

## NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Due to time restraints, the Secretary of State's Office will no longer edit the text of proposed rules. We will continue to make numbering and labeling changes as necessary.

Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

### NOTICE OF PROPOSED RULEMAKING

#### TITLE 4. PROFESSIONS AND OCCUPATIONS

#### CHAPTER 19. BOARD OF NURSING

#### PREAMBLE

**1. Sections Affected**

R4-19-301	Amend
R4-19-302	Amend
R4-19-303	Amend
R4-19-304	Amend
R4-19-305	Amend
R4-19-306	Amend
R4-19-307	Amend
R4-19-308	Amend

**Rulemaking Action:**

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

Authorizing statute: A.R.S. § 32-1606(A)

Implementing statutes: A.R.S. § 32-1606(B)(13)

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

None

**4. Name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Janet M. Walsh  
Associate Director  
Arizona State Board of Nursing

Address: 1651 E. Morten, Suite 150  
Phoenix, Arizona 85020

Telephone: (602) 331-8111, Ext. 145

Fax: (602) 906-9365

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

The Board of Nursing is initiating rulemaking on R4-19-301 through R4-19-308 to comply with the recommendations in the Board's last 5-year rules review. In addition, the Board is initiating rulemaking on R4-19-303 (temporary license rule) to remove the requirement that nurses from other states who endorse into Arizona must have negative state criminal history results (from Arizona) because this requirement impedes the Board's ability to issue temporary licenses to these applicants who are very unlikely to have positive state criminal history results when they have not lived in the state of Arizona.

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

None at the present time

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

Not applicable

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

The Board does not anticipate any economic impact on the majority of the amendments in this rule package. There will be a positive economic impact on nurses endorsing into Arizona from other states who will not have to wait for state criminal history results before receiving a temporary license and on the health care institutions who rely on hiring these nurses as quickly as possible because of the acute nursing shortage in Arizona. In addition, the amendments to the educational requirements for school nurse certification will benefit school nurses who have been experiencing difficulty in finding higher level courses to meet the educational requirements for initial certification as a school nurse and for renewal of certification.

**9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Janet M. Walsh  
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Address: 1651 E. Morten, Suite 150  
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**10. The time, place and nature of the proceedings for the adoption, amendment, or repeal of the rule, or if no proceeding is schedule, where, when, and how many persons may request an oral proceeding on the proposed rule:**

The Board has scheduled a public hearing on the proposed amendments to Article 3 for August 25, 2000, at 9:00 a.m. The Board will accept written comments submitted to the Associate Director identified in paragraph 4 until the close of record on August 25, 2000, at 5:00 p.m.

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

Not applicable

**12. Incorporation by reference and their location in the rules:**

Not applicable

**13. The full text of the rule follows:**

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 19. BOARD OF NURSING**

**ARTICLE 3. LICENSURE**

Section

R4-19-301.	Licensure by Examination
R4-19-302.	Licensure by Endorsement
R4-19-303.	Temporary License
R4-19-304.	<del>Biennial</del> License Renewal
R4-19-305.	<del>Inactive or Expired</del> License
R4-19-306.	Application for a Duplicate License
R4-19-307.	Change of Name or Address
R4-19-308.	School Nurse Certification Requirements

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ARTICLE 3. LICENSURE

**R4-19-301. Licensure by Examination**

- A. An applicant for licensure by examination shall ~~submit all of the following information to the Board not later than 60 days prior to the date the applicant wishes to take the examination.~~
1. ~~Submit to the Board a verified A-completed application on a form furnished by the Board that which provides the following information:~~
    - a. ~~A passport photograph not over 2 years old;~~
    - ~~b.a.~~ The applicant's full name and any former names used by the applicant;
    - e-b. The applicant's mailing current address and telephone number;
    - ~~d-c.~~ The applicant's place and date of birth;
    - e. ~~The applicant's sex and ethnic category;~~
    - d. The applicant's ethnic category and marital status, at the applicant's discretion;
    - f.e. The applicant's social security number ~~at the applicant's discretion;~~
    - f. Name and location of high school attended by the applicant, including years attended and graduation date, if applicable; or information regarding a passing score on an equivalency examination:
      - i. 4 years of high school or its equivalent is required for professional nurse applicants and practical nurse applicants not licensed in another state or territory of the United States.
      - ii. 2 years of high school or its equivalent is required for practical nurse applicants licensed in another state or territory of the United States.
    - g- The applicant's education, including the names of the schools, graduation dates, and degrees received;
    - g. The applicant's post-secondary education, including the names and locations of schools attended, graduation dates and degrees received, if applicable;
    - h. The applicant's current employer, including address, phone number, position, and dates of employment, if employed in health care, and previous employer in health care, if any, if current employment is less than 12 months;
    - ~~h-i.~~ Any If otherwise licensed as a registered or practical nurse, the state, territory or country in which the where the applicant holds a professional or practical nursing license and the license number and status of the license, including original state of licensure, if applicable is licensed;
    - i. ~~Whether the applicant has taken the SBTPE, NCLEX RN, or NCLEX PN in the United States, including dates and examination results;~~
    - j. The date Whether the applicant has previously filed a nursing application in Arizona, if applicable;
    - k- A listing of all states and countries in which the applicant is or has been licensed as a nurse and the license numbers;
    - k. Responses to questions regarding the Applicant's background, including, but not limited to, questions on the following subjects: Whether any disciplinary action, consent order, or settlement agreement is pending or has been imposed by any professional licensing agency, and an explanation of the circumstances and a completed questionnaire provided by the Board which requests the facts surrounding the matter if such occurred;
      - i. Pending disciplinary action or investigation in another state; and
      - ii. Felony conviction or conviction of an undesignated offense.
    - l. Detailed explanation and supporting documentation for each affirmative answer to questions regarding the applicant's background.
    - m- ~~Whether the applicant has ever been arrested, pled guilty to or been convicted of a felony, misdemeanor, or undesignated offense, and an explanation and a completed questionnaire provided by the Board which requests the facts surrounding the matter if such has occurred;~~
    - n- ~~Whether the applicant has ever been arrested for a traffic-related violation resulting in a fine of \$150.00 or greater, and an explanation and a completed questionnaire provided by the Board which requests the facts surrounding the matter if such has occurred;~~
    - o- ~~Whether the applicant has ever been named in a civil/malpractice case relating to employment as a nurse, and an explanation and a completed questionnaire provided by the Board which requests the facts surrounding the matter if such has occurred;~~
    - p- The applicant's current employer, including address, type of position, and dates of employment;
    - q- A sworn statement under oath by the applicant verifying the truthfulness of the information provided by the applicant;
  2. A copy of the application for licensure by examination sent to the National Council of State Boards of Nursing; and,
  2. Submit a completed fingerprint card if the applicant has not submitted a fingerprint card to the Board within the last 2 years; and
  3. Pay the applicable The statutorily required fees.

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- B.** In addition to the application, the following are required: An applicant shall submit to the Board, within 10 working days prior to the date of examination, a certificate signed by the Administrator showing that the applicant has successfully completed a nursing program.
1. If the applicant took the SBTPE, NCLEX-RN, or NCLEX-PN in any state or territory of the United States or in Canada:
    - a. The date of the examination;
    - b. The location of the examination; and
    - c. The result of the examination.
  2. For graduates of nursing programs in the United States, 1 of the following:
    - a. Certificate of completion signed by the administrator of an Arizona-approved professional nursing program for a professional nurse applicant or Arizona-approved practical nursing program for a practical nurse applicant; or
    - b. Transcripts or other documentation verifying completion of a nursing program from 1 of the following:
      - i. Diploma, associate degree nursing program, or baccalaureate nursing program for a professional nurse applicant.
      - ii. Practical nursing program, associate degree nursing program, or baccalaureate nursing program for a practical nurse applicant.
  3. For graduates of foreign nursing programs, proof of 1 of the following:
    - a. Passing score on the Canadian Nurses' Association Testing Service in English and:
      - i. Copy of a license in good standing; or
      - ii. Transcripts verifying completion of a foreign nursing program.
    - b. Certificate issued by the Commission on Graduates of Foreign Nursing Schools.
  4. For a professional nurse applicant, 1 of the following:
    - a. A passing score on the NCLEX-RN;
    - b. A score of 1600 on the NCLEX-RN, if the examination was taken prior July 1988; or
    - c. A score of not less than 350 on each part of the SBTPE for professional nurses.
  5. For a practical nurse applicant, 1 of the following:
    - a. A passing score on the NCLEX-PN;
    - b. A score of not less than 350 on the NCLEX-PN, if the examination was taken prior to October 1988; or
    - c. A score of not less than 350 on the SBTPE for practical nurses.
  6. State and federal criminal history results, if applicable.
- C.** An applicant who holds a Diploma or Associate degree in Nursing or a Baccalaureate degree in Nursing shall be eligible to take the licensure examination for professional nursing.
- D.** An applicant who holds a Certificate or a Diploma in Practical Nursing from an approved nursing program shall be eligible to take the licensure examination for practical nursing.
- E.** An applicant, who is a graduate of a foreign nursing program, shall be eligible to take the licensure examination upon submitting proof that the applicant is licensed or registered and in good standing in another country, or the applicant provides official document which evidences successful completion of a foreign program of nursing. A certificate issued by the Commission on Graduates of Foreign Nursing Schools may be submitted as evidence of the educational qualifications required in subsection (B).
- F.** To be eligible for licensing, an applicant for professional nurse licensure shall obtain 1 of the following:
1. A passing score on the NCLEX-RN;
  2. A score of 1600 on the NCLEX-RN, if the examination was taken prior to July 1988; or
  3. A score of not less than 350 on each part of the SBTPE for professional nurses.
- G.** To be eligible for licensing, an applicant for practical nurse licensure shall obtain 1 of the following:
1. A passing score on the NCLEX-PN;
  2. A score of not less than 350 on the NCLEX-PN, if the examination was taken prior to October 1988, or
  3. A score of not less than 350 on the SBTPE for practical nurses.
- H.** An applicant who fails the initial examination shall be allowed to retake the examination 3 additional times within a 1-year period from the date of the initial examination.
- I.** An applicant who fails the examination 4 times or who does not pass the examination within the time period specified in subsection (H) shall complete a reentry update program designed by an approved nursing program before being permitted to retake the examination. Upon completion of the program, the applicant shall request that the administrator of the nursing program submit documentation of satisfactory completion of the program by the applicant to the Board not later than 1 month prior to the date of reexamination for which the applicant has applied.

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~~**J.C.**~~ The Board shall grant licensure to practice as a professional or practical nurse to any applicant who meets the criteria set forth in this Section if it believes that licensure is in the best interest of the public. An applicant who is denied licensure may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for licensure. ~~may deny licensure of an applicant if the Board determines that it has reasonable cause to believe that cheating, fraud, deception, or improper conduct occurred on the part of the applicant during examination or in connection with the application. The applicant shall be notified, in writing, of the intended action of the Board and shall have 10 days from the date of receipt of this notice to file a request for hearing with the Board. Hearings shall be conducted in accordance with A.R.S. Title 32, Article 3, and A.R.S. Title 41, Chapter 6, Article 6 10.~~

**R4-19-302. Licensure by Endorsement**

- ~~**A.**~~ An applicant for licensure by endorsement shall submit all of the information required to be submitted in R4-19-301(A).
- ~~**B.**~~ To be eligible for licensure by endorsement, an applicant for professional nurse licensure by endorsement shall be qualified pursuant to A.R.S. § 32-1632 and shall have a passing examination score in accordance with R4-19-301(F).
- ~~**C.**~~ To be eligible for licensure by endorsement, an applicant for practical nurse licensure by endorsement shall be qualified pursuant to A.R.S. § 32-1637 and shall have a passing examination score in accordance with R4-19-301(G).
- ~~**D.**~~ An applicant shall request that the state issuing original licensure submit to the Board, on a form provided by the Board, verified evidence of the applicant's graduation from a program of nursing which is approved by the state where the program is administered, SBTPE or NCLEX results, and current licensure status. The applicant shall pay all required fees for official endorsement. No licensure by endorsement shall be issued in the absence of receipt of this documentation.
- ~~**E.**~~ An application for licensure by endorsement shall be completed within 6 months or it shall lapse. Upon lapsing, a new application shall be required.
- ~~**B.**~~ In addition to the information required in subsection (A), the following are required:
  - 1. A passing examination score in accordance with:
    - a. R4-19-301(B)(4) for professional nurse applicants.
    - b. R4-19-301(B)(5) for practical nurse applicants.
  - 2. Verification of the following:
    - a. Previous or current license in another state or territory of the United States or a foreign country; and
    - b. One of the following:
      - i. Completion of a nursing program that has been assigned a program code by the National Council of State Boards of Nursing at the time of program completion;
      - ii. Completion of a nursing program that met the qualifications for a program code at the time of the applicant's graduation if prior to 1986; or
      - iii. General report from the Commission on Graduates of Foreign Nursing Schools indicating that a foreign nursing program was substantially equivalent to an approved professional or practical nursing program in the United States.
  - 3. State and federal criminal history results, if applicable.

~~**F.C.**~~ The Board shall grant licensure to practice as a professional or practical nurse to any applicant who meets the criteria set forth in this Section if it believes that licensure is in the best interest of the public. An applicant who is denied licensure by endorsement may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for licensure. ~~to appeal the decision by filing the request, in writing, with the Board, not later than 10 days after receipt of the notice denying the license. Hearings shall be conducted in accordance with A.R.S. Title 32, Article 3, and A.R.S. Title 41, Chapter 6, Article 10.~~

**R4-19-303. Temporary License**

- ~~**A.**~~ Subject to subsection (B), the Board shall issue a temporary license to an applicant desiring to practice nursing pending licensure if the applicant lacks a state criminal history as verified by a report issued by the Arizona Department of Public Safety and the applicant:
  - 1. Is qualified under:
    - a. A.R.S. § 32-1635 and § 32-1640; and
    - b. R4-19-301 and R4-19-302; and
  - 2. If seeking licensure by examination, lacks a state criminal history as verified by a report issued by the Department of Public Safety.
  - 2-3. If seeking licensure by endorsement, has filed an application for licensure by endorsement and submitted documents or an official statement from another state board of nursing verifying that the applicant has a current license in good standing in another state or territory of the United States; or
  - 3-4. If seeking renewal of a license that has been inactive or expired for 5 or more years, has filed an application and enrolled in a reentry update refresher program.
  - 5. Has paid the applicable fees.

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- ~~B. An applicant who discloses a pending disciplinary charge, criminal conviction, chemical dependency, pending investigation or disciplinary action by a regulatory agency, or malpractice claim is not eligible for a temporary license without prior Board approval.~~
- B. An applicant who has a positive criminal history, history of disciplinary action by a regulatory agency, or a pending complaint before the Board is not eligible for a temporary license or extension of a temporary license without prior Board approval.
- C. ~~Unless extended for good cause under subsection (D), a~~ A temporary license is valid for a maximum of ~~6~~ 12 months unless extended for good cause under subsection (D).
- D. An applicant holding a ~~A~~ temporary licensee license may apply for and the Board or the Executive Director shall grant an extension for good cause. Good cause means reasons beyond the control of the temporary licensee such as unanticipated delays in obtaining information required for licensure.

**R4-19-304. Biennial License Renewal**

- A. ~~An applicant for renewal of a professional or practical nursing license shall: A licensee shall submit an application for license renewal on a form provided by the Board in accordance with A.R.S. § 32-1642, together with all statutorily mandated fees, on or before the licensee's date of birth. The applicant shall provide the following information, signed and under oath, on the application:~~
  - 1. Submit to the Board an application furnished by the Board that provides the following information:
    - ~~1-a.~~ The applicant's full name and current mailing address;
    - b. A listing of all states in which the applicant is currently licensed;
    - c. The applicant's marital status, at the applicant's discretion;
  - 2. Other names practiced under by the applicant, highest degree held, employment status, principal field of employment, employer's name and city of operation, type of nursing position held, and major clinical or teaching area in nursing;
    - d. The applicant's demographical information including but not limited to:
      - i. Educational background;
      - ii. Employment status; and
      - iii. Practice setting.
    - e. Responses to questions regarding the Applicant's background, including but not limited to, questions on the following subjects:
      - i. Criminal convictions for offenses involving drugs or alcohol; and
      - ii. Felony convictions or convictions for undesignated offenses.
    - f. Detailed explanation and supporting documentation for each affirmative answer to questions regarding the applicant's background.
  - 2. Pay the applicable fees for renewal.
  - 3. Pay an additional fee for late renewal if:
    - a. The renewal date is prior to July 1, 2000, and the application for renewal is submitted after expiration of the license; or
    - b. The renewal date is after July 1, 2000, and the application for renewal is submitted after August 1 of the year of renewal.
  - 3. Whether any disciplinary action, consent order, or settlement agreement is pending or has been imposed on applicant's license in any state or jurisdiction since last license renewal, and an explanation of the circumstances surrounding the matter if such occurred;
  - 4. Whether the applicant has ever been arrested, pled guilty to or been convicted of a felony, misdemeanor, or undesignated offense, and an explanation of the circumstances surrounding the matter if such has occurred;
  - 5. Whether the applicant has ever been arrested for a traffic related violation resulting in a fine of \$150.00 or greater, and an explanation of the circumstances surrounding the matter if such has occurred; and
  - 6. Whether the applicant has ever been named in a civil/malpractice case relating to employment as a nurse, and an explanation of the circumstances surrounding the matter if such has occurred;
- B. The licenses of licensees renewing prior to July 1, 2000, are valid for 2 years and expire on the expiration date indicated on the license issued by the Board.
- C. The licenses of licensees submitting a renewal application after July 1, 2000, do not expire until after November 1 of the year of renewal.
- ~~B. A licensee who submits a renewal application with the correct fee to the Board after the expiration of the license be assessed a penalty in accordance with A.R.S. § 32-1643(A)(5).~~
- ~~C. A licensee born in an even numbered year shall renew a license in an even numbered year. A licensee born in an odd numbered year shall renew a license in an odd numbered year.~~

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- D. A licensee whose license has been inactive or expired for 5 or more years shall submit proof of 1 of the following, with the renewal application ~~evidence of competency in nursing which shall include~~:
1. Employment as a professional nurse or licensed practical nurse in another state or foreign country within the previous 5-year period; or
  2. Satisfactory completion of a Board-approved ~~reentry update~~ refresher program which includes ~~both~~ theory and supervised clinical practice within the past year ~~or~~.
  - ~~3. Satisfactory completion of a minimum of 30 contact hours of continuing education activities in nursing during the past 2 years.~~
- E. A licensee who fails to ~~apply for~~ submit a renewal license application before expiration of a ~~valid~~ license shall not practice nursing until the Board issues a renewal license ~~is issued~~.
- F. The Board shall grant an application for renewal of a professional or practical nursing license to any applicant who meets the criteria set forth in this Section if it believes that renewal is in the best interest of the public. An applicant who is denied renewal of licensure may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the renewal application. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10.

**R4-19-305. Inactive ~~or Expired~~ License**

- A. A licensee in good standing may request transfer to inactive status, in writing to the Board, or by indicating requesting transfer to inactive status on a ~~license~~ renewal application. The licensee shall submit the ~~statutorily mandated~~ applicable fees with such request or application.
- B. The Board shall send a notice to the licensee ~~confirming granting~~ granting inactive status in writing or denying the request. A licensee denied a request for transfer to inactive status may request a hearing by filing a written request with the Board within 30 days of service of the denial of the request. If denied, the licensee shall have 10 days from the date of receipt of the notice to file a request for hearing with the Board, appealing the denial. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article ~~6~~ 10.

**R4-19-306. Application for a Duplicate License**

- A. A licensee shall report ~~to the Board, in writing,~~ a lost or stolen license to the Board, in writing, within ~~5 business~~ 30 days of the loss.
- B. A licensee desiring a duplicate license shall file ~~a renewal an~~ application for a duplicate license and pay the applicable fee ~~a notarized statement explaining and verifying the loss or theft of the license.~~
- ~~C. A licensee shall cooperate fully with any Board investigation or in testifying concerning any loss of a license.~~

**R4-19-307. Change of Name or Address**

- A. A licensee shall notify the Board, in writing, of any legal change in name within 30 days, ~~when the name of the licensee has been legally changed~~ and submit a ~~A~~ copy of the official document verifying ~~evidencing~~ the name change ~~shall also be submitted.~~
- B. A licensee shall notify the Board of any change in mailing address within 30 days ~~of any address change.~~

**R4-19-308. School Nurse Certification Requirements**

- A. Scope and applicability.
1. This Section establishes the requirements for school nurse certification.
  2. This Section applies to all professional nurses seeking initial school nurse certification and renewal of school nurse certification.
  3. School nurse certifications issued by the Department of Education are valid ~~and remain valid~~ until expiration. Upon expiration of a Department of Education certificate, a professional nurse who wishes to maintain school nurse certification shall seek initial certification under this Section.
- B. Application requirements. An applicant for initial school nurse certification shall:
1. Hold a current license in good standing to practice as a professional nurse in Arizona; and
  2. Submit to the Board a verified application on a form furnished by the Board that provides the following ~~information~~:
    - a. The applicant's full name and any former names used by the applicant;
    - b. The applicant's ~~current~~ mailing address and telephone ~~phone~~ number;
    - c. The applicant's professional nurse license number;
    - d. The applicant's social security number;
    - e. A description of the applicant's educational background, including the number and location of schools attended, the number of years attended, the date of graduation, the type of degree or certificate awarded, and if applicable, a statement that the applicant has satisfied the educational requirements specified in subsection (D);
    - f. The applicant's current employer, including address, telephone number, type of position, and dates of employment, and previous employer if the current employment is less than 12 months;

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- g. ~~Whether the applicant has taken and passed a national certification examination, the~~ The name of any national certifying organization, specialty area, certification number, and date of certification, if applicable;
- h. ~~Whether the applicant has ever had a nursing license denied, suspended, or revoked, and an explanation of the license denial, suspension or revocation, if any;~~
- i. ~~Whether a disciplinary action, consent order, or settlement agreement has been imposed on the applicant, and an explanation of the disciplinary action, consent order, or settlement agreement, if any;~~
- j. ~~Whether the applicant has ever been convicted of a felony, and the date of absolute discharge of the sentence for all felony convictions, if applicable; and~~
- k. ~~A sworn statement under oath by the applicant verifying the truthfulness of the information provided by the applicant.~~
- h. Responses to questions regarding the applicant's background, including, but not limited to, questions on the following subjects:
  - i. Pending disciplinary action or investigation in another state; and
  - ii. Felony or undesignated offense convictions.
- i. Detailed explanation and supporting documentation for each affirmative answer to questions regarding the Applicant's background.

3. Applicable fees.

C. Certification and renewal terms.

- 1. Initial certification and 1st renewal of certification shall be valid for 3 years.
- 2. Subsequent renewals of certification shall be valid for 6 years.
- 3. An applicant holding a school nurse certificate issued by the Department of Education or by another state shall provide proof of completion of the educational requirements of subsections (D)(1), (D)(2), or (D)(3) for the certification or renewal period applicable to the applicant.

D. Educational requirements.

- 1. ~~Prior to~~ Upon application for the 1st renewal of certification, a professional nurse shall provide proof of completion of all of the following educational requirements:
  - a. Three semester hours in school nurse practice course work;
  - b. Three semester hours in physical assessment of the school-aged child course work; and
  - c. Three semester hours in nursing care of the child with developmental disabilities.
- 2. ~~Prior to~~ Upon application for 2nd renewal of certification, a professional nurse shall provide proof of ~~completion of 1 of the following; all of the following educational requirements:~~
  - a. ~~Three semester hours in community health;~~
  - b. ~~Three semester hours in management concepts; and~~
  - e. ~~Three semester hours of upper division course work in any of the following: counseling, health promotion, nutrition, legal-ethical or interpersonal communication, and group process.~~
  - a. A bachelor of science degree in nursing; or
  - b. Completion of the following educational requirements:
    - i. Three semester hours in community health theory;
    - ii. Three semester hours in management theory; and
    - iii. Either 3 semester hours of upper division or graduate credit in nursing or health-related subjects from a regionally-accredited institution, as defined in R4-19-101(23) or 45 hours of continuing education related to nursing practice.
- 3. Prior to all subsequent applications for renewal of certification, a professional nurse shall provide proof of completion of 1 of the following:
  - a. Six semester hours of upper division or graduate credit from a regionally-accredited institution, as defined in R4-19-101(23); or
  - b. Ninety contact hours of continuing education related to nursing practice.
- 4. Notwithstanding subsections (C)(3) and (D)(1):
  - a. Professional nurses who have been certified as school nurses by the Department of Education and are applying for initial certification or professional nurses applying for 1st renewal of certification through the Board, who have completed the educational requirements in subsection (D)(1), shall provide proof of completion of the educational requirements in subsections (D)(1) and (D)(2); and
  - b. Professional nurses who have been certified as school nurses by the Department of Education and who are applying for initial certification, or professional nurses applying for 1st renewal, or subsequent renewals of certification through the Board, who have completed the educational requirements in subsection (D)(2), shall provide proof of completion of the educational requirements of subsection (D)(3).

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- E.** The Board shall grant school nurse certification to any applicant who meets the criteria set forth in this Section if it believes that school nurse certification is in the best interest of the public. An applicant who is denied school nurse certification may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10.

**NOTICE OF PROPOSED RULEMAKING**

**TITLE 20. COMMERCE, BANKING, AND INSURANCE**

**CHAPTER 4. BANKING DEPARTMENT**

**PREAMBLE**

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|------------------------------------|---------------------------------|
| <b>1. <u>Sections Affected</u></b> | <b><u>Rulemaking Action</u></b> |
| R20-4-102                          | Amend                           |
- 2. The specific statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**  
Authorizing statute: A.R.S. § 6-123 (2)  
Implementing statute: A.R.S. § 6-123 (1)
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**  
Notice of Rulemaking Docket Opening: 5 A.A.R. 2266, July 16, 1999
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
- |            |   |
|------------|---|
| Name:      | John P. Hudock  |
| Address:   | 2910 North 44th Street, Suite 310<br>Phoenix, Arizona 85018 |
| Telephone: | 602-255-4421, Ext. 167                                      |
| Fax:       | 602-381-1225  |
| E-mail:    | jhudock@azbanking.com                                       |
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**
- The economic circumstances that make the use of "leased employees" advantageous have caused increasingly large numbers of licensees to use this strategy to control human resources overhead. The current regulation defines "employee" in a way that precludes use of "leased employees" because they do not meet all the criteria of the regulatory definition. This rulemaking is intended to revise the definition of "employee" so that it will include so-called "leased" employees. The Department believes this will close the gap between the present economic circumstances and the economic reality in existence when the present regulatory definition of "employee" was put into effect. The Department's effort is aimed at recognizing economic reality as it affects licensees while, at the same time, maintaining regulatory discipline and consumer protection.
- The Department's legal research and discussions with the regulated community, the owners and representatives of "professional employment organizations" (employee lessors), as well as the insurance industry representatives that write the fidelity bonds for licensees have all lead to these conclusions.
- Present day employment laws, income tax laws, agency laws, and insurance laws do not recognize the leased employee as being in a different legal relationship with the employer than a traditional employee.
- The leased employee is still an employee of the licensee whose work the leased employee performs.
- So long as the licensee/employer has the right to control the employees' activities, not only as to results but also as to the means and methods used to accomplish the result, the licensee/employer retains liability for the employees' misconduct.
- Standard fidelity bond provisions recognize leased employees who are controlled by the licensee/employer as employees whose conduct is covered by the bond.

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These revisions to the definition of employee, while minimal, are designed to take advantage of these modern legal realities, permit the use of leased employees, maintain the Department's power to discipline licensees for employee misconduct, and preserve the fidelity bond's protection for the benefit of the licensees' customers.

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

The Department does not propose to rely on any study as an evaluator or justification for the proposed rule.

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

Not applicable

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

**A. The Banking Department**

This rule revision will result in lower examination costs by broadening the definition of "employee" to include all agents of a licensee. This eliminates the need to spend the time required to make technical legal decisions about an agent's status as an employee.

**B. Other Public Agencies**

The state will incur normal publishing costs incident to rulemaking.

**C. Private Persons and Businesses Directly Affected**

Costs of services will not increase to any measurable degree. Several private businesses and numerous persons will be spared the expense of licensure.

**D. Consumers**

One mortgage lending industry commentator predicts several materially positive effects for consumers. The cost savings available to licensees from the use of leased employees may allow some licensees to remain in business who would otherwise have to close their doors. The consumer public benefits from the continuity of a mortgage lender that has begun a transaction remaining in business to close the loan.

The same cost savings, by permitting a larger number of licensees to remain in business, also foster more vigorous price competition. That effect benefits consumers to the extent it lowers the price of services.

Finally, the cost savings allow more mortgage lenders to do business through employees directly with consumers, presenting an alternative to low overhead on-line lenders. Existing mortgage lending companies assert the electronic lenders render less service to the consuming public than traditional business forms.

**E. Private and Public Employment**

There is no measurable effect on private and public employment.

**F. State Revenues**

This rulemaking will not change state revenues.

**9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

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

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**10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

No oral proceedings are scheduled. The Department will schedule an oral proceeding on the proposed rule if it receives a written request for a proceeding within 30 days after the publication date of this Notice, pursuant to the provisions of A.R.S. § 41-1023(C). Send requests to the department personnel listed in questions 4 and 9 of this Preamble. The Department invites and will accept written comments on the proposed rule or the preliminary economic, small business, and consumer impact statement. Submit comments during regular business hours, at the address listed in question 9 of this Preamble, until the close of the record for this proposed rulemaking. The record will close on the 31st day following publication of this Notice, unless the department schedules an oral proceeding.

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

Not applicable

**12. Incorporations by reference and their location in the rules:**

None

**13. The full text of the rules follows:**

**TITLE 20. COMMERCE, BANKING AND INSURANCE**

**CHAPTER 4. BANKING DEPARTMENT**

**ARTICLE 1. GENERAL**

Section

R20-4-102. Definitions

**ARTICLE 1. GENERAL**

**R20-4-102. Definitions**

1. No Change.
2. No Change.
3. No Change.
4. No Change.
5. No Change.
6. No Change.
7. No Change.
8. No Change.
9. No Change.
10. No Change.
11. No Change.
12. "Employee" means a natural person who has an employment relationship acknowledged by both that person and the licensee, and:
  - a. The person is entitled to payment, or is paid, by the licensee;
  - b. The licensee withholds and remits, or is liable for withholding and remitting, payroll deductions for all applicable ~~routine~~ federal and state payroll taxes ~~including Federal Unemployment Tax, and Federal Insurance Contributions Act;~~
  - c. The licensee has the right to hire and fire the employee and ~~to hire and fire~~ the employee's assistants;
  - d. The licensee directs the methods and procedures for performing the employee's job;  
The licensee supervises the employee's business conduct and the employee's compliance with applicable ~~laws~~ laws and rules; and
  - f. The duty to pay, the duty to remit withholding and other taxes, the right to hire and fire, the right to direct methods and procedures, and the right to supervise the employee belong to the licensee regardless of whether another person also shares those rights and duties.
13. No Change.
14. No Change.
15. No Change.
16. No Change.
17. No Change.

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- 18. No Change.
- 19. No Change.
- 20. No Change.
- 21. No Change.
- 22. No Change.
- 23. No Change.