSED OF CERTIFIED PUBLIC ACCOUNTANTS OR PUBLIC ACCOUNTANTS shall ~~be subject to~~ MEET the ~~same~~ requirements ~~as certified public accountant partnerships~~ OF TITLE 10, CHAPTER 3 AND ANY ADDITIONAL NONCONFLICTING REQUIREMENTS contained in ~~section~~ SECTIONS 32-731 AND 32-732. Wherever in section 32-731 OR 32-732 the word "partner" appears, such wording shall apply to ANY shareholder, officer, ~~or~~ director OR EMPLOYEE of a professional corporation ~~or any employee of such corporation~~ who holds an Arizona certificate. Wherever in section 32-731 OR 32-732 the word "partnership" appears, such wording shall apply to a professional corporation.

Sec. 9. Section 32-741, Arizona Revised Statutes, is amended to read:

32-741. **Revocation or suspension of certificate; certified public accountants; public accountants**

A. After notice and hearing, the board may revoke or suspend any certificate granted under this chapter, or may censure the holder of any certificate for any one or any combination of the following causes:

1. Conviction of a felony under the laws of any state or of the United States WHERE CIVIL RIGHTS HAVE NOT BEEN RESTORED PURSUANT TO TITLE 13, CHAPTER 6, ARTICLE 11, OR OTHER APPLICABLE RECOGNIZED JUDICIAL OR GUBERNATORIAL ORDER.

2. Conviction of any crime, an essential element of which is dishonesty, deceit or fraud.

3. Fraud or deceit in obtaining a certificate as a certified public accountant or in obtaining a certificate as a public accountant under this chapter.

4. Dishonesty, fraud or gross negligence in the practice of public accounting.

5. Cancellation, revocation or suspension of certificate or other authority to practice or refusal to renew the certificate or other authority to practice as a certified public accountant by any other state or foreign country.

6. Violation of any of the provisions of this chapter.

7. Wilful violation of a rule or regulation promulgated by the board under the authority granted by this chapter.

8. Suspension or revocation for cause of the right to practice before any governmental body or agency.

B. The board shall suspend, without notice or hearing, the certificate of any certified public accountant or the certificate of any public accountant who ~~fail~~ FAILS to register and pay the annual registration fee as required by ~~law.~~ SECTION 32-730. Terms of a suspension issued under this rule shall include a provision that the suspension shall be vacated when the registrant has paid all past due fees and penalties not to exceed seventy-five dollars. The board may waive the collection of any fee or penalty after suspension under conditions which the board deems justifiable.

Sec. 10. Section 32-742, Arizona Revised Statutes, is amended to read:

32-742. **Revocation or suspension of certificate; partnerships; professional corporations**

A. After notice and hearing, as provided in section 32-743, the board shall revoke the ~~certificate and the~~ registration to practice public accounting, of a partnership OR PROFESSIONAL CORPORATION if at any time it does not have all the qualifications prescribed by this chapter.

B. After notice and hearing, as provided in section 32-743, the board may revoke or suspend the ~~certificate, and the~~ registration to practice public accounting of a partnership OR PROFESSIONAL CORPORATION or may censure the ~~holder of any certificate~~ REGISTRANT for any of the causes enumerated in section 32-741, subsection A, or for any of the following additional causes:

1. The revocation or suspension of any certificate of any ~~partner~~

SHAREHOLDER, OFFICER, DIRECTOR OR EMPLOYEE OF A PROFESSIONAL CORPORATION, OR PARTNER OR EMPLOYEE OF A PARTNERSHIP.

2. The cancellation, revocation, suspension or refusal to renew the authority of the partnership or any partner thereof to practice public accounting in any other state for any cause other than failure to pay an annual registration fee in such other state.

C. The board shall suspend, without notice or hearing, the ~~certificate~~ REGISTRATION TO PRACTICE PUBLIC ACCOUNTING of any partnership OR PROFESSIONAL CORPORATION which fails to register and pay the annual registration fee as required by section 32-730. TERMS OF A SUSPENSION ISSUED UNDER THIS RULE SHALL INCLUDE A PROVISION THAT THE SUSPENSION SHALL BE VACATED WHEN THE REGISTRANT HAS PAID ALL PAST DUE FEES AND PENALTIES NOT TO EXCEED SEVENTY DOLLARS. THE BOARD MAY WAIVE THE COLLECTION OF ANY FEE OR PENALTY AFTER SUSPENSION UNDER CONDITIONS WHICH THE BOARD DEEMS JUSTIFIABLE.

Sec. 11. Section 32-747, Arizona Revised Statutes, is amended to read:

32-747. **Unlawful use of designation or abbreviation; penalty**

A. A person who has received from the board a certificate to practice as a certified public accountant, or as a public accountant issued under the laws of the state, shall be known as a "certified public accountant" or "public accountant", in accordance with his certificate and he may also use the abbreviation "C.P.A." or "P.A.", in accordance with his certificate. No other person, corporation or partnership shall assume or use any such title, designation or abbreviation or any other title, designation, sign, card or device tending to indicate that the person, corporation, partnership or firm using it is authorized to practice public accounting or is a certified public accountant or a public accountant in this state.

B. No person, corporation or partnership shall assume or use the title or designation "chartered accountant", "certified accountant", "enrolled accountant", "registered accountant", "licensed accountant", "certified tax accountant", "certified tax consultant" or any other title or designation likely or intended to be confused with "certified public accountant" or "public accountant", nor shall any person, CORPORATION or partnership assume or use any of the abbreviations "C.A.", "E.A.", "R.A.", "C.T.A.", "C.T.C.", "L.A." or similar abbreviations likely or intended to be confused with "C.P.A." or "P.A.", but a person qualfied

as a certified public accountant in this state who also holds a comparable title under the laws of another country may use such title in conjunction with the title "Certified Public Accountant", or "C.P.A.".

C. Nothing in this section shall apply to, or affect or limit the right to continuous use of a partnership name, or a modification thereof, by successor firms formed by the remaining partner or partners or added partner or partners even though the person whose names are included in the partnership name are not partners, but the successor firm shall conform to all other provisions of this chapter, NOR SHALL THE PROVISIONS OF THIS SECTION APPLY TO, OR AFFECT OR LIMIT THE RIGHT TO CONTINUOUS USE OF A PROFESSIONAL CORPORATION'S NAME AS PROVIDED PURSUANT TO THIS CHAPTER OR TITLE 10, CHAPTER 3.

D. No corporation shall be permitted to practice public accounting in this state, provided that this provision shall not apply to a professional corporation incorporated under the laws of this state or properly qualified to do business within this state and which is otherwise qualified to practice accounting under the provisions of this chapter.

E. If a person or firm violates this chapter, or represents himself or itself to the public as having received a certificate ~~of authority~~ OR REGISTRATION to practice after a certificate OR REGISTRATION has been revoked or suspended, the person or firm is guilty of a misdemeanor punishable by a fine of not less than fifty nor more than three hundred dollars, by imprisonment in the county jail for not less than one nor more than six months, or both, and each day an offense is committed shall constitute a separate offense.

F. The displaying or uttering by a person of a card, sign, advertisement or other printed, engraved or written instrument or device, bearing a person's name or a firm name intended to be confused with the words "certified public accountant" or "public accountant" or an abbreviation of either shall be prima facie evidence in a prosecution, proceeding or hearing brought under this section that the person or firm whose name is so displayed caused or procured the displaying or uttering of such card, sign, advertisement or other printed, engraved or written instrument or device.

Approved by the Governor--May 7, 1973

Filed in the Office of the Secretary of State--May 7, 1973

LAWS OF ARIZONA

CHAPTER 131

House Bill 2292

AN ACT

RELATING TO EDUCATION; ABOLISHING STATE AGENCY STATUS OF ARIZONA SCHOOL BOARD ASSOCIATION; AUTHORIZING SCHOOL DISTRICT MEMBERSHIP IN AND PAYMENTS OF ANNUAL FEES TO SCHOOL BOARD ASSOCIATION; AMENDING SECTION 15-442, ARIZONA REVISED STATUTES AND REPEALING TITLE 15, CHAPTER 1, ARTICLE 3, ARIZONA REVISED STATUTES.

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

Section 1. Section 15-442, Arizona Revised Statutes, is amended to read:

15-442. **General powers and duties**

A. The board of trustees shall:

1. Maintain the schools established by them. Schools shall be maintained for the attendance of each pupil for a period of not less than one hundred seventy-five school days, or its equivalent as approved by the superintendent of public instruction for a school approved for extended year operation, in each school year, and if the funds of the district are sufficient, for a longer period, and as far as practicable with equal rights and privileges.

2. Enforce the courses of study and select all textbooks used in the schools from the multiple lists determined and authorized by the state board of education pursuant to paragraph 18 of section 15-102 and purchase the same from the publishers under contracts negotiated by the state board as provided in this title. One-fourth of the amount budgeted for textbooks may be expended for teaching aids relating to the textbooks selected. District school funds may be budgeted and expended by the board for supplementary books, as contained in the lists prepared by the state board of education pursuant to subsection B of section 15-1101, and for such additional textbooks as may be necessary because of an extraordinary increase in enrollment or an act of God, provided that supplementary books shall not be purchased in such quantities as to take the place of the textbooks prescribed by paragraph 18 of section 15-102.

3. Visit every school in the district and examine carefully into its management, condition and needs.

4. Provide transportation for any child or children when deemed for the best interest of the district, whether within or without the district, county or state.

5. Exclude from schools all books, publications or papers of a sectarian, partisan or denominational character.

6. Manage and control the school property within its district.

7. Purchase school furniture, apparatus, equipment, library books and supplies for the use of the schools.

8. Rent, furnish, repair and insure the school property of the district.

9. Construct school buildings when directed to do so by a vote of the district.

10. Make in the name of the district conveyances of property belonging to the district and sold by the board.

11. Purchase or sell school sites when authorized by a vote of the district, but such authorization shall not necessarily specify the site to be purchased.

12. Construct, improve and furnish buildings used for school purposes when such buildings or premises are leased from the national park service, when directed to do so by a vote of the district.

13. Purchase school sites or construct, improve and furnish school buildings from the proceeds of the sale of or from insurance recoveries on school property only when directed to do so by a vote of the district.

B. The board may:

1. Expel pupils for misconduct.

2. Exclude from the primary grades children under six years of age.

3. Make such segregation of groups of pupils as it deems advisable.

4. Maintain such special schools during vacation as deemed necessary for the benefit of the pupils of the district.

5. Permit a superintendent, principal or their representatives to travel for a school purpose, as determined by a majority vote of the board. By unanimous vote the board may permit members of the board to travel for a school purpose. Any expenditure for travel and subsistence shall be as provided under the terms of title 38, chapter 4, article 2, and shall be a charge against the budgeted school district funds.

6. Rent such buildings as may be necessary provided the rental contract does not exceed one year.

7. Construct or provide in rural districts housing facilities for teachers which the board determines is necessary for the operation of the school.

8. Sell to the state, county or city any school property required for a public purpose, provided the sale of the property will not affect the normal operations of a school within the school district.

9. Apply the proceeds from the sale of school property or from insurance recoveries to the payment of any outstanding bonded indebtedness of the school district which is payable from the levy of taxes upon property within the district.

10. ANNUALLY BUDGET AND EXPEND AN AMOUNT EQUAL TO TWENTY-FIVE ONE HUNDRED THOUSANDTHS OF THE TOTAL OF THE CURRENT YEAR OPERATING BUDGET, BASED ON ALL BUDGET ITEMS EXCEPT CAPITAL OUTLAY, FOR THE PURPOSE OF BELONGING TO AND PAYING DUES IN AN ASSOCIATION OF SCHOOL DISTRICTS WITHIN THIS STATE. HOWEVER, THE ANNUAL AMOUNT BUDGETED FOR THE MEMBERSHIP OF ANY DISTRICT SHALL NOT EXCEED TEN THOUSAND NOR BE LESS THAN TWENTY-FIVE DOLLARS.

C. Except as provided in section 15-445, the board of trustees shall not enter into any lease-purchase agreement. A lease-purchase agreement may be continued until the termination date thereof if such agreement was entered into before and is still in effect on July 1, 1968.

Sec. 2. **Repeal**

Title 15, chapter 1, article 3, Arizona Revised Statutes, is repealed.

Sec. 3. **Effective date**

This act shall become effective on July 1, 1974.

Approved by the Governor–May 7, 1973

Filed in the Office of the Secretary of State–May 7, 1973

LAWS OF ARIZONA

CHAPTER 132

House Bill 2042

AN ACT

RELATING TO AMUSEMENTS AND SPORTS; PROVIDING CERTAIN REVISIONS RELATING TO BINGO GAMES; DEFINING CERTAIN TERMS; PROVIDING CLARIFICATION FOR CERTAIN REPORTS; PROVIDING FOR THE LICENSING AND REGULATION OF SMALL BINGO GAMES; PRESCRIBING PROCEDURES; AMENDING SECTIONS 5-401, 5-406 AND 5-407, ARIZONA REVISED STATUTES, AND AMENDING TITLE 5, CHAPTER 4, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 2.

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

Section 1. Section 5-401, Arizona Revised Statutes, is amended to read:

5-401. **Definitions**

In this chapter, unless the context otherwise requires:

1. "Charitable organization" means any organization, not for pecuniary profit, which is operated for the relief of poverty, distress or other condition of public concern within this state, and which has been so engaged for two years prior to making application for a license under this article.

2. "Chartered branch or lodge or chapter of a national or state organization" means any branch or lodge or chapter of a national or state qualified organization.

3. "Equipment" means the receptacle and numbered objects drawn from it, the master board upon which such objects are placed as drawn, the cards or sheets bearing numbers or other designations to be covered and the objects used to cover them, the board or signs, however operated, used to announce or display the numbers or designations as they are drawn, public address system, and all other articles essential to the operation, conduct and playing of bingo.

4. "Fraternal organization" means any organization within this state, except college and high school fraternities, not for pecuniary profit, which is a branch or lodge or chapter of a national or state organization and

exists for the common business, brotherhood, or other interests of its members and which NATIONAL OR STATE ORGANIZATION has so existed for two years IN ARIZONA prior to making application for a license under this article. THE TERM "FRATERNAL ORGANIZATION" SHALL ALSO INCLUDE ANY AUXILIARY OF SUCH ORGANIZATION.

5. "Gross receipts" means receipts from the sale of shares, tickets or rights in any manner connected with participation in a game of bingo or the right to participate therein, including any admission fee or charge, the sale of equipment or supplies, and all other miscellaneous receipts.

~~6. "Lawful purposes" means educational, charitable, patriotic or religious purposes which benefit an indefinite number of persons under the influence of education or religion, by relieving their bodies from disease, suffering, or constraint, by assisting them in establishing themselves in life, or by erecting or maintaining public buildings or works, or otherwise lessening the burden of government. Such terms do not include the erection, acquisition, improvement, maintenance or repair of property, real, personal or mixed, unless such property is and shall be used exclusively for one or more of the purposes stated in this section~~.

6. "Lawful purposes" means THE EXPENDITURE OF NET PROCEEDS OF A GAME OF BINGO EXCLUSIVELY BY A LICENSEE FOR THE PURPOSES OF CARRYING OUT ITS MISSION AND ITS AIMS OR FOR THE PURPOSE OF CHARITY OR BETTERMENT OF THE COMMUNITY.

7. "Lawful use" means the devotion of the entire net proceeds of a game of bingo exclusively to a lawful purpose or to lawful purposes.

8. "Licensee" means any qualified organization to which a license has been issued by the licensing authority.

9. "Licensing authority" means the state tax commission.

10. "Local governing body" means the governing body of a city or town or the board of supervisors of the county for locations outside a city or town.

11. "Member" means an individual who has qualified for membership in a qualified organization pursuant to its bylaws, articles of incorporation, charter, rules or other written statement.

12. "Net proceeds" means the receipts less such expenses, charges, fees and deductions as are specifically authorized under this article.

13. "Occasion" means a single gathering or session at which a series of successive bingo games is played not to exceed thirty-five in number.

14. "Person" means a natural person, firm, association, corporation or other legal entity.

15. "Premises" means any room, hall, enclosure or outdoor area used for the purpose of playing a game of bingo.

16. "Qualified organization" means any bona fide charitable, fraternal, religious, social~~,~~ (as defined in section 43-147, subsection (a), paragraph 7), veterans' or volunteer firemen's organization or any chartered branch or lodge or chapter of such ~~an~~ NATIONAL OR STATE organization which operates without profit to its members and which has been in existence continuously for a period of two years IN ARIZONA immediately prior to the making of an application for a license under this article.

17. "Religious organization" means any organization, church, body of communicants or group, not for pecuniary profit, gathered in common membership for regular worship and religious observances and which organization has been so gathered or united for two years prior to making application for a license under this article.

18. "Veterans' organization" means any CONGRESSIONALLY CHARTERED organization within this state, or any branch or lodge or chapter of a national or state organization within this state, not for pecuniary profit, the membership of which consists of individuals who were members of the armed services or forces of the United States, which has been in existence for two years prior to making application for a license under this article. THE TERM "VETERANS' ORGANIZATION" SHALL ALSO INCLUDE ANY AUXILIARY OF SUCH ORGANIZATION.

19. "Voluntary firemen's organization" means any organization within this state, not for pecuniary profit, established pursuant to title 9, chapter 9.

Sec. 2. Section 5-406, Arizona Revised Statutes, is amended to read:

5-406. **Persons permitted to conduct games; premises; equipment; expenses; compensation**

A. No person may hold, operate or conduct any game or games of bingo under any license issued pursuant to this article except a member of the organization to which the license is issued.

B. No person may assist in the holding, operating or conducting of any game or games of bingo under such license except a member of the licensee or a member of an organization auxiliary to the licensee or an organization of which the licensee is an auxiliary or an organization which is affiliated with the licensee as an auxiliary to another organization.

C. Bookkeepers or accountants may be exempt as provided in this section.

D. No item of expense shall be incurred or paid in connection with the holding, operating or conducting of any game of bingo, held, operated or conducted pursuant to any license issued under this article, except bona fide expenses in reasonable amount for goods, wares and merchandise furnished or services rendered, reasonably necessary for the holding, operating or conducting thereof. No such game or games of bingo shall be conducted with any equipment except such as shall be owned by the licensee.

E. The officers of a licensee shall designate a member of the licensee to be in charge and primarily responsible for the conduct of the games of bingo on each occasion. The member in charge shall supervise all activities on the occasion for which he is in charge and shall be responsible for the making of the required report. He shall be present on the premises continuously during the games and for a period of at least thirty minutes after the last game.

F. The officers of a licensee shall designate an officer to be in full charge and primarily responsible for the proper utilization of the entire net proceeds of any game in accordance with the state law.

G. The entire net proceeds of any game shall be devoted to a lawful use or uses.

H. The premises where any game of bingo is being held, operated or conducted, or where it is intended that any game of bingo shall be held, operated or conducted, or where it is intended that any equipment be used, shall at all times be open to inspection by the licensing authority, its agents and employees, and by peace officers of any political subdivision of the state.

I. When any merchandise prize is awarded in a game of bingo, its value shall be its current retail price. No merchandise prize shall be redeemable or convertible into cash directly or indirectly.

J. Equipment, prizes and supplies for games of bingo shall not be purchased or sold at prices in excess of the usual price thereof.

K. No alcoholic beverage shall be offered or given as a prize in any such game.

L. The net profits derived from the holding of games of bingo must be devoted within one year FROM THE DATE SUCH PROFITS WERE EARNED to the lawful purposes of the organization permitted to conduct such games. Any organization desiring to hold the net profits of games of bingo for a period longer than one year FROM THE DATE SUCH PROFITS WERE EARNED must apply to the licensing authority for special permission and upon good cause shown the authority may grant the request.

M. Any licensee which does not report during any one year period THE AMOUNT OF HIS net profits, IF ANY, shall be required to show cause before the licensing authority why its right to conduct games of bingo should not be revoked.

N. No prize greater in the amount or value than ~~two hundred fifty~~ THREE THOUSAND dollars shall be offered or given in any single game of bingo conducted under any such license. ~~, except that a cumulative prize may be added for a given game as long as the weekly total prizes offered in a fifty-two week year do not exceed an average of two thousand dollars per day.~~

O. The equipment used in the playing of bingo and the method of play, shall be such that each card shall have an equal opportunity to be a winner. The objects or balls to be drawn shall be essentially the same as to size, shape, weight, balance and all other characteristics that may influence their selection. All objects or balls shall be present in the receptacle before each game is begun. All numbers announced shall be plainly and clearly aduible or visible to all the players present. Where more than one room is used for any one game, the receptacle and the caller must be present in the room where the greatest number of players are present and all numbers announced shall be plainly audible or visible to the players in the aforesaid room and also audible or visible to the players in the other room or rooms. The card or sheets of the players shall be part of a deck, group or series of cards, no two of which shall be alike, and which deck, group or series shall not be so prepared or arranged as to prefer any card.

P. The receptacle, the caller and the person removing the objects or balls from the receptacle must be visible to all the players at all times except where more than one room is used for any one game wherein the provisions of subsection O shall prevail.

Q. The particular arrangement of numbers required to be covered in order to win the game and the amount of the prize shall be clearly and audibly or visibly described and announced to the players immediately before each game is begun.

R. Any players shall be entitled to call for a verification of all numbers drawn at the time a winner is determined, and for a verification of the objects or balls remaining in the receptacle and not yet drawn. The verification shall be made in the immediate presence of the member designated to be in charge of the occasion, but if such member be also the caller, then in the immediate presence of an officer of the licensee.

S. No person who is not physically present on the premises where the game is actually conducted shall be allowed to participate as a player in the game.

T. No person shall act as a caller or assistant to the caller in the conduct of any game of bingo unless he ~~has been~~ IS a member of the licensee conducting such game ~~or one of its licensed auxiliaries for at least one year immediately prior to the date of such game, be of~~ AND OF good moral character and never been convicted of a felony.

~~U. No owner, coowner or lessee of premises, or if a corporation is the owner of the premises, any officer, director or stockholder owning more than ten per cent of the outstanding stock, shall be a person responsible for or assisting in the holding, operating or conducting of any game of bingo.~~

Sec. 3. Section 5-407, Arizona Revised Statutes, is amended to read:

5-407. **Statement of receipts; expenses**

A. On or before the fifteenth day of April, July, October and January of each year each licensee shall file with the licensing authority upon forms prescribed by the licensing authority, a duly verified statement covering the preceding calendar quarter showing the amount of the gross receipts derived during such periods from games of bingo, the expenses incurred, or paid, and a brief description of the classification of such expenses, the

name and address of each person to whom has been paid three hundred dollars or more and the purpose of such expenditure, the net proceeds derived from each such game of bingo, and the uses to which such net proceeds have been or are to be applied. Each licensee shall maintain and keep such books and records as may be necessary to substantiate the particulars of each such report.

B. If a licensee fails to file reports within the time required, or if reports are not properly verified, or not fully, accurately and truthfully completed, any existing license may be suspended until such time as the default has been corrected.

C. All monies collected or received from the sale of admission, extra regular cards, special game cards, sale of supplies and all other receipts from the games of bingo shall be deposited in a special account of the licensee which shall contain only such money. All expenses for such game shall be withdrawn from such account by consecutively numbered checks duly signed by a specified officer or officers of the licensee and payable to a specific person or organization. There shall also be written on the check the nature of the expense for which the check is drawn. No check shall be drawn to "cash" or a fictitious payee.

D. No part of the net profits after they have been given over to another organization shall be used by the donee organization to pay any person for services rendered or materials purchased in connection with the conducting of bingo by the donor organization.

E. No item of expense shall be incurred or paid in connection with holding, operating or conducting any game of bingo pursuant to any license, except bona fide expenses of a reasonable amount. Expenses may be incurred only for the following purposes:

1. The purchase of goods, wares and merchandise furnished.

2. Payment for services rendered which are reasonably necessary for repairs of equipment, operating or conducting the game of bingo.

3. For rent if the premises are rented, or for janitorial services if not rented.

4. Accountant's fees.

5. License fees.

6. UTILITY EXPENSES.

For the purpose of this subsection, the following terms shall have the following meanings: "goods, wares and merchandise" means prizes, equipment as defined in section 5-401, articles of a minor nature such as pencils, crayons, tickets, envelopes, paper clips and coupons necessary to the conduct of games of bingo; "services rendered" means repair to equipment, reasonable compensation TO MEMBERS AND to bookkeepers or accountants, not more than two in the aggregate, for services in preparing financial reports ~~for an amount not exceeding the total amount of fifteen dollars for each occasion~~, A REASONABLE AMOUNT FOR rental of premises, UTILITIES ~~not exceeding the amount of twenty five dollars for each occasion, except upon prior approval of a greater amount by the licensing authority,~~ and a reasonable amount for janitorial service. ~~, not exceeding a total amount of fifteen dollars for each occasion.~~

F. In lieu of the taxes collected under sections 42-1314 and 42-1361 there shall be paid to the state licensing authority two and one-half per cent of the net proceeds of any game of bingo, held, operated, or conducted under the provisions of this article, such sums to be used for the administration of this article only. All administrative receipts, including license fees, collected by the state pursuant to this article shall be deposited in the state general fund.

G. Each licensee shall, at the time each financial report is submitted to the licensing authority, pay to the order of the licensing authority the amount of administration expense provided in subsection F of this section.

Sec. 4. Title 5, chapter 4, Arizona Revised Statutes, is amended by adding article 2, to read:

ARTICLE 2. SMALL GAME BINGO

5-421. **Small game bingo license; definition**

A. IN LIEU OF THE LICENSES PROVIDED FOR IN ARTICLE 1 OF THIS CHAPTER, ANY PERSON MAY APPLY FOR A SMALL GAME BINGO LICENSE AS PRESCRIBED IN THIS ARTICLE.

B. FOR THE PURPOSES OF THIS ARTICLE, "SMALL GAME BINGO" MEANS A BINGO GAME OR GAMES CONDUCTED OR OPERATED BY A SMALL BINGO LICENSEE AND WHICH DO NOT EXCEED IN THE AGGREGATE THREE HUNDRED DOLLARS IN GROSS RECEIPTS PER WEEK.

5-422. **Licensing authority; powers; duties**

THE STATE TAX COMMISSION IS DESIGNATED AS THE "LICENSING AUTHORITY" OF THIS ARTICLE. THE STATE TAX COMMISSION SHALL BE IN CHARGE OF ENFORCEMENT OF THE TERMS AND PROVISIONS OF THIS ARTICLE AND, AS STATE LICENSING AUTHORITY, IT SHALL:

1. GRANT OR REFUSE LICENSES UNDER THIS ARTICLE. IN ADDITION, THE LICENSING AUTHORITY SHALL HAVE THE POWER ON HIS OWN MOTION BASED ON REASONABLE GROUNDS OR ON COMPLAINT MADE AND AFTER INVESTIGATION AND PUBLIC HEARING, AT WHICH THE LICENSEE SHALL BE AFFORDED AN OPPORTUNITY TO BE HEARD, TO SUSPEND OR REVOKE ANY LICENSE ISSUED BY THE LICENSING AUTHORITY FOR ANY VIOLATION BY THE LICENSEE OR ANY EMPLOYEE OF SUCH LICENSEE OF THE PROVISIONS OF THIS ARTICLE OR ANY RULE OR REGULATION AUTHORIZED UNDER THIS ARTICLE. NOTICE OF SUSPENSION OR REVOCATION, AS WELL AS NOTICE OF SUCH HEARING, SHALL BE GIVEN BY CERTIFIED MAIL OF SAME TO THE LICENSEE AT THE ADDRESS CONTAINED IN SUCH LICENSE. THE LICENSING AUTHORITY MAY SUSPEND THE OPERATION OF A GAME PENDING A HEARING, IN WHICH CASE, THE HEARING SHALL BE HELD WITHIN TEN DAYS AFTER SUCH NOTICE. PROCEEDINGS TO SUSPEND OR REVOKE A LICENSE SHALL BE HELD PURSUANT TO THE PROVISIONS OF TITLE 41, CHAPTER 6.

2. SUPERVISE THE ADMINISTRATION OF THIS ARTICLE, AND TO ADOPT, AMEND AND REPEAL RULES AND REGULATIONS GOVERNING THE HOLDING, OPERATING AND CONDUCTING OF GAMES OF BINGO, THE RENTAL OF PREMISES, AND THE PURCHASE OF EQUIPMENT, TO PROVIDE THAT GAMES OF BINGO SHALL BE HELD, OPERATED AND CONDUCTED ONLY BY LICENSEES FOR THE PURPOSES AND IN CONFORMITY WITH THE PROVISIONS OF THIS ARTICLE.

3. KEEP RECORDS OF ALL ACTIONS AND TRANSACTIONS OF THE LICENSING AUTHORITY.

4. REPORT ON REQUEST TO THE GOVERNOR OR THE STATE LEGISLATURE RESPECTING THE ADMINISTRATION OF THIS ARTICLE AND MAKE SUCH RECOMMENDATIONS IN REGARD TO LEGISLATION AS THE LICENSING AUTHORITY SHALL DEEM NECESSARY AND PROPER.

5-423. **Persons entitled to licenses; fee**

A. A PERSON SHALL BE ELIGIBLE FOR A LICENSE TO BE ISSUED BY THE LICENSING AUTHORITY UNDER THIS ARTICLE, EXCEPT THAT IN THE EVENT ANY LICENSE IS REVOKED, THE LICENSEE SHALL NOT BE ELIGIBLE TO APPLY FOR ANOTHER LICENSE PURSUANT TO THE PROVISIONS OF SUBSECTION B OF THIS SECTION UNTIL AFTER THE EXPIRATION OF THE PERIOD OF ONE YEAR FROM THE DATE OF SUCH REVOCATION.

B. THE LICENSES PROVIDED BY THIS ARTICLE SHALL BE ISSUED TO APPLICANTS QUALIFIED UNDER THIS ARTICLE UPON RECEIPT OF THE CERTIFIED COPY OF THE APPLICATION FROM THE LOCAL GOVERNING BODY AND PAYMENT OF THE LICENSE FEE. THE LICENSES SHALL EXPIRE AT THE END OF THE CALENDAR YEAR IN WHICH THEY WERE ISSUED AND MAY BE RENEWED UPON THE FILING OF AN APPLICATION FOR RENEWAL THEREOF PROVIDED BY THE LICENSING AUTHORITY AND THE PAYMENT OF THE FEE OF FIVE DOLLARS FOR SUCH RENEWAL.

C. NO LICENSE GRANTED PURSUANT TO THIS ARTICLE OR ANY RENEWAL THEREOF IS TRANSFERABLE.

D. EACH APPLICANT FOR A LICENSE TO BE ISSUED PURSUANT TO THE PROVISIONS OF THIS ARTICLE SHALL FILE WITH THE LOCAL GOVERNING BODY A LICENSE FEE OF FIVE DOLLARS TOGETHER WITH A WRITTEN APPLICATION IN TRIPLICATE IN THE FORM PRESCRIBED BY THE LICENSING AUTHORITY, DULY EXECUTED AND VERIFIED, AND IN WHICH SHALL BE STATED:

1. THE NAME AND ADDRESS OF THE APPLICANT.

2. SUFFICIENT FACTS TO ENABLE THE LICENSING AUTHORITY TO DETERMINE WHETHER OR NOT THE APPLICANT IS OF GOOD MORAL CHARACTER AND REPUTATION AND HAS NOT BEEN CONVICTED OF ANY FELONY OR ANY CRIME INVOLVING MORAL TURPITUDE.

3. THE PLACE OR PLACES WHERE SUCH GAMES OF BINGO ARE INTENDED TO BE HELD, OPERATED AND CONDUCTED BY THE APPLICANT, UNDER THE LICENSE APPLIED FOR.

4. THE ITEMS OF EXPENSE INTENDED TO BE INCURRED OR PAID IN CONNECTION WITH THE HOLDING, OPERATING AND

CONDUCTING OF SUCH GAMES OF BINGO AND THE NAMES AND ADDRESSES OF THE PERSONS TO WHOM, AND THE PURPOSES FOR WHICH, THEY ARE TO BE PAID.

5. AN AFFIDAVIT THAT NO COMMISSION, SALARY, COMPENSATION, REWARD OR RECOMPENSE WILL BE PAID TO ANY PERSON FOR HOLDING, OPERATING, CONDUCTING OR ASSISTING IN A GAME OR GAMES OF BINGO EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE.

6. SUCH OTHER INFORMATION AS SHALL BE DEEMED ADVISABLE BY THE LICENSING AUTHORITY.

E. IF ANY PREMISES ARE TO BE LEASED OR RENTED IN CONNECTION WITH THE HOLDING, OPERATING OR CONDUCTING ANY GAME OF BINGO PURSUANT TO THIS ARTICLE, AN AFFIDAVIT BY THE LESSOR SHALL ACCOMPANY THE APPLICATION STATING THE LESSOR'S ADDRESS, THE AMOUNT OF RENT WHICH WILL BE PAID FOR SUCH PREMISES AND THAT THE LESSOR IS, OR ITS OFFICERS AND DIRECTORS ARE OF GOOD MORAL CHARACTER AND HAVE NOT BEEN CONVICTED OF ANY CRIME INVOLVING MORAL TURPITUDE.

F. THE LOCAL GOVERNING BODY SHALL UPON RECEIPT OF THE APPLICATION IMMEDIATELY SET A HEARING ON THE APPLICATION AND SHALL FORWARD ONE COPY OF THE APPLICATION TO THE LICENSING AUTHORITY.

G. WITHIN FORTY-FIVE DAYS FOLLOWING THE RECEIPT OF THE APPLICATION THE LOCAL GOVERNING BODY SHALL RECOMMEND APPROVAL OR DISAPPROVAL OF THE APPLICATION AND FORWARD A CERTIFIED COPY OF THE APPLICATION ENDORSED WITH ITS APPROVAL OR DISAPPROVAL TO THE LICENSING AUTHORITY. IF THE APPLICATION IS DISAPPROVED THE ENDORSEMENT SHALL CONTAIN THE SPECIFIC REASONS FOR DISAPPROVAL.

5-424. **Form of license; display**

A. EACH LICENSE SHALL CONTAIN A STATEMENT OF THE NAME AND ADDRESS OF THE LICENSEE BY WHOM SUCH GAMES OF BINGO WILL BE HELD, OPERATED AND CONDUCTED, AND THE PLACE OR PLACES WHERE BINGO GAMES ARE TO BE HELD.

B. EACH LICENSE ISSUED FOR THE CONDUCT OF ANY GAME OR GAMES OF BINGO SHALL BE CONSPICUOUSLY DISPLAYED AT THE PLACE WHERE THE SAME IS TO BE CONDUCTED AT ALL TIMES DURING ANY GAME AND FOR AT LEAST THIRTY MINUTES THEREAFTER.

5-425. **Persons permitted to conduct games; premises; equipment; expenses; compensation**

A. NO PERSON MAY HOLD, OPERATE OR CONDUCT ANY GAME OR GAMES OF BINGO UNDER ANY LICENSE ISSUED PURSUANT TO THIS ARTICLE EXCEPT THE LICENSEE.

B. NO ITEM OF EXPENSE SHALL BE INCURRED OR PAID IN CONNECTION WITH THE HOLDING, OPERATING OR CONDUCTING OF ANY GAME OF BINGO, HELD, OPERATED OR CONDUCTED PURSUANT TO ANY LICENSE ISSUED UNDER THIS ARTICLE, EXCEPT BONA FIDE EXPENSES IN REASONABLE AMOUNT FOR GOODS, WARES AND MERCHANDISE FURNISHED OR SERVICES RENDERED, REASONABLY NECESSARY FOR THE HOLDING, OPERATING OR CONDUCTING THEREOF. NO SUCH GAME OR GAMES OF BINGO SHALL BE CONDUCTED WITH ANY EQUIPMENT EXCEPT SUCH AS SHALL BE OWNED BY THE LICENSEE.

C. THE PREMISES WHERE ANY GAME OF BINGO IS BEING HELD, OPERATED OR CONDUCTED, OR WHERE IT IS INTENDED THAT ANY GAME OF BINGO SHALL BE HELD, OPERATED OR CONDUCTED, OR WHERE IT IS INTENDED THAT ANY EQUIPMENT BE USED, SHALL AT ALL TIMES BE OPEN TO INSPECTION BY THE LICENSING AUTHORITY, ITS AGENTS AND EMPLOYEES, AND BY PEACE OFFICERS OF ANY POLITICAL SUBDIVISION OF THE STATE.

D. WHEN ANY MERCHANDISE PRIZE IS AWARDED IN A GAME OF BINGO, ITS VALUE SHALL BE ITS CURRENT RETAIL PRICE. NO MERCHANDISE PRIZE SHALL BE REDEEMABLE OR CONVERTIBLE INTO CASH DIRECTLY OR INDIRECTLY.

E. EQUIPMENT, PRIZES AND SUPPLIES OR GAMES OF BINGO SHALL NOT BE PURCHASED OR SOLD AT PRICES IN EXCESS OF THE USUAL PRICE THEREOF.

F. NO ALCOHOLIC BEVERAGE SHALL BE OFFERED OR GIVEN AS A PRIZE IN ANY SUCH GAME.

G. THE EQUIPMENT USED IN THE PLAYING OF BINGO AND THE METHOD OF PLAY, SHALL BE SUCH THAT EACH CARD SHALL HAVE AN EQUAL OPPORTUNITY TO BE A WINNER. THE OBJECTS OR BALLS TO BE DRAWN SHALL BE ESSENTIALLY THE SAME AS TO SIZE, SHAPE, WEIGHT, BALANCE AND ALL OTHER CHARACTERISTICS THAT MAY INFLUENCE THEIR SELECTION. ALL OBJECTS OR BALLS SHALL BE PRESENT IN THE RECEPTACLE BEFORE EACH GAME IS BEGUN. ALL NUMBERS ANNOUNCED SHALL BE PLAINLY AND CLEARLY AUDIBLE OR VISIBLE TO ALL THE PLAYERS PRESENT. WHERE MORE THAN ONE ROOM IS USED FOR ANY ONE GAME, THE RECEPTACLE AND THE CALLER MUST BE PRESENT IN THE ROOM WHERE THE GREATEST NUMBER OF PLAYERS ARE PRESENT AND ALL NUMBERS ANNOUNCED SHALL BE PLAINLY AUDIBLE OR VISIBLE TO THE PLAYERS IN THE AFORESAID ROOM AND ALSO AUDIBLE OR VISIBLE TO THE PLAYERS IN THE OTHER ROOM OR ROOMS. THE CARD OR SHEETS OF THE PLAYERS SHALL BE PART OF A DECK, GROUP OR SERIES OF CARDS, NO TWO OF WHICH SHALL BE ALIKE, AND WHICH DECK, GROUP OR SERIES SHALL NOT BE SO PREPARED OR ARRANGED AS TO PREFER ANY CARD.

H. THE RECEPTACLE, THE CALLER AND THE PERSON REMOVING THE OBJECTS OR BALLS FROM THE RECEPTACLE MUST BE VISIBLE TO ALL THE PLAYERS AT ALL TIMES EXCEPT WHERE MORE THAN ONE ROOM IS USED FOR ANY ONE GAME WHEREIN THE PROVISIONS OF SUBSECTION G SHALL PREVAIL.

I. THE PARTICULAR ARRANGEMENT OF NUMBERS REQUIRED TO BE COVERED IN ORDER TO WIN THE GAME AND THE AMOUNT OF THE PRIZE SHALL BE CLEARLY AND AUDIBLY OR VISIBLY DESCRIBED AND ANNOUNCED TO THE PLAYERS IMMEDIATELY BEFORE EACH GAME IS BEGUN.

J. ANY PLAYER SHALL BE ENTITLED TO CALL FOR A VERIFICATION OF ALL NUMBERS DRAWN AT THE TIME A WINNER IS DETERMINED, AND FOR A VERIFICATION OF THE OBJECTS OR BALLS REMAINING IN THE RECEPTACLE AND NOT YET DRAWN. THE VERIFICATION SHALL BE MADE IN THE IMMEDIATE PRESENCE OF THE MEMBER DESIGNATED TO BE IN CHARGE OF THE OCCASION, BUT IF SUCH MEMBER BE ALSO THE CALLER, THEN IN THE IMMEDIATE PRESENCE OF AN OFFICER OF THE LICENSEE.

K. NO PERSON WHO IS NOT PHYSICALLY PRESENT ON THE PREMISES WHERE THE GAME IS ACTUALLY CONDUCTED SHALL BE ALLOWED TO PARTICIPATE AS A PLAYER IN THE GAME.

L. NO PERSON SHALL ACT AS A CALLER OR ASSISTANT TO THE CALLER IN THE CONDUCT OF ANY GAME OF BINGO UNLESS HE IS OF GOOD MORAL CHARACTER AND HAS NEVER BEEN CONVICTED OF A FELONY.

M. NOTWITHSTANDING ANY PROVISION TO THE CONTRARY, NO PERSON OR ORGANIZATION WHICH HOLDS A LIQUOR LICENSE ISSUED PURSUANT TO TITLE 4, ARIZONA REVISED STATUTES, SHALL BE ISSUED A LICENSE TO CONDUCT BINGO GAMES AUTHORIZED UNDER THIS ARTICLE EXCEPT THOSE HOLDERS OF A CLUB LICENSE AS DEFINED IN SECTIONS 4-101 AND 4-205.

5-426. **Statement of receipts; expenses**

A. ON OR BEFORE THE FIFTEENTH DAY OF MARCH OF EACH YEAR EACH LICENSEE SHALL FILE WITH THE LICENSING AUTHORITY UPON FORMS PRESCRIBED BY THE LICENSING AUTHORITY, A DULY VERIFIED STATEMENT COVERING THE PRECEDING CALENDAR YEAR SHOWING THE AMOUNT OF THE GROSS RECEIPTS DERIVED DURING SUCH PERIODS FROM GAMES OF BINGO, THE EXPENSES INCURRED, OR PAID, AND A BRIEF DESCRIPTION OF THE CLASSIFICATION OF SUCH EXPENSES AND THE PURPOSE OF SUCH EXPENDITURE AND THE NET PROCEEDS DERIVED FROM EACH SUCH GAME OF BINGO. EACH LICENSEE SHALL MAINTAIN AND KEEP SUCH BOOKS AND RECORDS AS MAY BE NECESSARY TO SUBSTANTIATE THE PARTICULARS OF EACH SUCH REPORT.

B. IF A LICENSEE FAILS TO FILE REPORTS WITHIN THE TIME REQUIRED, OR IF REPORTS ARE NOT PROPERLY VERIFIED, OR NOT FULLY, ACCURATELY AND TRUTHFULLY COMPLETED, ANY EXISTING LICENSE MAY BE SUSPENDED UNTIL SUCH TIME AS THE DEFAULT HAS BEEN CORRECTED.

C. NO ITEM OF EXPENSE SHALL BE INCURRED OR PAID IN CONNECTION WITH HOLDING, OPERATING OR CONDUCTING ANY GAME OF BINGO PURSUANT TO ANY LICENSE, EXCEPT BONA FIDE EXPENSES OF A REASONABLE AMOUNT. EXPENSES MAY BE INCURRED ONLY FOR THE FOLLOWING PURPOSES:

1. THE PURCHASE OF GOODS, WARES AND MERCHANDISE FURNISHED.

2. PAYMENT FOR SERVICES RENDERED WHICH ARE REASONABLY NECESSARY FOR REPAIRS OF EQUIPMENT, OPERATING OR CONDUCTING THE GAME OF BINGO.

3. FOR RENT IF THE PREMISES ARE RENTED, OR FOR JANITORIAL SERVICES IF NOT RENTED.

4. ACCOUNTANT'S FEES.

5. LICENSE FEES.

6. UTILITY EXPENSES.

FOR THE PURPOSE OF THIS SUBSECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS: "GOODS, WARES AND MERCHANDISE" MEANS PRIZES, INCLUDING CASH PRIZES, AND EQUIPMENT AS DEFINED IN SECTION 5-401, ARTICLES OF A MINOR NATURE SUCH AS PENCILS, CRAYONS, TICKETS, ENVLOPES, PAPER CLIPS AND COUPONS NECESSARY TO THE CONDUCT OF GAMES OF BINGO; "SERVICES RENDERED" MEANS REPAIRS TO EQUIPMENT; "RENT" MEANS RENTAL OF PREMISES NOT EXCEEDING THE AMOUNT OF TWENTY-FIVE DOLLARS FOR EACH OCCASION, EXCEPT UPON PRIOR APPROVAL OF A GREATER AMOUNT BY THE LICENSING AUTHORITY, AND A REASONABLE AMOUNT FOR JANITORIAL SERVICES NOT EXCEEDING A TOTAL OF FIFTEEN DOLLARS FOR EACH OCCASION, MAY BE INCURRED IF NOT RENTED; "ACCOUNTANT'S FEES" MEANS REASONABLE COMPENSATION TO BOOKKEEPERS OR ACCOUNTANTS, NOT MORE THAN TWO IN THE AGGREGATE, FOR SERVICES IN PREPARING FINANCIAL REPORTS FOR AN AMOUNT NOT EXCEEDING THE TOTAL AMOUNT OF FIFTEEN DOLLARS FOR EACH OCCASION.

D. IN LIEU OF THE TAXES COLLECTED UNDER SECTIONS 42-1314 AND 42-1361 THERE SHALL BE PAID TO THE STATE LICENSING AUTHORITY TWO AND ONE-HALF PER CENT OF THE NET PROCEEDS OF ANY GAME OF BINGO, HELD, OPERATED OR CONDUCTED UNDER THE PROVISIONS OF THIS ARTICLE, SUCH SUMS TO BE USED FOR THE ADMINISTRATION OF THIS ARTICLE ONLY. ALL ADMINISTRATIVE RECEIPTS, INCLUDING LICENSE FEES, COLLECTED BY THE STATE PURSUANT TO THIS ARTICLE SHALL BE DEPOSITED IN THE STATE GENERAL FUND.

E. EACH LICENSEE SHALL, AT THE TIME EACH FINANCIAL REPORT IS SUBMITTED TO THE LICENSING AUTHORITY, PAY TO THE ORDER OF THE LICENSING AUTHORITY THE AMOUNT OF ADMINISTRATION EXPENSE PROVIDED IN SUBSECTION D OF THIS SECTION.

5-427. **Examination of books and records**

THE LICENSING AUTHORITY AND ITS AGENTS SHALL HAVE POWER TO EXAMINE OR CAUSE TO BE EXAMINED THE BOOKS AND RECORDS OF ANY LICENSEE TO WHICH ANY SUCH LICENSE IS ISSUED SO FAR AS THEY MAY RELATE TO ANY TRANSACTIONS CONNECTED WITH THE HOLDING, OPERATING AND CONDUCTING OF ANY GAME OF BINGO.

5-428. **Forfeiture of license; ineligibility to apply for license**

ANY PERSON WHO MAKES ANY FALSE STATEMENT IN ANY APPLICATION FOR ANY SUCH LICENSE OR IN ANY STATEMENT ANNEXED THERETO OR FAILS TO KEEP SUFFICIENT BOOKS AND RECORDS TO SUBSTANTIATE THE ANNUAL REPORTS REQUIRED UNDER SECTION 5-426 OR FALSIFIES ANY BOOKS OR RECORDS SO FAR AS THEY RELATE TO ANY TRANSACTION CONNECTED WITH THE HOLDING, OPERATING AND CONDUCTING OF ANY GAME OF BINGO UNDER ANY SUCH LICENSE OR VIOLATES ANY OF THE PROVISIONS OF THIS ARTICLE OR OF ANY TERM OF SUCH LICENSE IS GUILTY OF A MISDEMEANOR AND SHALL, IF CONVICTED, IN ADDITION TO SUFFERING ANY OTHER PENALTIES WHICH MAY BE IMPOSED, FORFEIT ANY LICENSE ISSUED TO IT PURSUANT TO THIS ARTICLE AND SHALL BE INELIGIBLE TO APPLY FOR A LICENSE PURSUANT TO THIS ARTICLE FOR AT LEAST ONE YEAR THEREAFTER.

5-429. **Penalties for violation**

ANY PERSON WHO WILFULLY VIOLATES OR WHO PROCURES, AIDS OR ABETS IN THE WILFUL VIOLATION OF THIS ARTICLE, SHALL BE DEEMED GUILTY OF A MISDEMEANOR AND UPON CONVICTION, SHALL BE PUNISHED BY A FINE OF NOT MORE THAN ONE THOUSAND DOLLARS OR IMPRISONMENT IN THE COUNTY JAIL FOR NOT MORE THAN THREE MONTHS, OR BOTH.

Sec. 5. **Emergency**

To preserve the public peace, health and safety it is necessary that this act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.

Approved by the Governor–May 4, 1973

Filed in the Office of the Secretary of State–May 7, 1973

LAWS OF ARIZONA

CHAPTER 133

House Bill 2098

AN ACT

RELATING TO LABOR; AMENDING PROVISIONS RELATING TO HOURS OF LABOR, MINIMUM WAGES, PAYMENT OF WAGES, EMPLOYMENT SECURITY AND WORKMEN'S COMPENSATION; AMENDING SECTIONS 23-283, 23-311, 23-312, 23-313, 23-317, 23-320, 23-321, 23-323, 23-326, 23-327, 23-328, 23-329 AND 23-354, ARIZONA REVISED STATUTES; AMENDING TITLE 23, CHAPTER 2, ARTICLE 7, ARIZONA REVISED STATUTES, BY ADDING SECTION 23-355; AMENDING SECTIONS 23-674, 23-783, 23-907, 23-908, 23-941, 23-942, 23-943, 23-946, 23-951, 23-1027, 23-1044, 23-1045, 23-1046, 23-1047, 23-1061, 23-1062, 23-1064, 23-1065, 23-1067 AND 23-1069, ARIZONA REVISED STATUTES; REPEALING SECTION 23-261, ARIZONA REVISED STATUTES, AND CHANGING THE DESIGNATIONS OF TITLE 23, CHAPTER 2, ARTICLES 6 AND 6.1, ARIZONA REVISED STATUTES.

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

Section 1. Section 23-283, Arizona Revised Statutes, is amended to read:

23-283. **Hoisting engineers and furnace persons; exception; violation; penalty**

A. The period of employment of hoisting engineers at mines, and furnace ~~men~~ PERSONS at smelters, shall be eight hours per day except in cases of emergency where life or property is in imminent danger.

B. A person, including the employee, who violates the provisions of this section is guilty of a misdemeanor punishable by a fine of not less than one hundred nor more than three hundred dollars for each offense.

Sec. 2. Section 23-311, Arizona Revised Statutes, is amended to read:

23-311. **Definitions**

In this article, unless the context otherwise requires:

1. "Commission" means the industrial commission of Arizona.

2. "Directory order" means a temporary order which becomes mandatory as provided in this article.

3. 'Employee" means every ~~woman or~~ minor in receipt of or entitled to compensation for labor performed for any employer.

4. "Employer" means every person, firm, corporation, agent, manager, representative, contractor, subcontractor, principal or other person having control or direction of any ~~woman or~~ minor employed at any labor, or responsible directly or indirectly for the wages of another.

5. "Fair wage" means a wage both fairly and reasonably commensurate with the value of the service or class of service rendered, and sufficient to meet the minimum cost of living necessary for health.

6. "Mandatory order" means an order the violation of which is subject to the penalties prescribed in section 23-329, subsection B.

7. "Minor" means a person of either sex under the age of eighteen years. A minor employed as a part time worker whose principal occupation is that of student actually attending public or private school shall not be deemed engaged in an employment within the scope of this article.

8. "Occupation" means any class of work in any industry, trade, business, or branch thereof, in which ~~women or~~ minors are gainfully employed, but does not include domestic service in the home of an employer or agricultural labor.

9. "Oppressive and unreasonable wage" means a wage which is both less than the fair and reasonable value of the services rendered and less than sufficient to meet the minimum cost of living necessary for health.

10. "Wage" or "wages" means any compensation for labor measured by time, piece, or otherwise.

11. "Wage board" means a board created as provided in section 23-314.

~~12. "Woman" means a female of eighteen years of age or over.~~

Sec. 3. Section 23-312, Arizona Revised Statutes, is amended to read:

23-312. **Powers and duties of commission**

The commission or any authorized representative may:

1. Investigate and ascertain the wages of ~~women and~~ minors employed in any occupation.

2. Enter the place of business or employment of any employer of ~~women or~~ minors in any occupation for the purpose of examining and inspecting all books, registers, payrolls, and other records of the employer which in any manner pertain to or have a bearing upon the question of wages of ~~women or~~ minors and for the purpose of ascertaining whether the orders of the commission have been and are being complied with.

3. Require from the employer full and correct written statements of the wages paid to all ~~women and~~ minors in his employment when the commission or any authorized representative thereof deems necessary.

Sec. 4. Section 23-313, Arizona Revised Statutes, is amended to read:

23-313. **Investigation of wage rates**

The commission, on the petition of twenty or more residents of the state engaged in any particular occupation, shall cause an investigation to be made of the wages being paid to ~~women or~~ minors in that occupation to ascertain whether any substantial number of ~~women or~~ minors in the occupation are receiving oppressive and unreasonable wages as defined in section 23-311. If, on the basis of information in the possession of the commission, with or without a special investigation, the commission is of the opinion that a substantial number of ~~women or~~ minors in any occupation or occupations are receiving oppressive and unreasonable wages as defined in section 23-311, it shall appoint a wage board, as described in section 23-314, to report upon the establishment of minimum fair wage rates for ~~women or~~ minors in such occupation or occupations.

Sec. 5. Section 23-317, Arizona Revised Statutes, is amended to read:

23-317. **Learner and apprentice wage rates**

A wage board may recommend a suitable scale of wage rates for learners and apprentices in any occupation. The scale of learners' and apprentices' wage rates may be less than the regular minimum fair wage rates recommended for experienced ~~women or~~ minors in the occupation, but the board shall fix a definite period for which the scale of wages for learners and apprentices shall be paid.

Sec. 6. Section 23-320, Arizona Revised Statutes, is amended to read:

23-320. **Duty of commission to provide information to wage board**

The commission shall present to a wage board promptly upon its organization all the evidence and information in its possession relating to

wages of ~~women and~~ minors working in occupations over which the wage board has authority to investigate as provided by this article, and all other information which the commission deems relevant to the establishment of a minimum fair wage for such ~~women and~~ minors, and shall present to the wage board witnesses whom the commission deems material. A wage board may summon other witnesses or request the commission to furnish additional information to aid in its deliberation.

Sec. 7. Section 23-321, Arizona Revised Statutes, is amended to read:

23-321. **Report of wage board; action by commission**

A. Within ten days after its organization a wage board shall submit a report which shall include its recommendations of minimum fair wage standards for ~~women or~~ minors in the occupations the wage board was appointed to investigate. If the report is not submitted within ten days, the commission shall appoint a new wage board.

B. A report from a wage board submitted to the commission shall be accepted or rejected by the commission within ten days after its submission. If the report is rejected, the commission shall resubmit the matter to the same wage board or to a new wage board with a statement of reasons for resubmission.

Sec. 8. Section 23-323, Arizona Revised Statutes, is amended to read:

23-323. **Posting of wage orders**

Every employer subject to a minimum fair wage order, whether directory or mandatory, shall keep a copy of the order posted in a conspicuous place where ~~women or~~ minors are employed. Employers shall be furnished copies of orders on request without charge.

Sec. 9. Section 23-326, Arizona Revised Statutes, is amended to read:

23-326. **Special licenses to work for less than minimum wage**

In an occupation for which minimum fair wage rates have been established, the commission may issue to a ~~woman or~~ minor, including a learner or apprentice, whose earning capacity is impaired by age, physical or mental deficiency, or injury, a special license authorizing employment at wages less than the minimum fair wage rates and for a period of time fixed by the commission or the wage board which shall be stated in the license.

Sec. 10. Section 23-327, Arizona Revised Statutes, is amended to read:

23-327. **Action by employee for recovery of wages; amount of recovery**

If a ~~woman or~~ minor is paid less than the minimum fair wage to which ~~either~~ SUCH MINOR is entitled under a mandatory minimum fair wage order, ~~either~~ SUCH MINOR may recover in a civil action AN AMOUNT WHICH IS TREBLE the full amount of the minimum wage, together with costs and a reasonable attorney's fee to be allowed by the court ON THE BASIS OF TIME AND EFFORT EXPENDED BY COUNSEL IN BEHALF OF THE PLAINTIFF-EMPLOYEE if judgment is rendered against the employer, less any amount actually paid to the employee by the employer. Any agreement between the employee and the employer to work for less than the mandatory minimum fair wages is not a defense to the action.

Sec. 11. Section 23-328, Arizona Revised Statutes, is amended to read:

23-328. **Contract or agreement for employment of minor at oppressive wage void**

It is contrary to public policy for an employer to employ a ~~woman or~~ minor in an occupation at an oppressive and unreasonable wage as defined by section 23-311, and any contract, agreement or understanding for, or in relation to such employment, is void.

Sec. 12. Section 23-329, Arizona Revised Statutes, is amended to read:

23-329. **Violations; penalties**

A. An employer or his agent, or the officer or agent of a corporation, who discharges, or in any other manner discriminates against an employee, because the employee has served, or is about to serve, on a wage board, or has testified, or is about to testify before a wage board, or in any other investigation or proceeding under or related to this article, or because the employer believes that the employee may serve on a wage board, or may testify before a wage board or in an investigation or proceeding under this article, or who deducts any part of any wages or compensation, other than as prescribed by law, when due a ~~woman or~~ minor, is guilty of a misdemeanor punishable for each separate offense by a fine of not less than fifty nor more than two hundred dollars.

B. An employer or his agent, or the officer or agent of a corporation, who pays or agrees to pay to a ~~woman or~~ minor employee less than the wage rates applicable to the ~~woman or~~ minor under a mandatory minimum fair

wage order is guilty of a misdemeanor punishable for each separate offense by a fine of not less than fifty nor more than two hundred dollars, imprisonment for not less than ten nor more than ninety days, or both.

C. An employer or his agent, or the officer or agent of a corporation, who fails to keep the records required by this article or to furnish the records to the commission or an authorized representative of the commission upon request is guilty of a misdemeanor punishable for each separate offense by a fine of not less than twenty-five nor more than one hundred dollars.

Sec. 13. Section 23-354, Arizona Revised Statutes, is amended to read:

23-354. **Preference of wages in insolvency proceedings or upon death of employer**

A. In assignments of property for benefit of creditors or in proceedings in insolvency, the wages of salesmen, clerks or laborers employed by the debtor or insolvent, to the amount of two hundred dollars each for services rendered within sixty days previous to such assignment or insolvency proceedings, are preferred claims and shall be paid by the trustee, receiver, or assignee before any other creditor is paid.

B. Upon the death of an employer, such wages of such employees rank in priority next after the funeral expenses, expenses of the last sickness, the charges and expenses of administering upon the estate and the allowance to the ~~widow~~ SURVIVING SPOUSE and infant children, and shall be paid before any other claims against the estate of the deceased person.

Sec. 14. Title 23, chapter 2, article 7, Arizona Revised Statutes, is amended by adding section 23-355, to read:

23-355. **Action by employee to recover wages; amount of recovery**

IF AN EMPLOYER, IN VIOLATION OF THE PROVISIONS OF THIS CHAPTER, SHALL FAIL TO PAY WAGES DUE ANY EMPLOYEE, SUCH EMPLOYEE MAY RECOVER IN A CIVIL ACTION AGAINST AN EMPLOYER OR FORMER EMPLOYER AN AMOUNT WHICH IS TREBLE THE AMOUNT OF THE UNPAID WAGES, TOGETHER WITH COSTS AND REASONABLE ATTORNEYS' FEES TO BE ALLOWED BY THE COURT ON THE BASIS OF TIME AND EFFORT EXPENDED BY COUNSEL IN BEHALF OF THE PLAINTIFF-EMPLOYEE.

Sec. 15. Section 23-674, Arizona Revised Statutes, is amended to read:

23-674. **Procedure in rendering decisions; rights of parties**

A. In rendering its decisions, the appeal tribunal after reasonable notice shall afford all parties an opportunity for hearing. The notice shall state the time, place and issues involved but if by reason of the nature of the proceeding the issues cannot be fully stated in advance of the hearing, or if subsequent amendment of the issues is necessary, they shall be fully stated as soon as practicable, and opportunity shall be afforded all parties to present evidence and argument with respect thereto. The proceedings shall be recorded, but transcripts need not be prepared unless required by the director. Informal disposition may be made of any case by stipulation, agreed settlement, consent order or default.

B. The tribunal may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent ~~men~~ PERSONS in the conduct of their affairs. It shall give effect to the rules of privilege recognized by law. It may exclude incompetent, irrelevant, immaterial and unduly repetitious evidence. All evidence, including records and documents in the possession of the department of which it desires to avail itself, shall be offered and made a part of the record in the case, and no other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. The tribunal may take notice of judicially cognizable facts and in addition may take notice of general, technical or scientific facts within its specialized knowledge. Parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed. The tribunal may utilize its experience, technical competence and specialized knowledge in the evaluation of the evidence presented to it. Each party shall have the right of cross-examination of the witnesses who testify and shall have the right to submit rebuttal evidence.

C. Every decision and order adverse to a party to the proceedings shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact. Parties to the proceeding shall be notified of the decision and order in person or by mail.

Sec. 16. Section 23-783, Arizona Revised Statutes, is amended to read:

23-783. **Assignment or pledge of benefits void; exemption from attachment or execution; waiver of exemption void**

No assignment, pledge or encumbrance of the right to benefits which are or may become due or payable under this chapter shall be valid; and the rights to benefits shall be exempt from levy, execution, attachment or any other remedy provided for the collection of debts. Benefits received by an individual, so long as they are not commingled with other funds of the ~~receipient~~ RECIPIENT, shall be exempt from any remedy for the collection of all debts except debts incurred for necessaries furnished to the individual or his OR HER spouse or dependents during the time when the individual was unemployed. No waiver of an exemption provided for in this section shall be valid.

Sec. 17. Section 23-907, Arizona Revised Statutes, is amended to read:

23-907. **Liability of employer failing to secure compensation; defenses; presumption; right of employee to compensation under chapter**

A. Employers subject to and who fail to comply with the provisions of section 23-961 shall not be entitled to the benefits of chapters 6 and 7 during the period of noncompliance, but shall be liable in an action under any other applicable law of the state. In such action the defendant shall not avail himself of the defenses of assumption of risk or contributory negligence. In all such actions proof of the injury shall constitute prima facie evidence of negligence on the part of the employer and the burden shall be upon the employer to show freedom from negligence resulting in the injury.

B. An employee of such an employer, or the employee's dependents in case death ensued, may, in lieu of proceeding against the employer by civil action in court, file his application with the commission for compensation in accordance with the provisions of chapters 6 and 7, and the commission shall hear and determine the application for compensation in the manner other claims are heard and determined before the commission. The compensation so determined shall be paid by the employer to the person entitled thereto within ten days after receiving notice of the amount thereof as fixed and determined by the commission. ~~In the event the employer does not pay such compensation within ten days, the commission, in its discretion, may order the award paid out of the special fund created by section 23-1065 and in that event the cause of action against the employer shall be deemed assigned to the commission for the benefit of such fund. The commission shall then have a claim against the employer for the amount so paid, together with all necessary expenses, a reasonable attorney's fee to be fixed by the court, and a penalty equal to ten per cent of the amount paid by the commission out of the special fund.~~

~~C.~~ An abstract of the award may be filed in the office of the clerk of the superior court in any county in the state and shall be entered in the civil order book and judgment docket, and when so filed and entered shall be a lien for eight years from the date of the award upon the property of the employer located in the county. Execution may issue thereon within eight years in the same manner and with like effect as if the award were a judgment of the superior court.

C. IF THE EMPLOYER DOES NOT PAY THE COMPENSATION AWARDED PURSUANT TO SUBSECTION B OF THIS SECTION WITHIN TEN DAYS, THE COMMISSION SHALL ORDER IN A SUBSEQUENT AWARD THAT THE APPLICANT'S AWARD BE PAID OUT OF THE SPECIAL FUND CREATED BY SECTION 23-1065. THE AWARD ORDERING PAYMENT FROM THE SPECIAL FUND SHALL ALSO SPECIFY THAT TEN PER CENT OF THE AMOUNT EXPENDED WILL BE ADDED AS A PENALTY. THE AWARD WILL ACT AS A JUDGMENT AGAINST THE EMPLOYER FOR THE AMOUNT EXPENDED BY THE SPECIAL FUND PLUS THE TEN PER CENT PENALTY. IF THE COMMISSION PAYS THE AWARD THE COMMISSION MAY FILE THAT AWARD IN THE OFFICE OF THE CLERK OF THE SUPERIOR COURT IN ANY COUNTY IN THE STATE AND SUCH AWARD SHALL BE ENTERED IN THE CIVIL ORDER BOOK AND JUDGMENT DOCKET, AND WHEN SO FILED AND ENTERED SHALL BE A LIEN FOR EIGHT YEARS FROM THE DATE OF THE AWARD UPON THE PROPERTY OF THE EMPLOYER LOCATED IN THE COUNTY. EXECUTION MAY ISSUE THEREON WITHIN EIGHT YEARS IN THE SAME MANNER AND WITH LIKE EFFECT AS IF THE AWARD WERE A JUDGMENT OF THE SUPERIOR COURT. ANY RECOVERY PURSUANT TO THIS SECTION SHALL BE DEPOSITED IN THE SPECIAL FUND ACCOUNT.

D. An employer with three or more employees who is required to comply with the provisions of chapters 6 and 7 but who fails to obtain coverage through an insurance carrier or as a self-insurer shall be subject to an action by the commission to apply to the court for an injunction which shall cause the employer to cease the operation of his business until such employer complies with the provisions of law pertaining thereto.

Sec. 18. Section 23-908, Arizona Revised Statutes, is amended to read:

23-908. **Injury reports by employer and physician; fees of physician; violations; penalty**

A. Every employer affected by the provisions of this chapter, and every physician who attends an injured employee of such employer, shall file

with the commission and the employer's insurance carrier from time to time a full and complete report of every known injury to the employee arising out of or in the course of his employment and resulting in loss of life or injury. Such report shall be furnished to the commission and such insurance carrier at times and in the form and detail the commission prescribes, and shall make special answers to all questions required by the commission under its rules and regulations.

B. The commission shall fix a schedule of fees to be charged by physicians attending injured employees, which shall be reviewed annually by the commission.

C. NOTWITHSTANDING THE PROVISIONS OF SECTION 12-2235, information obtained by ~~the attending~~ ANY physician or surgeon ~~while in attendance on the~~ EXAMINING OR TREATING AN injured person shall not be considered a privileged communication, if such information is requested by interested parties for a proper understanding of the case and a determination of the rights involved. HOSPITAL RECORDS OF AN EMPLOYEE CONCERNING AN INDUSTRIAL CLAIM SHALL NOT BE CONSIDERED PRIVILEGED IF REQUESTED BY AN INTERESTED PARTY IN ORDER TO DETERMINE THE RIGHTS INVOLVED. MEDICAL INFORMATION FROM ANY SOURCE PERTAINING TO CONDITIONS UNRELATED TO THE PENDING INDUSTRIAL CLAIM SHALL REMAIN PRIVILEGED.

D. When an accident occurs to an employee, the employee shall forthwith report the accident and the injury resulting therefrom to the employer, and any physician employed by the injured employee shall forthwith report the accident and the injury resulting therefrom to the employer, the insurance carrier and to the commission.

E. When an accident occurs to an employee, the employer may designate in writing a physician chosen by the employer, who shall be permitted by the employee, or any person in charge of the employee, to make one examination of the injured employee in order to ascertain the character and extent of the injury occasioned by the accident. The physician so chosen shall forthwith report to the employer, the insurance carrier and the commission the character and extent of the injury as ascertained by him. If the accident is not reported by the employee or his physician forthwith, as required, or if the injured employee or those in charge of him refuse to permit the employer's physician to make the examination, and the injured employee is a party to the refusal, no compensation shall be paid for the injury claimed to have resulted from the accident. The commission may relieve the injured person or his dependents from the loss

or forfeiture of compensation if it believes after investigation that the circumstances attending the failure on the part of the employee or his physician to report the accident and injury are such as to have excused them.

F. Within ten days after receiving notice of an accident, the employer shall inform his insurance carrier. The insurance carrier or self-insurer shall inform the commission on such forms and in such manner as may be prescribed by the commission.

G. Immediately upon notice to the employer of an accident resulting in an injury to an employee, the employer shall provide the employee with the name and address of the employer's insurance carrier, the policy number, and expiration date.

H. Any person failing or refusing to comply with the provisions of this section is guilty of a misdemeanor punishable by a fine of not less than fifty nor more than two hundred dollars.

Sec. 19. Section 23-941, Arizona Revised Statutes, is amended to read:

23-941. **Hearing rights and procedure**

A. Subject to the provisions of section 23-947, any interested party may FILE A request FOR a hearing concerning a claim.

B. A request for a hearing shall be made in writing, signed by or on behalf of the interested party and including his address, stating that a hearing is desired, and ~~mailed to~~ FILED WITH the commission.

C. The commission shall refer the request for the hearing to the hearing officer division for determination as expeditiously as possible. The presiding hearing officer may dismiss a request for hearing when it appears to his satisfaction that the disputed issue or issues have been resolved by the parties. Any interested party who objects to such dismissal may ~~appeal within thirty days to the commission to again refer his request for hearing to the hearing officer.~~ REQUEST A REVIEW PURSUANT TO SECTION 23-943.

D. At least twenty days' prior notice of the time and place of the hearing shall be given to all parties in interest by mail at their last known address. IN THE CASE OF A HEARING CONCERNING SUSPENSION OF BENEFITS, PURSUANT TO SECTION 23-1026, 23-1027, 23-1047, SUBSECTION D, OR 23-1071, ONLY TEN DAYS' PRIOR NOTICE

NEED BE GIVEN. Hearings shall be held in the county where the workman resided at the time of the injury or the occurrence of the occupational disease or such other place selected by the hearing officer.

E. A stenographic record of all proceedings at the hearing shall be kept but need not be transcribed unless a party requests a review of the order of the hearing officer.

F. Except as otherwise provided in this section and rules or procedure established by the commission, the hearing officer is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure and may conduct the hearing in any manner that will achieve substantial justice.

G. Any party shall be entitled to issuance and service of subpoenas under the provisions of section 23-921. Any party or his representative may serve such subpoenas.

H. Any interested party or his authorized agent shall be entitled to inspect any claims file of the commission, provided that such authorization is filed in writing with the commission.

I. ~~At least ten days prior to the date set for the~~ WITHIN THIRTY DAYS AFTER THE DATE OF NOTICE OF hearing any interested party to a hearing before the commission may file an affidavit for change of hearing officer against any hearing officer of the commission hearing such matters or commencing to hear such matter, setting forth any of the grounds as provided in subsection J OF THIS SECTION, and the hearing officer shall immediately transfer the matter to another officer of the commission who shall preside therein. Not more than one change of hearing officer shall be granted to any one party.

J. Grounds which may be alleged as provided in subsection I OF THIS SECTION for change of hearing officer are:

1. That the hearing officer has been engaged as counsel in the hearing prior to appointment as hearing officer.

2. That the hearing officer is otherwise interested in the hearing.

3. That the hearing officer is of kin or otherwise related to a party to the hearing.

4. That the hearing officer is a material witness in the hearing.

5. That the party filing the affidavit has cause to believe and does believe that on account of the bias, prejudice, or interest of the hearing officer he cannot obtain a fair and impartial hearing.

Sec. 20. Section 23-942, Arizona Revised Statutes, is amended to read:

23-942. **Awards of hearing officer; contents; disposition and effect**

A. Upon the conclusion of any hearing, or prior thereto with concurrence of the parties, the hearing officer shall promptly and not later than thirty days after the matter is submitted for decision determine the matter and make an award in accordance with his determination.

B. IN THE EVENT OF THE DEMISE, RESIGNATION, RETIREMENT, TERMINATION OF EMPLOYMENT, OR OTHER INCAPACITATION OF THE PRESIDING HEARING OFFICER, THE AWARD SHALL BE DETERMINED BY THE CHIEF HEARING OFFICER OR HIS APPOINTEE.

~~B.~~ C. The award shall ~~be filed with~~ BECOME A PART OF the commission FILE. A copy of the award shall be sent forthwith by ~~registered or certified~~ mail to all parties in interest.

~~C.~~ D. The award is final when entered unless within thirty days after the date on which a copy of the award is mailed to the parties, one of the parties ~~requests a~~ FILES A REQUEST FOR review under section 23-943. The award shall contain a statement explaining the rights of the parties under section 23-943.

Sec. 21. Section 23-943, Arizona Revised Statutes, is amended to read:

23-943. **Decision upon review**

A. The request for review ~~by the commission of an award~~ of a hearing officer AWARD need only state that the party requests a review of the award. THE REQUEST MAY BE ACCOMPANIED BY A MEMORANDUM OF POINTS AND AUTHORITIES, IN WHICH EVENT ANY OTHER INTERESTED PARTY SHALL HAVE FIFTEEN DAYS FROM THE DATE OF FILING IN WHICH TO RESPOND. FAILURE TO RESPOND WILL NOT BE DEEMED AN ADMISSION AGAINST INTEREST.

B. The request for review shall be ~~mailed to the commission~~ FILED WITH THE HEARING OFFICER DIVISION and copies of the request

shall be mailed to all other parties to the proceeding. ~~before the hearing officer. Not more than a thirty day extension of the period for requesting review may be granted by the commission.~~

C. When review has been requested, the record of such oral proceedings at the hearings before the hearing officer for purposes of the review shall be transcribed at the expense of the commission. ~~The record shall be certified to be true and correct by the hearing officer.~~

D. Notice of the review shall be given to the parties by ~~registered or certified~~ mail.

E. The review ~~by the commission~~ shall be MADE BY THE PRESIDING HEARING OFFICER AND SHALL BE based upon the record AND THE MEMORANDA submitted ~~to it~~ under the provisions of subsection A OF THIS SECTION. ~~C and such oral or written argument as it may receive. If the commission determines that a case has been improperly, incompletely, or otherwise insufficiently developed or heard by the hearing officer, it may remand the case to the hearing officer for further evidence taking, correction, or other necessary action.~~

F. The ~~commission~~ PRESIDING HEARING OFFICER may affirm, reverse, RESCIND, modify or supplement the award ~~of the hearing officer~~ and make such disposition of the case as ~~it determines~~ IS DETERMINED to be appropriate. ~~It shall make its decision~~ A DECISION UPON REVIEW SHALL BE MADE within sixty days after the review has been requested, with preference being given to those cases not receiving compensation.

G. The ~~award of the commission shall be filed~~ DECISION UPON REVIEW SHALL BECOME A PART OF THE COMMISSION FILE and a copy thereof sent by ~~registered or certified~~ mail to the parties.

H. ~~An award of the commission is~~ THE DECISION UPON REVIEW SHALL BE final unless within thirty days after the date of mailing of copies of such ~~award~~ DECISION to the parties, one of the parties applies to the court of appeals for a writ of certiorari pursuant to section 23-951. The ~~award~~ DECISION shall contain a statement explaining the rights of the parties under this section and section 23-951.

Sec. 22. Section 23-946, Arizona Revised Statutes, is amended to read:

23-946. **Action asserting invalidity of order; limitation; venue and procedure**

A. Any person in interest dissatisfied with an order of the commission may WITHIN THIRTY DAYS commence an action in the superior court

of the county where the property, plant or place of employment affected by the order is located against the commission as defendant to set aside, vacate or amend the order, on the ground that the order is unreasonable or unlawful, and the superior court shall have exclusive jurisdiction thereof. The commission shall be served with summons as in civil actions.

B. The answer of the commission shall be filed within ~~ten~~ TWENTY days after service of summons upon it. The commission shall file with the answer a certified transcript of its record in the matter, whereupon the action shall be at issue and shall be advanced for trial by the court upon application of either party to the earliest possible date.

C. No action or proceeding to set aside, amend or enjoin enforcement of an order of the commission shall be brought unless the petitioner has applied to the commission for a hearing thereon as provided by section 23-945 and in such petition has raised every issue in the action.

Sec. 23. Section 23-951, Arizona Revised Statutes, is amended to read:

23-951. **Writ of certiorari to review lawfulness of award, order or decision upon review; procedure**

A. Any party affected by an award by the commission or by a decision upon review ~~of the commission~~ under the provisions of section 23-943~~,~~ or by an order ~~or decision other than the one issued pursuant to section 23-944,~~ UNDER THE PROVISIONS OF SECTION 23-237 may apply to the court of appeals for a writ of certiorari to review the lawfulness of the award, order or decision UPON REVIEW.

B. The writ of certiorari provided by subsection A OF THIS SECTION and by section 23-943 shall be made returnable within ten days and shall direct the commission to certify its record, proceedings and evidence to the court of appeals. The court of appeals may quash or dismiss the writ of certiorari upon the grounds of dismissal applicable to civil appeals. The review shall be limited to determining whether or not the commission acted without or in excess of its power and, if findings of fact were made, whether or not such findings of fact support the award, order or decision. If necessary, the court may review the evidence.

C. Each party to the proceedings before the commission may appear in the court of appeals.

D. The court of appeals shall enter judgment either affirming or setting aside the award, order or decision.

E. The rules of civil procedure relating to certiorari shall apply so far as applicable and not in conflict with this chapter.

Sec. 24. Section 23-1027, Arizona Revised Statutes, is amended to read:

23-1027. **Compensation precluded by neglect or refusal of employee to submit to treatment**

No compensation shall be payable for the death or disability of an employee if his death is caused by, or insofar as his disability may be aggravated, caused or continued by an unreasonable refusal or neglect to submit to or follow any competent ~~and~~ OR reasonable surgical treatment or medical aid.

Sec. 25. Section 23-1044, Arizona Revised Statutes, is amended to read:

23-1044. **Compensation for partial disability; computation**

A. For temporary partial disability there shall be paid during the period thereof~~, for not to exceed sixty months, sixty five~~ SIXTY-SIX AND TWO-THIRDS per cent of the difference between the wages earned before the injury and the wages which the injured person is able to earn thereafter. UNEMPLOYMENT BENEFITS RECEIVED DURING THE PERIOD OF TEMPORARY PARTIAL DISABILITY SHALL BE CONSIDERED WAGES ABLE TO BE EARNED.

B. Disability shall be deemed permanent partial disability if caused by any of the following specified injuries, and compensation of fifty-five per cent of the average monthly wage of the injured employee, in addition to the compensation for temporary total disability, shall be paid for the period given in the following schedule:

1. For the loss of a thumb, fifteen months.

2. For the loss of a first finger, commonly called the index finger, nine months.

3. For the loss of a second finger, seven months.

4. For the loss of a third finger, five months.

5. For the loss of the fourth finger, commonly called the little finger, four months.

6. The loss of a distal or second phalange of the thumb or the distal or third phalange of the first, second, third or fourth finger, shall be considered equal to the loss of one-half of the thumb or finger, and compensation shall be one-half of the amount specified for the loss of the entire thumb or finger.

7. The loss of more than one phalange of the thumb or finger shall be considered as the loss of the entire finger or thumb, but in no event shall the amount received for more than one finger exceed the amount provided for the loss of a hand.

8. For the loss of a great toe, seven months.

9. For the loss of a toe other than the great toe, two and one-half months.

10. The loss of the first phalange of any toe shall be considered equal to the loss of one-half of the toe and compensation shall be one-half of the amount for one toe.

11. The loss of more than one phalange shall be considered as the loss of the entire toe.

12. For the loss of a major hand, fifty months, or of a minor hand, forty months.

13. For the loss of a major arm, sixty months, or of a minor arm, fifty months.

14. For the loss of a foot, forty months.

15. For the loss of a leg, fifty months.

16. For the loss of an eye by enucleation, thirty months.

17. For the permanent and complete loss of sight in one eye without enucleation, twenty-five months.

18. For permanent and complete loss of hearing in one ear, twenty months.

19. For permanent and complete loss of hearing in both ears, sixty months.

20. The permanent and complete loss of the use of a finger, toe, arm, hand, foot or leg may be deemed the same as the loss of any such member by separation.

21. For the partial loss of use of a finger, toe, arm, hand, foot, leg, or partial loss of sight or hearing, fifty per cent of the average monthly wage during that proportion of the number of months in the foregoing schedule provided for the complete loss of use of such member, or complete loss of sight or hearing, which the partial loss of use thereof bears to the total loss of use of such member or total loss of sight or hearing.

22. For permanent disfigurement about the head or face, which shall include injury to or loss of teeth, the commission may, in accordance with the provisions of section 23-1047, allow such sum for compensation thereof as it deems just, in accordance with the proof submitted, for a period not to exceed eighteen months.

C. In cases not enumerated in subsection B of this section, where the injury causes permanent partial disability for work, the employee shall receive during such disability compensation equal to fifty-five per cent of the difference between his average monthly wages before the accident and the amount which represents his reduced monthly earning capacity resulting from the disability, but the payment shall not continue after the disability ends, or the death of the injured person, and in case the partial disability begins after a period of total disability, the period of total disability shall be deducted from the total period of compensation.

D. In determining the amount which represents the reduced monthly earning capacity for the purposes of subsection C of this section, consideration shall be given, among other things, to any previous disability, the occupational history of the injured employee, the nature and extent of the physical disability, the type of work the injured employee is able to perform subsequent to the injury, any wages received for work performed subsequent to the injury and the age of the employee at the time of injury.

E. In case there is a previous disability, as the loss of one eye, one hand, one foot or otherwise, the percentage of disability for a subsequent injury shall be determined by computing the percentage of the entire disability and deducting therefrom the percentage of the previous disability as it existed at the time of the subsequent injury.

F. For the purposes of subsection C of this section, the commission shall, in accordance with the provisions of section 23-1047 when the

physical condition of the injured employee becomes stationary, determine the amount which represents the reduced monthly earning capacity, and upon such determination make an award of compensation which shall be subject to change in the following events:

1. Upon a showing of a change in the physical condition of the workman subsequent to such findings and award arising out of the injury resulting in the reduction or increase of his earning capacity, or

2. Upon a showing of a reduction in the earning capacity of the workman arising out of such injury where there is no change in his physical condition, subsequent to the findings and award, or

3. Upon a showing that his earning capacity has increased subsequent to such findings and award.

G. The commission may adopt a schedule for rating loss of earning capacity and reasonable and proper rules to carry out the provisions of this section.

Sec. 26. Section 23-1045, Arizona Revised Statutes, is amended to read:

23-1045. **Compensation for total disability; permanent total disability defined**

A. For temporary total disability the following compensation shall be paid:

1. If there is no one residing in the United States totally dependent upon the employee at the time of the injury, compensation of ~~sixty-five~~ SIXTY-SIX AND TWO-THIRDS per cent of the average monthly wage shall be paid during the period of disability. ~~, not to exceed one hundred months.~~

2. If there are persons residing in the United States totally dependent for support upon the employee, compensation shall be paid as provided in this chapter with an additional allowance of ten dollars per month for such dependents during the period of disability. The additional allowance shall not be based upon a per capita number of dependents but shall reflect a total monthly benefit increase of exactly ten dollars. The provisions of this paragraph shall be retroactive with respect to payments previously made.

B. For permanent total disability, compensation of ~~sixty-five~~ SIXTY-SIX AND TWO-THIRDS per cent of the average monthly wage shall be paid during the life of the injured person.

C. In the absence of proof to the contrary, disability shall be deemed total and permanent if caused by:

1. The total and permanent loss of sight of both eyes.

2. The loss by separation of both feet.

3. The loss by separation of both hands.

4. An injury to the spine resulting in permanent and complete paralysis of both legs or both arms, or one leg and one arm.

5. An injury to the skull resulting in incurable imbecility or insanity.

6. The loss by separation of one hand and one foot.

D. The enumeration in this section is not exclusive, and in all other cases permanent total disability shall be determined in accordance with the facts and in accordance with the provisions of section 23-1047.

Sec. 27. Section 23-1046, Arizona Revised Statutes, is amended to read:

23-1046. **Death benefits**

A. In case of an injury causing death, the compensation therefor shall be known as a death benefit, and shall be payable in the amount, for the period, and to and for the benefit of the persons following:

1. Burial expenses, not to exceed eight hundred dollars, in addition to the compensation.

2. To the ~~widow~~ SURVIVING SPOUSE, if there is no child, thirty-five per cent of the average wage of the deceased, to be paid until ~~her~~ SUCH SPOUSE'S death or remarriage, with two years' compensation in one sum upon remarriage.

~~3. To the widower, if there is no child, thirty-five per cent of the average wage of the deceased, if wholly dependent for support upon the deceased employee at the time of her death, to be paid until his death or remarriage.~~

~~4.~~ 3. To the widow or widower, if there is a child or children, the additional amount of fifteen per cent of such wage for each child until the age of eighteen years, the total not to exceed sixty-six and two-thirds per cent of the average wage.

~~5.~~ 4. To a single surviving child, in the case of the subsequent death of a surviving HUSBAND OR wife, ~~or a dependent husband,~~ or if there is no surviving HUSBAND OR wife ~~or dependent husband~~, twenty-five per cent of such average wages, or if there is more than one surviving child, twenty-five per cent for one child, and fifteen per cent for each additional child, to be divided among such children share and share alike, but not exceeding a total of sixty-six and two-thirds per cent of the average wage. Compensation to any such child shall cease upon death, marriage or upon reaching the age of eighteen years, except, if over eighteen years and incapable of self-support, when it becomes capable of self-support.

~~6.~~ 5. To a parent, if there is no surviving HUSBAND, wife~~, dependent husband~~ or child under the age of eighteen years, if wholly dependent for support upon the deceased employee at the time of his death, twenty-five per cent of the average monthly wage of the deceased during dependency, with an added allowance of fifteen per cent if two dependent parents survive, and, if neither parent is wholly dependent, but one or both partly dependent, fifteen per cent divided between them share and share alike.

~~7.~~ 6. To brothers or sisters under the age of eighteen years, if there is no surviving HUSBAND OR wife, ~~dependent husband,~~ dependent children under the age of eighteen years or dependent parent, the following shall govern:

(a) If one of the brothers or sisters is wholly dependent upon the deceased employee for support at the time of injury causing death, twenty-five per cent of the average monthly wage until of the age of eighteen years.

(b) If more than one brother or sister is wholly dependent, thirty-five per cent of the average monthly wage at the time of injury causing death, divided among such dependents share and share alike.

(c) If none of the brothers or sisters is wholly dependent, but one or more partly dependent, fifteen per cent divided among such dependents share and share alike.

~~8.~~ 7. If there are no dependents in the foregoing schedule, dependency shall be determined according to the facts as of the time of the injury in accordance with the provisions of section 23-1047.

B. If the deceased employee leaves dependents only partially dependent upon his earnings for support at the time of the injury, the monthly compensation shall be equal to such proportion of the monthly payments for the benefit of persons totally dependent as the amount contributed by

the employee to such partial dependents bears to the average wage of the deceased at the time of the injury resulting in his death. The duration of compensation to partial dependents shall be fixed by the commission in accordance with the facts shown, and in accordance with the provisions of section 23-1047, but shall in no case exceed compensation for one hundred months.

C. A death benefit paid to an alien not residing in the United States shall be only sixty per cent of the amount specified in this section.

D. In event of death of a dependent before expiration of the time named in the award, the funeral expenses of such person, not to exceed eight hundred dollars, shall be paid.

Sec. 28. Section 23-1047, Arizona Revised Statutes, is amended to read:

23-1047. **Procedure for determining compensation for partial disability and permanent total disability in cases not enumerated; procedure for determining nonscheduled dependence and duration of compensation to partial dependents in death cases**

A. In cases of permanent partial disability under the provisions of paragraph 22 of subsection B and subsections C, D~~, E~~ and F of section 23-1044, when the physical condition of the injured employee becomes stationary, or in the case of permanent total disability not enumerated in section 23-1045, and under the provisions of subsection D thereof, or in death cases under the provisions of paragraph 8, subsection A, section 23-1046 and subsection B of section 23-1046, the employer or insurance carrier shall so notify the commission and request that the claim be examined and further compensation, if any, be determined. A copy of all medical reports necessary to make such determination also shall be furnished to the commission. The employer or insurance carrier may commence payment of a permanent disability award without waiting for a determination under subsection B of this section.

B. Within thirty days after the commission receives the medical reports, the claims shall be examined and further compensation, including permanent disability award, if any, determined under the commission's supervision. If necessary, the commission may require additional medical or other information with respect to the claim and may postpone the determination for not more than sixty additional days. Any determination under this subsection may include necessary adjustments in any compensation paid or payable.

C. The commission shall mail a copy of the determination to all interested parties. Any such party may request a hearing under section 23-941 on the determination made under subsection B of this section within sixty days after copies of the determination are mailed.

D. Any person receiving permanent compensation benefits shall report annually on the anniversary date of the award to the commission all of his earnings for the prior twelve month period, which information shall be immediately forwarded to the employer or insurance carrier responsible for paying such compensation benefits. In the event the person fails to make such report to the commission within thirty days following the anniversary date, the commission shall notify the employer or insurance carrier and the employee that such reports have not been received, and the employer or insurance carrier may then suspend any further payments until such report of earnings is filed with the commission.

Sec. 29. Section 23-1061, Arizona Revised Statutes, is amended to read:

23-1061. **Notice of accident; form of notice; claim for compensation; reopening; payment of compensation**

A. Notwithstanding the provisions of subsection D of section 23-908, no claim for compensation shall be valid or enforceable unless the claim is filed with the commission by the employee, or if resulting in death by the parties entitled to compensation, or someone on their behalf, in writing within one year after the injury occurred or the right thereto accrued. The commission upon receiving a claim shall give notice to the carrier.

B. Failure of an employee to file a claim with the commission within one year or to comply with the provisions of section 23-908 shall not bar a claim if the insurance carrier or employer has commenced payments under the provisions of section 23-1044, 23-1045 or 23-1046.

C. If the commission receives a notification of the injury, the commission shall send a claim form to the employee.

D. The issue of failure to file a claim must be raised at the first hearing on a claim for compensation in respect to the injury or death.

E. Within ten days after receiving notice of an accident, the employer shall inform his insurance carrier and the commission on such forms as may be prescribed by the commission.

F. Each insurance carrier and self-insuring employer shall report to the commission a notice of the first payment of compensation and shall

promptly report to the commission and to the employee by ~~certified~~ mail at his last known address any denial of a claim, any change in the amount of compensation and the termination thereof, except that claims for medical, surgical and hospital benefits which are not denied shall be reported to the commission ~~only, on a semi annual basis~~ in the form and manner determined by the commission. In all cases where compensation is payable, the carrier or self-insuring employer shall promptly determine the average monthly wage pursuant to section 23-1041. Within thirty days of the payment of the first installment of compensation, the carrier or self-insuring employer shall notify the employee and commission of the average monthly wage of the claimant as calculated, and the basis for such determination. The commission shall thereupon make its own independent determination of the average monthly wage pursuant to section 23-1041. The commission shall within thirty days after receipt of such notice notify the employee, employer and carrier of such determination. The amount determined by the commission shall be payable retroactive to the first date of entitlement. The first payment of compensation shall be accompanied by a notice on a form prescribed by the commission stating the manner in which the amount of compensation was determined.

G. Except as otherwise provided by law, the insurance carrier or self-insuring employer shall process and pay compensation and provide medical, surgical and hospital benefits, without the necessity for the making of an award or determination by the commission.

H. An employee may reopen his claim to secure an increase or rearrangement of compensation or additional benefits by filing with the commission a petition requesting the reopening of his claim upon the basis of new, additional or previously undiscovered temporary or permanent condition, which petition shall be accompanied by a statement from a physician setting forth the physical condition of the employee relating to the claim. The payment for such reasonable and necessary medical ~~examination~~, HOSPITAL and laboratory work expense shall be paid for by the EMPLOYER OR THE employer's insurance carrier ~~or the self-insuring employer if it accepts the petition as hereinafter~~ IF THE CLAIM IS REOPENED AS provided BY LAW AND IF SUCH EXPENSES ARE INCURRED WITHIN FIFTEEN DAYS OF THE FILING OF THE PETITION TO REOPEN. No ~~other additional~~ SURGICAL BENEFITS OR MONETARY compensation shall be payable for any period prior to the date of filing of the petition TO REOPEN.

I. Upon the filing of a petition to reopen a claim the commission shall in writing notify the employer's insurance carrier or the self-insuring employer, which shall in writing notify the commission and the employee

within twenty-one days after the date of such notice of its acceptance or denial of the petition. The reopened claim shall be processed thereafter in like manner as a new claim.

J. The commission shall investigate and review any claim in which it appears to the commission that the claimant has not been granted the benefits to which such claimant is entitled. If the commission determines that payment or denial of compensation is improper in any way, it shall hold a hearing pursuant to section 23-941 within sixty days after receiving notice of such impropriety.

K. When there is a dispute as to which employer, or insurance carrier, is liable for the payment of a compensable claim, the commission may, by order, designate the employer or insurance carrier which shall pay the claim. Payment shall begin within fourteen days after the employer or insurance carrier has been ordered by the commission to commence payment. When a final determination has been made as to which employer or insurance carrier is actually liable, the commission shall direct any necessary monetary adjustment or reimbursement between the parties or carriers involved.

L. UPON APPLICATION TO THE COMMISSION, AND FOR GOOD CAUSE SHOWN, THE COMMISSION MAY DIRECT THAT A DOCUMENT FILED AS A CLAIM FOR COMPENSATION BENEFITS BE DESIGNATED AS A PETITION TO REOPEN, EFFECTIVE AS OF THE ORIGINAL DATE OF FILING. IN LIKE MANNER UPON APPLICATION AND GOOD CAUSE SHOWN THE COMMISSION MAY DIRECT THAT A DOCUMENT FILED AS A PETITION TO REOPEN BE DESIGNATED A CLAIM FOR COMPENSATION BENEFITS, EFFECTIVE AS OF THE ORIGINAL DATE OF FILING.

M. IF THE INSURANCE CARRIER OR SELF-INSURER DOES NOT ISSUE A NOTICE OF CLAIM STATUS DENYING THE CLAIM WITHIN TWENTY-ONE DAYS FROM THE DATE THE CARRIER IS NOTIFIED BY THE COMMISSION OF A CLAIM OR OF A PETITION TO REOPEN, THE CARRIER SHALL PAY IMMEDIATELY, COMPENSATION FROM THE DATE THE CARRIER IS NOTIFIED BY THE COMMISSION OF A CLAIM OR PETITION TO REOPEN UNTIL THE DATE UPON WHICH THE CARRIER ISSUES A NOTICE OF CLAIM STATUS DENYING SUCH CLAIM. AS USED IN THIS SUBSECTION, "COMPENSATION PAYABLE" INCLUDES MEDICAL, SURGICAL AND HOSPITAL BENEFITS. THIS SECTION SHALL NOT APPLY TO CASES INVOLVING SEVEN DAYS OR LESS OF TIME LOST FROM WORK.

Sec. 30. Section 23-1062, Arizona Revised Statutes, is amended to read:

23-1062. **Medical, surgical, hospital benefits; commencement of compensation**

A. Promptly, upon notice to the employer, every injured employee shall receive medical, surgical and hospital benefits or other treatment, nursing, medicine, surgical supplies, crutches and other apparatus, including artificial members, reasonably required at the time of the injury, and during the period of ~~temporary~~ disability. Such benefits shall be termed "medical, surgical and hospital benefits."

B. The first installment of compensation is to be paid no later than the twenty-first day after written notification by the commission to the carrier of the filing of a claim except where the right to compensation is denied. Thereafter, compensation shall be paid at least once each two weeks during the period of temporary total disability and at least monthly thereafter. Compensation shall not be paid for the first seven days after the injury. If the incapacity extends beyond the period of seven days, compensation shall begin on the eighth day after the injury, but if the disability continues for one week beyond such seven days, compensation shall be computed from the date of the injury.

Sec. 31. Section 23-1064, Arizona Revised Statutes, is amended to read:

23-1064. **Presumptions of dependency; determination**

A. The following persons are conclusively presumed to be totally dependent for support upon a deceased employee:

1. A wife upon a husband whom she has not voluntarily abandoned at the time of the injury.

2. A husband~~, mentally or physically incapacitated from wage earnings,~~ upon a wife whom he has not voluntarily abandoned at the time of the injury.

3. A natural, posthumous or adopted child under the age of eighteen years, or over that age if physically or mentally incapacitated from wage earning, upon the injured parent. Stepparents may be regarded as parents, if dependent, and a stepchild as a natural child if dependent.

B. Questions of dependency and the extent thereof shall be determined as of the date of the injury to the employee and the dependent's right to

any death benefit shall become fixed as of such time irrespective of any subsequent change in conditions, and the death benefits shall be directly recoverable by and payable to the dependent entitled thereto.

Sec. 32. Section 23-1065, Arizona Revised Statutes, is amended to read:

23-1065. **Payment where no dependent survives; special fund; purposes**

A. When an injury results in death and there is no dependent, the employer, insurance carrier, or the state compensation fund, as the case may be, shall pay the burial expenses of the deceased, as provided in this chapter, and shall pay into the state treasury one thousand one hundred fifty dollars. In addition, the industrial commission may direct the payment into the state treasury of not to exceed two per cent of all premiums received by the state compensation fund and private insurance carriers during the immediately preceding calendar year. The same percentage shall be assessed against self-insurers based on the total cost to the self-insured employer as provided in subsection F of section 23-961. Such assessments shall be computed on the same premium basis as provided for in subsection F of section 23-961~~.~~, AND SHALL BE NO MORE THAN IS NECESSARY TO KEEP THE SPECIAL FUND ACTUARIALLY SOUND. Such payments shall be placed in a special fund within the administrative fund for the following purposes:

1. In the discretion of the commission, to provide such additional awards as may be necessary to enable injured employees to accept the benefits of any law of the state, or of the United States, or both jointly, for promotion of vocational rehabilitation of persons disabled in industry.

~~2. The commission shall provide additional awards for injured employees in such amounts as may be necessary for continuing benefits or medical benefits after the period of temporary disability, or after the obligation of the carrier is extinguished under subsection A of section 23-1044 or subsection A of section 23-1045.~~

~~3.~~ 2. An employee who loses by separation, or who sustains the permanent and complete loss of the use of a hand, an arm, a foot, a leg or an eye, and who has previously lost by separation, or has permanently and completely lost the use of a hand, an arm, a foot, a leg or an eye, and thereby, as a result of the subsequent loss, becomes in fact totally and permanently disabled, shall receive the compensation provided by section 23-1044 for such subsequent loss, and shall in addition thereto, after termination of the period of compensation provided by section 23-1044, if the permanent total disability continues thereafter, receive compensation

at the rate provided in subsection B of section 23-1045, but the additional compensation shall be paid solely from the funds created by this section.

~~4.~~ 3. An employee who suffers from a pre-existing disease, whether or not created by an industrial injury, and thereafter sustains an injury by accident arising out of and in the course of employment, within the meaning of subsection B of section 23-1044, which injury aggravates the pre-existing disease to the extent that he becomes in fact totally and permanently disabled, shall receive the compensation provided by subsection B of section 23-1044 for such injury, and in addition thereto, after termination of the period of compensation provided by such section, if the total and permanent disability continues thereafter, receive compensation at the rate provided in subsection B of section 23-1045, such additional compensation to be paid solely from the funds created by this section.

~~5.~~ 4. An employee who suffers from a pre-existing disabling condition other than defined in paragraphs ~~3~~ 2 and ~~4~~ 3 of this section whether or not created by an industrial injury, and who thereafter sustains an injury by accident arising out of and in the course of his employment within the meaning of section 23-1044, which subsequent accident has permanently aggravated the previous condition, shall receive such benefits as provided in section 23-1044, however, the compensation payable for the combined disabilities shall be apportioned upon the ratio of the percentage of the pre-existing general physical functional disability of the total percentage of the combined general physical functional disability and the amount of compensation so attributable to the pre-existing general physical functional disability shall be paid solely from the funds created by this section, provided the combined disabilities total forty per cent or more general physical functional disablement.

B. In the event the injured employee is awarded additional compensation, under the provisions of paragraph 2, 3~~,~~ OR 4, ~~or 5,~~ the commission retains jurisdiction to amend, alter or change the award upon a change in the physical condition of the injured employee resulting from the injury.

C. The commission shall request the auditor general to make an annual audit of the special award fund, and shall also cause an annual actuarial study of the fund to be made by a qualified actuary who is a member of the society of actuaries. The actuary shall make specific recommendations for maintaining the fund on a sound actuarial basis. The audit report and the actuarial study shall be completed on or before September 1.

D. THE SPECIAL FUND CREATED BY THIS SECTION SHALL BE ADMINISTERED BY THE DIRECTOR OF THE INDUSTRIAL

COMMISSION, SUBJECT TO THE AUTHORITY OF THE INDUSTRIAL COMMISSION. THE DIRECTOR MAY INVEST AND REINVEST THE FUNDS CREATED BY THIS SECTION IN ANY LEGAL INVESTMENTS AUTHORIZED UNDER THE PROVISIONS OF SECTION 38-757.

E. ALL SECURITIES PURCHASED PURSUANT TO SUBSECTION D OF THIS SECTION SHALL FORTHWITH BE DEPOSITED WITH THE STATE TREASURER AS CUSTODIAN THEREOF, WHO SHALL COLLECT THE DIVIDENDS, INTEREST, AND PRINCIPAL THEREOF, AND PAY, WHEN COLLECTED, INTO THE SPECIAL FUND. THE STATE TREASURER SHALL PAY ALL VOUCHERS DRAWN FOR THE PURCHASE OF SECURITIES. THE DIRECTOR MAY SELL ANY OF THE SECURITIES AS HE DEEMS APPROPRIATE AND THE PROCEEDS THEREFROM SHALL BE PAYABLE TO THE STATE TREASURER FOR THE ACCOUNT OF THE SPECIAL FUND UPON DELIVERY OF THE SECURITIES TO THE PURCHASER OR HIS AGENT.

Sec. 33. Section 23-1067, Arizona Revised Statutes, is amended to read:

23-1067. **Commutation of compensation to lump sum payment**

A. The commission may allow ~~conversion~~ COMMUTATION of the compensation ~~into~~ AWARDED PURSUANT TO SECTION 23-1044, SUBSECTION B, TO a lump sum payment not to exceed twenty-five thousand dollars, WITH OR WITHOUT THE CONSENT OF THE CARRIER LIABLE FOR THE COMMUTATION, under such rules, regulations and system of computation as it devises for obtaining the present value of the compensation.

B. THE COMMISSION MAY ALLOW COMMUTATION OF COMPENSATION PURSUANT TO SECTION 23-1044, SUBSECTION C, AND SECTION 23-1045, SUBSECTIONS B, C AND D, TO A LUMP SUM NOT TO EXCEED TWENTY-FIVE THOUSAND DOLLARS, WITH THE CONSENT OF THE CARRIER LIABLE TO PAY THE CLAIM, UNDER SUCH RULES, REGULATIONS AND SYSTEM OF COMPUTATION AS IT DEVISES FOR OBTAINING THE PRESENT VALUE OF THE COMPENSATION.

Sec. 34. Section 23-1069, Arizona Revised Statutes, is amended to read:

23-1069. **Attorney's fees; payment; time limitation**

A. In proceedings before the commission in which an attorney employed by the claimant has rendered services reasonably necessary in processing

the claim, the commission shall, upon application ~~of~~ FILED BY the attorney or the claimant PRIOR TO A FINAL DISPOSITION OF THE CASE, set a reasonable attorney's fee and shall provide for the payment thereof from the award, in installments or otherwise, as the commission determines proper in view of the award made, and shall further provide for the payment of the attorney's fee direct to the attorney. The commission shall charge the amount of the payment against the award to the claimant.

B. The attorney's fee provided for in subsection A shall be not more than twenty-five per cent up to ten years from the date of the award. In cases involving solely loss of earning capacity, the maximum shall be twenty-five per cent up to five years from the date of the final award. When the payment of the award to the claimant is made in installments, or in other than a lump sum manner, in no event may an amount in excess of twenty-five per cent of any one such installment payment be withheld for the attorney's fee.

C. The reasonableness of the attorney's fee set pursuant to subsection A shall be reviewable upon the application of the claimant or the attorney in the same manner as other awards of the commission.

Sec. 35. **Repeal**

Section 23-261, Arizona Revised Statutes, is repealed.

Sec. 36. **Name change**

A. The designation of title 23, chapter 2, article 6, Arizona Revised Statutes, is changed from "MINIMUM WAGES FOR WOMEN AND MINORS" to "MINIMUM WAGES FOR MINORS".

B. The designation of title 23, chapter 2, article 6.1, is changed from "EQUAL WAGES FOR WOMEN" to "EQUAL WAGES".

Approved by the Governor–May 7, 1973

Files in the Office of the Secretary of State–May 7, 1973

LAWS OF ARIZONA

CHAPTER 134

House Bill 2122

AN ACT

RELATING TO ELECTIONS; PROHIBITING CONTRIBUTION BY LABOR ORGANIZATION TO INFLUENCE ANY ELECTION, AND AMENDING SECTION 16-471, ARIZONA REVISED STATUTES.

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

Section 1. Section 16-471, Arizona Revised Statutes, is amended to read:

16-471. **Prohibition of contributions by corporations or labor organizations; penalty**

A. It is unlawful for a corporation organized or doing business in the state to make any contribution of money or anything of value for the purpose of influencing an election.

B. IT IS UNLAWFUL FOR A LABOR ORGANIZATION ORGANIZED OR DOING BUSINESS IN THE STATE TO MAKE ANY CONTRIBUTION OF MONEY OR ANYTHING OF VALUE FOR THE PURPOSE OF INFLUENCING AN ELECTION.

~~B.~~ C. A corporation, LABOR ORGANIZATION or person acting on behalf thereof violating this section shall be punished by a fine of not less than five hundred nor more than two thousand dollars.

~~C.~~ D. The person through whom the violation is effected shall be further punished by imprisonment in the state penitentiary for not less than one nor more than three years.

E. FOR THE PURPOSES OF THIS SECTION "LABOR ORGANIZATION" MEANS ANY ORGANIZATION OF ANY KIND OR ANY AGENCY OR EMPLOYEE REPRESENTATION COMMITTEE OR PLAN IN WHICH EMPLOYEES PARTICIPATE AND WHICH EXISTS FOR THE PURPOSE IN WHOLE OR IN PART OF DEALING WITH EMPLOYERS CONCERNING GRIEVANCES, LABOR DISPUTES, WAGES, RATES OF PAY, HOURS OF EMPLOYMENT OR CONDITIONS OF WORK.

F. FOR THE PURPOSES OF THIS SECTION "EMPLOYER" INCLUDES ANY PERSON ACTING AS AN AGENT OF AN EMPLOYER, DIRECTLY OR INDIRECTLY.

G. FOR THE PURPOSES OF THIS SECTION "EMPLOYEE' SHALL INCLUDE ANY EMPLOYEE, SHALL NOT BE LIMITED TO THE EMPLOYEES OF A PARTICULAR EMPLOYER, AND SHALL INCLUDE ANY INDIVIDUAL WHOSE WORK HAS CEASED AS A CONSEQUENCE OF, OR IN CONNECTION WITH, ANY CURRENT LABOR DISPUTE OR BECAUSE OF ANY UNFAIR LABOR PRACTICE.

H. FOR PURPOSES OF THIS SECTION "ELECTION" MEANS ANY ELECTION TO ANY POLITICAL OFFICE, ANY ELECTION TO ANY POLITICAL CONVENTION OR CAUCUS, OR ANY PRIMARY ELECTION HELD FOR THE PURPOSE OF SELECTING ANY CANDIDATE, POLITICAL COMMITTEE OR OTHER PERSON FOR ANY POLITICAL OFFICE, CONVENTION OR CAUCUS.

Approved by the Governor–May 7, 1973

Filed in the Office of the Secretary of State–May 7, 1973

CHAPTER 135

House Bill 2237

AN ACT

RELATING TO INSURANCE; PRESCRIBING DATE FOR FILING PREMIUM TAX REPORT; PRESCRIBING PREMIUM TAX RATES FOR CERTAIN INSURANCE COMPANIES; AUTHORIZING THE DIRECTOR OF INSURANCE TO ADOPT RULES AND REGULATIONS DEFINING A HOME OFFICE, AND AMENDING SECTIONS 20-224 AND 20-224.01, ARIZONA REVISED STATUTES.

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

Section 1. Section 20-224, Arizona Revised Statutes, is amended to read:

20-224. **Premium tax**

A. Each authorized insurer, and each formerly authorized insurer referred to in subsection B of section 20-206, shall file with the director, on or before March ~~31~~ 1 each year, a report in form as prescribed by the director showing total direct premium income including policy membership and other fees and all other considerations for insurance from all classes of business whether designated as a premium or otherwise received by it during the preceding calendar year on account of policies and contracts covering property, subjects or risks located, resident or to be performed in this state, after deducting from such total direct premium income applicable cancellations, returned premiums, the amount of reduction in or refund of premiums allowed to industrial life policyholders for payment of premiums direct to an office of the insurer, all policy dividends, refunds, savings coupons and other similar returns paid or credited to policyholders within this state and not reapplied as premiums for new, additional or extended insurance. No deduction shall be made of the cash surrender values of policies or contracts. Considerations received on annuity contracts, as well as the unabsorbed portion of any premium deposit, shall not be included in total direct premium income, and neither shall be subject to tax.

B. Coincident with the filing of such tax report each foreign or alien insurer AND EACH DOMESTIC INSURER WHO FAILS TO MAINTAIN IN THIS STATE A HOME OFFICE AS DEFINED BY RULES AND REGULATIONS ADOPTED BY THE DIRECTOR shall pay to the state treasurer, through the director, a tax of two per cent of such net premiums. ~~, and each~~ EACH domestic insurer MAINTAINING IN THIS STATE A HOME OFFICE AS DEFINED BY RULES AND REGULATIONS ADOPTED BY THE DIRECTOR shall so pay a tax of one per cent of such net premiums.

C. That portion of the tax paid hereunder by an insurer on account of premiums received for fire insurance shall be separately specified in the report and shall be apportioned in the manner provided by sections 9-951, 9-952, and 9-972, except that all of the tax allocated to a fund of a municipality which has no volunteer firemen or pension obligations to volunteer firemen shall be appropriated to the account of the municipality in the public safety personnel retirement system and all of the tax allocated to a fund of a municipality which has both full time paid firemen and volunteer firemen or pension obligations to full time paid firemen or volunteer firemen shall be appropriated to the account of the municipality in the public safety personnel retirement system where it shall be reallocated by actuarial procedures proportionately to the municipality for

the account of the full time paid firemen and to the municipality for the account of the volunteer firemen. A full accounting of such reallocation shall be forwarded to the municipality and both local boards.

D. This section shall not apply to title insurance, and such insurers shall be taxed as provided in section 20-1566.

E. NOTWITHSTANDING THE PROVISIONS OF SUBSECTION B OF THIS SECTION, A DOMESTIC INSURER FORMED UNDER THE LAWS OF THIS STATE PRIOR TO JANUARY 1, 1973, WHICH DOES NOT MAINTAIN IN THIS STATE A HOME OFFICE AS DEFINED BY RULES AND REGULATIONS ADOPTED BY THE DIRECTOR SHALL, UNTIL JANUARY 1, 1975, PAY THE TAX PROVIDED FOR A DOMESTIC INSURER WHICH MAINTAINS A HOME OFFICE IN THIS STATE. THEREAFTER SUCH DOMESTIC INSURER SHALL HAVE EITHER ESTABLISHED A HOME OFFICE OR SHALL PAY THE TAX PRESCRIBED FOR A FOREIGN OR ALIEN INSURER AND FOR EACH DOMESTIC INSURER NOT MAINTAINING A HOME OFFICE IN THIS STATE.

Sec. 2. Section 20-224.01, Arizona Revised Statutes, is amended to read:

20-224.01. **Additional premium tax**

A. Beginning on July 1, 1959, and coincident with the filing of such tax report as required in section 20-224, each foreign or alien insurer AND EACH DOMESTIC INSURER WHO FAILS TO MAINTAIN IN THIS STATE A HOME OFFICE AS DEFINED BY RULES AND REGULATIONS ADOPTED BY THE DIRECTOR shall pay to the state treasurer, through the director, a tax of one-half of one per cent of such net premiums received from all insurance carried for or on vehicles as defined in section 28-153, in addition to other applicable taxes.

B. The tax of one-half of one per cent of such net premiums received by the state treasurer and paid by an insurer on account of premiums received for insurance on certain vehicles as defined in section 28-153, shall be separately specified in the insurer's report required in section 20-224 and is appropriated to the public safety personnel retirement system and shall be paid by the state treasurer to the fund manager of the public safety personnel retirement system for deposit in the highway patrol account. All unexpended and unencumbered funds remaining to the credit of the state highway patrol retirement fund within the state retirement system board shall, from and after June 30, 1968, be transferred to the fund manager of the public safety personnel retirement system for deposit in the highway patrol account.

C. NOTWITHSTANDING THE PROVISIONS OF SUBSECTION A OF THIS SECTION, A DOMESTIC INSURER FORMED UNDER THE LAWS OF THIS STATE PRIOR TO JANUARY 1, 1973, WHICH DOES NOT MAINTAIN IN THIS STATE A HOME OFFICE AS DEFINED BY RULES AND REGULATIONS ADOPTED BY THE DIRECTOR SHALL, UNTIL JANUARY 1, 1975, PAY THE TAX PROVIDED FOR A DOMESTIC INSURER WHICH MAINTAINS A HOME OFFICE IN THIS STATE. THEREAFTER SUCH DOMESTIC INSURER SHALL HAVE EITHER ESTABLISHED A HOME OFFICE OR SHALL PAY THE TAX PRESCRIBED FOR A FOREIGN OR ALIEN INSURER AND FOR EACH DOMESTIC INSURER NOT MAINTAINING A HOME OFFICE IN THIS STATE.

Approved by the Governor–May 7, 1973

Filed in the Office of the Secretary of State–May 7, 1973

CHAPTER 136

Senate Bill 1012

AN ACT

RELATING TO LABOR; INCLUDING CERTAIN WORKING MEMBERS OF PARTNERSHIPS, AND MEMBERS OF ARIZONA NATIONAL GUARD, ARIZONA STATE GUARD OR UNORGANIZED MILITIA WITHIN THE WORKMEN'S COMPENSATION LAWS; PROVIDING THAT WORKMEN'S COMPENSATION LAWS SHALL APPLY TO EVERY PERSON WHO HAS IN HIS EMPLOY ANY WORKMEN OR OPERATIVES EXCEPT DOMESTIC SERVANTS; PROVIDING WORKMEN'S COMPENSATION BENEFITS FOR AGRICULTURAL WORKERS; AMENDING SECTION 23-901, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1973, CHAPTER 53, SECTION 1; AMENDING SECTIONS 23-902 AND 23-907, ARIZONA REVISED STATUTES, AND REPEALING SECTION 26-164, ARIZONA REVISED STATUTES.

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

Section 1. Section 23-901, Arizona Revised Statutes, as amended by Laws 1973, chapter 53, section 1, is amended to read:

23-901. **Definitions**

In this chapter, unless the context otherwise requires:

1. "Award" means the finding or decision of a hearing officer or the commission as to the amount of compensation or benefit due an injured employee or the dependents of a deceased employee.

2. "Commission" means the industrial commission of Arizona.

3. "Compensation" means the compensation and benefits provided by this chapter.

4. "Employee", "workmen" and "operative" means:

(a) Every person in the service of the state, a county, city, town, municipal corporation or school district, including regular members of lawfully constituted police and fire departments of cities and towns, whether by election, appointment or contract of hire.

(b) Every person in the service of any employer subject to the provisions of this chapter, including aliens and minors legally or illegally permitted to work for hire, but not including a person whose employment is casual and not in the usual course of trade, business or occupation of the employer.

(c) Lessees of mining property and their employees and contractors engaged in the performance of work which is a part of the business conducted by the lessor and over which the lessor retains supervision or control are within the meaning of this paragraph employees of the lessor, and deemed to be drawing such wages as are usually paid employees for similar work. The lessor may deduct from the proceeds of ores mined by the lessees the premium required by this chapter to be paid for such employees.

(d) Regular members of volunteer fire departments organized pursuant to article 1, chapter 9 of title 9, volunteer firemen serving as members of a fire department of any incorporated city or town without pay or without full pay and on a part-time basis, and voluntary policemen serving as such in any incorporated city or town without pay or without full pay and on a part-time basis, are deemed to be employees, but for the purposes of this chapter, the basis for computing wages for premium payments and compensation benefits for such regular members of volunteer fire departments, volunteer firemen, and volunteer policemen, shall be the salary equal to the beginning salary of the same rank or grade in the

full-time service with the city, town or volunteer fire department, provided if there is no such full-time equivalent then the salary equivalent shall be as determined by resolution of the governing body of the city, town or volunteer fire department.

(e) Regular members of the Arizona highway patrol reserve, organized pursuant to section 41-1744, are deemed to be employees, but for the purposes of this chapter, the basis for computing wages for premium payments and compensation benefits for a member of the Arizona highway patrol reserve shall be the salary received by officers of the Arizona highway patrol for their first month of regular patrol duty as an officer.

(f) Any person being evaluated or trained in vocational activities or who performs service for an employer as a trainee under the auspices of vocational rehabilitation division is deemed to be an employee of the vocational rehabilitation division, but, for the purposes of this chapter, the basis for computing wages for premium payments and compensation benefits for such person shall be two hundred dollars per month.

(g) Regular members of a volunteer sheriff's reserve, which may be established by resolution of county board of supervisors, to assist the sheriff in the performance of his official duties. A roster of the current members shall monthly be certified to the clerk of the board of supervisors by the sheriff and shall not exceed the maximum number authorized by the board. Certified members of an authorized volunteer sheriff's reserve shall be deemed to be employees of the county for the purpose of coverage under the Arizona workmen's compensation laws and occupational disease disability laws and shall be entitled to receive the benefits of such laws for any compensable injuries or disabling conditions which arise out of and occur in the course of the performance of duties authorized and directed by the sheriff. Compensation benefits and premium payments shall be based upon a wage of four hundred dollars per month for each certified member of a volunteer sheriff's reserve. This subdivision shall not be construed to provide compensation coverage for any member of a sheriff's posse who is not a certified member of an authorized volunteer sheriff's reserve.

(h) A WORKING MEMBER OF A PARTNERSHIP WHO RECEIVES WAGES IRRESPECTIVE OF PROFITS MAY BE DEEMED TO BE AN EMPLOYEE ENTITLED TO THE BENEFITS PROVIDED BY CHAPTERS 6 AND 7 OF THIS TITLE UPON WRITTEN ACCEPTANCE BY THE INSURANCE CARRIER FOR THE PARTNERSHIP OF AN APPLICATION FOR COVERAGE BY SUCH WORKING PARTNER.