

NOTICES OF PROPOSED RULEMAKING

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

NOTICE OF PROPOSED RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 45. BOARD OF RESPIRATORY CARE EXAMINERS

[R07-400]

PREAMBLE

1. Sections Affected

R4-45-102
R4-45-105
R4-45-201
R4-45-204
R4-45-205
R4-45-207
R4-45-210
R4-45-211
R4-45-213
R4-45-214
R4-45-301

Rulemaking Action

Amend
New Section
Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend

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

Authorizing statute: A.R.S. § 32-3504(A)(2)

Implementing statute: A.R.S. §§ 32-3504(A)(9); 32-3506(C)(4); 32-3521; 32-3523; 32-3524; 32-3525; 32-3526; 32-3554

3. List of all previous notices appearing in the *Register* addressing the proposed rules:

Notice of Rulemaking Docket Opening: 13 A.A.R. 3766, November 9, 2007

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

Name: Mary Hauf Martin
Address: Board of Respiratory Care Examiners
1400 W. Washington St., Ste. 200
Phoenix, AZ 85007
Telephone: (602) 542-5995
Fax: (602) 542-5900
E-mail: Mary@rb.state.az.us

5. An explanation of the rules, including the agency's reasons for initiating the rulemaking:

The Board is moving towards electronic communication with applicants and licensees. As a result, it is necessary to amend the rules to account for differences between electronic and non-electronic communication. The Board is also making clarifications regarding temporary licensees and standards of professional conduct. Other changes will make the rules more clear, concise, and understandable.

6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

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None

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

Not applicable

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

This rulemaking, which is designed to facilitate electronic communication between the Board and applicants and licensees, will have moderate economic impact. The Board will benefit from reduced costs to print, assemble, and mail forms. Applicants and licensees will also have reduced costs associated with mailing materials to the Board. Both the Board and applicants and licensees will benefit from more timely communication.

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: Mary Hauf Martin
Address: Board of Respiratory Care Examiners
1400 W. Washington St., Ste. 200
Phoenix, AZ 85007
Telephone: (602) 542-5995
Fax: (602) 542-5900
E-mail: Mary@rb.state.az.us

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

An oral proceeding regarding the proposed rules will be held as follows:

Date: Thursday, January 17, 2008
Time: 9:00 a.m.
Location: 1400 W. Washington St.
Room B-1
Phoenix, AZ 85007

The rulemaking record will close at 5:00 p.m. on Friday, January 18, 2008.

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

None

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

None

13. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 45. BOARD OF RESPIRATORY CARE EXAMINERS

ARTICLE 1. GENERAL PROVISIONS

Section
R4-45-102. Fees
R4-45-105. Electronic Communication

ARTICLE 2. LICENSURE

Section
R4-45-201. Application
R4-45-204. Application by a Foreign-trained Applicant
R4-45-205. Application Based on Licensure by Another State
R4-45-207. Renewal; Reinstatement
R4-45-210. Criteria for Approved Continuing Education
R4-45-211. Audit of Compliance and Sanction for Noncompliance with Continuing Education Requirement

- R4-45-213. Temporary Licensure
R4-45-214. Standards of Professional Conduct

ARTICLE 3. HEARINGS

- Section
R4-45-301. Hearing Procedures

ARTICLE 1. GENERAL PROVISIONS

R4-45-102. Fees

- A. Under the authority provided by A.R.S. § 32-3526, the Board establishes and shall collect the following fees:
1. Application for a license, \$100;
 2. Application based on a diploma from a foreign respiratory therapy school, \$200;
 3. Initial license, \$120;
 4. Biennial renewal of a license, \$120;
 5. Renewal of a temporary license, \$75;
 6. Verifying an Arizona license to another state:
 - a. Current valid license, \$25;
 - b. Expired license, \$50;
 7. Duplicate license or duplicate wallet license card, \$25;
 8. Copy of the Board's Respiratory Care Practitioner Register compiled under A.R.S. § 32-3504(A)(7):
 - a. Noncommercial, \$25;
 - b. Commercial, \$25 or the amount allowed under A.R.S. § 39-121.03(A), whichever is greater;
 9. Insufficient funds check submitted to the Board as payment of any fee, \$25;
 10. Fingerprint fee, in the form of a credit card, certified check, or money order, \$50; and
 11. Copy of the audiotape of a hearing under A.R.S. § 41-1092.07(E), \$25.
- B. With the exception of the fingerprint fee specified in subsection (A)(10), all fees shall be remitted to the Board of Respiratory Examiners by personal check, credit card, certified check, or money order. All fees remitted to the Board are nonrefundable, except as provided in A.R.S. § 41-1077.

R4-45-105. Electronic Communication

- A. To facilitate communication between the Board and an applicant, licensee, or continuing education provider, the Board shall make the following forms available on its web site:**
1. Application for licensure.
 2. Verification of license form.
 3. License renewal application.
 4. Temporary license renewal application.
 5. Application for approval of a continuing education.
 6. Request for waiver of continuing education requirement, and
 7. Notice of change in name or address.
- B. After completing a form that is available on the Board's web site, an applicant, licensee, or continuing education provider shall submit the form to the Board electronically or by the U.S. Postal Service or personal delivery.**
- C. An applicant, licensee, or continuing education provider that submits a form to the Board electronically shall use the U.S. Postal Service or personal delivery to submit or have submitted on behalf of the applicant, licensee, or continuing education provider other documents required under this Chapter.**
- D. An applicant, licensee, or continuing education provider that does not have access to the Board's web site may request from the Board a printed copy of any form listed in subsection (A).**

ARTICLE 2. LICENSURE

R4-45-201. Application

- A. In addition to meeting the qualifications listed in A.R.S. § 32-3523(A), an applicant for a license to practice as a respiratory care practitioner shall submit the following information on a ~~the Board's~~ license application form ~~furnished by the Board~~:
1. Applicant's full name and Social Security number;
 2. Applicant's current mailing, ~~and~~ permanent, ~~and~~ e-mail addresses;
 3. Current employer's name, address, and telephone number;
 4. Current employment position and beginning date of employment;
 5. Current supervisor's name and telephone number;
 6. Applicant's area of care or specialty;
 7. Applicant's birth date;

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8. Applicant's home and work telephone numbers;
 9. Any name by which the applicant has ever been known. The applicant shall submit documentation of name change if the applicant is applying for licensure under a name different from that on the applicant's credentials, educational degree, or diploma;
 10. A statement of the facts entitling the applicant to take the CRT examination or to receive a license without examination under R4-45-206;
 11. Name of any state or province in which the applicant has been granted a certification, registration, or license as a respiratory care practitioner; including certificate number, date issued, expiration date, and a statement whether that certificate, registration, or license has ever been the subject of discipline, censure, probation, practice restriction, suspension, revocation, or cancellation;
 12. A statement whether the applicant has ever been denied a professional license or certificate or the privilege of taking an examination by a governing licensing authority and, if the answer is yes, a complete explanation of the denial including date, state or province, and a copy of any order issued;
 13. A statement whether the applicant is the subject of any pending disciplinary action that is directly or indirectly related to the practice of respiratory therapy and, if the answer is yes, a complete explanation, including date, state or province, and a copy of any order issued;
 14. A statement whether the applicant has ever voluntarily surrendered a professional license and, if the answer is yes, a complete explanation, including dates, state or province, and a copy of any order issued;
 15. A statement whether the applicant has ever filed an application for a respiratory care practitioner license in Arizona and, if the answer is yes, the date;
 16. A statement whether the applicant has been enrolled in or committed to a substance-abuse or alcohol-treatment program in the past 10 years and, if the answer is yes, a complete explanation, including date, place, and a copy of any documentation of completion of the program;
 17. Except for a minor traffic violation, a statement whether the applicant has ever been convicted of, pled no contest (nolo contendere) to, entered into any agreement concerning an arrest or charge (even if the agreement resulted in a dismissal or expungement of record), or has an outstanding arrest or charge for any violation of any law of any state of the United States, or a foreign country and, if the answer is yes, a complete explanation, including place, date, and a copy of any pertinent documentation such as a court order or plea agreement;
 18. A statement whether the applicant has had an intemperance to drugs or alcohol within the last 10 years and, if the answer is yes, a complete explanation;
 19. Applicant's physical description, including height, weight, and eye and hair color;
 20. Highest level of education completed by the applicant;
 21. Consistent with the Board's authority under A.R.S. § 32-3522(B)(4), other information or documentation the Board determines is necessary to evaluate the applicant fully; ~~and~~
 22. A record or documentation release; ~~and the applicant's~~
 23. Applicant's sworn statement verifying the truthfulness of affirmation that the information provided by the applicant is true and complete and that the applicant has not engaged in any act prohibited by Arizona law or Board rules this Chapter.
- B.** An applicant shall submit or have submitted on the applicant's behalf the following with the license application form:
- ~~1- 2" by 2" color, bust photograph of the applicant taken within the last 60 days and signed on the back by the applicant;~~
 - ~~2- Photocopy of the applicant's diploma awarded upon successful completion of an approved respiratory therapy training program or letter of completion from the registrar of an approved respiratory therapy training program that provides the date of the applicant's successful completion;~~
 - ~~3-1. If NBRC-certified or registered, a photocopy copy of the applicant's:~~
 - ~~a. NBRC-issued certification or registration; or~~
 - ~~b. CRT examination results;~~
 - ~~2. If not NBRC-certified or registered, a copy of the applicant's diploma awarded upon successful completion of an approved respiratory therapy training program or letter of completion from the registrar of an approved respiratory therapy training program that provides the date of the applicant's successful completion;~~
 - ~~4-3. If ever licensed as a respiratory care practitioner in another state, a verification of license, completed, signed, and authenticated by seal or notarization by the board of each state in which the applicant holds or has held certification, licensure, or registration as a respiratory care practitioner the information specified in R4-45-205;~~
 - ~~5-4. If foreign-trained, a certified copy of all course transcripts and complete, descriptive information concerning the applicant's course of study delivered to the Board by the foreign respiratory therapy school and a photocopy of the applicant's diploma from the foreign respiratory therapy school submitted by the applicant the information specified in R4-45-204;~~
 - ~~6-5. The fee required under R4-45-102(A)(1); and~~
 - ~~7-6. A full set of fingerprints submitted on a card provided by the Board for a state and federal criminal background check along with a certified check or money order in the amount fee prescribed at R4-45-102(A)(10); and~~

8. A photocopy of the applicant's CRT examination results.
- C. The Board shall issue a temporary license to an applicant who is qualified under R4-45-213.
- D. An applicant shall inform the Board in writing of ~~any~~ a change in the applicant's address ~~of record~~ or other contact information within 10 days from the date of the change.
- E. An applicant shall inform the Board immediately, by fax or e-mail, of the following:
 1. A change in any non-contact information provided on the license application.
 2. A change in the applicant's employment status and the reason for the change, or
 3. Other information that a reasonable person would believe might influence the Board's decision to grant or deny a license to the applicant.

R4-45-204. Application by a Foreign-trained Applicant

An applicant who has a diploma from a respiratory therapy school located outside the United States shall:

1. ~~cause~~ Cause the school from which the diploma was issued to deliver to the Board a certified copy of course transcripts and other information concerning the applicant's course of study sufficient to enable the Board to determine whether the course of study is equivalent to a training program approved under R4-45-202; and
2. Submit a photocopy of the applicant's diploma from the foreign respiratory therapy school.

R4-45-205. Application Based on Licensure ~~By~~ by Another State

~~A.~~ If an application for a license is based on licensure by another state, the applicant shall cause the state that issued the license to deliver to the Board:

1. a ~~A~~ certified copy of the license; ~~and a~~
2. ~~A Verification~~ verification of License ~~license~~ regarding the status of the applicant's license in that state, ~~completed, signed, and authenticated by seal or notarization by the Board of the state issuing the license; and~~

~~B.~~ An applicant shall cause the state in which the applicant is licensed to deliver to the Board either

3. ~~Either~~ a copy of the results of the CRT examination or a copy of another examination administered to the applicant, the results of the other examination, and any information necessary to enable the Board to determine whether the other examination is equivalent to the CRT examination.

R4-45-207. Renewal; Reinstatement

A. A respiratory care practitioner's first license expires on the licensee's second birthday following issuance of the license. Thereafter, a respiratory care practitioner's license expires every other year on the licensee's birthday.

B. To apply for renewal of a license, a licensee shall:

1. Complete a license renewal application form and provide the following information:
 - a. Applicant's full name;
 - b. Applicant's Arizona license number;
 - c. Applicant's ~~street or mailing, permanent, and e-mail~~ address ~~addresses~~ and telephone number;
 - d. Applicant's highest educational degree;
 - e. Applicant's employment status;
 - f. Applicant's principal field of employment;
 - g. Current employer's name and address;
 - h. Current supervisor's name and telephone number;
 - i. Applicant's physical description, including height, weight, and eye and hair color;
 - j. A statement whether, since the time of last application, the applicant:
 - i. Has been arrested, pled guilty or no contest to, or convicted of a felony, misdemeanor, or undesignated offense, and if the answer is yes, a complete explanation, including place, date, charge, and a copy of any pertinent documentation such as a court order or plea agreement;
 - ii. Has been arrested for a traffic violation that resulted in a fine greater than \$150, and if the answer is yes, a complete explanation, including date, offense, and a copy of any pertinent documentation such as a court order;
 - iii. Has been named in a civil or malpractice lawsuit relating to the applicant's employment as a respiratory care practitioner, and if the answer is yes, a complete explanation;
 - iv. Has been or is subject to any disciplinary action, consent order, or settlement regarding the applicant's license in any jurisdiction, and if the answer is yes, a complete explanation;
 - v. Has abused illegal substances, prescription drugs, or alcohol or been enrolled or committed to a substance-abuse or alcohol-treatment program, and if the answer is yes, a complete explanation, including date, place, and copy of any documentation of program completion; and
 - vi. Has been disciplined, suspended, or terminated from employment as a respiratory care practitioner, and if the answer is yes, a complete explanation; ~~and~~
- k. A statement of whether the applicant is in compliance with all federal and state law regarding storage, transfer, and access to medical records; and

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- ~~k.1.~~ The applicant's ~~sworn statement verifying the truthfulness of~~ verification that the information provided is true and complete;
 - ~~2.~~ Attach a 2" by 2" color, bust photograph of the applicant taken within the last 60 days and signed on the back by the applicant;
 - ~~3-2.~~ Pay the renewal fee prescribed in R4-45-102(A)(4); and
 - ~~4-3.~~ Complete the required continuing education units.
- C. The Board shall notify a licensee ~~by mail at the licensee's address of record of:~~
1. Need to renew the licensee's license,
 2. Expiration of the licensee's license, and
 3. Audit of the licensee's continuing education records.
- D. If a license expires because it is not renewed timely, the former licensee may apply to have the license reinstated within two years from the date of expiration. To apply for reinstatement, the former licensee shall comply with subsection (B).
- E. If an expired license is not reinstated within two years from the date of expiration, the former licensee may obtain a new license only by applying as a new applicant.
- F. Misrepresentation of information on the license renewal application form or of compliance with the continuing education requirement in R4-45-208 constitutes grounds for disciplinary action.

R4-45-210. Criteria for Approved Continuing Education

- A. The Board shall approve for CEUs a continuing education that meets the following criteria:
1. The content of the continuing education is relevant to the scope of practice of respiratory care as defined in A.R.S. § 32-3501(5),
 2. At least 2/3 of the continuing education hours relate to clinical practice,
 3. The non-clinical continuing education hours cover:
 - a. Activities relevant to specialized aspects of respiratory care, such as education, supervision, and management;
 - b. Health care cost containment or cost management;
 - c. Preventative health services and health promotion;
 - d. Required abuse reporting; or
 - e. Other subject matter required by statute or rule to be included in continuing education for a licensed health professional, and
 4. The faculty who provide the continuing education are knowledgeable in the continuing education subject matter as evidenced by:
 - a. A degree from an accredited college or university and verifiable experience in the subject matter, or
 - b. Teaching and clinical experience in the same or similar subject matter.
- B. A continuing education provider that wishes to grant CEUs shall apply to the Board using an application, which is available from the Board, ~~that provides~~ and provide the following information:
1. List of educational objectives;
 2. Description of the teaching methods, for example: lecture, seminar, audio-visual materials, or simulation;
 3. Description of the manner in which participants will be involved in the learning activities; and
 4. Names and qualifications of all faculty.
- C. A continuing education provider shall maintain a record of who attended each continuing education for three years.
- D. A continuing education provider shall provide documentation of attendance to each participant that includes:
- ~~1. the~~ The participant's name,
 - ~~and~~ The participant's respiratory care practitioner license number,
 - ~~3. Title of the continuing education title,~~
 - ~~4. number~~ Number of CEUs earned,
 - ~~5. date~~ Date or dates of attendance, and
 - ~~6. name~~ Name and address of the continuing education provider.

R4-45-211. Audit of Compliance and Sanction for Noncompliance with Continuing Education Requirement

~~When notice of the need to renew a license is provided, the~~ The Board shall ~~also~~ provide notice of an audit of continuing education records to a random sample of licensees. A licensee subject to a continuing education audit ~~at the time of license renewal~~ shall submit documentation that demonstrates compliance with the continuing education requirement ~~at the same time the licensee submits the license renewal application form required under R4-45-207~~ within the time specified in the audit notice. If the licensee fails to submit ~~the license renewal application form and~~ documentation that demonstrates compliance with the continuing education requirement on or before the date ~~of license expiration, the license expires~~ specified in the audit notice, the Board shall provide written notice of intent to revoke the license issued to the licensee.

R4-45-213. Temporary Licensure

- A. To be considered for a temporary license, an applicant shall submit a license application package, as described in R4-45-201, and pay the application fee. The Board shall issue a temporary license, valid for eight months, to the applicant only if

the Board's Executive Director determines, after reviewing the license application package, that the applicant has never held a temporary license and is eligible to receive a license except that one or more of the following documents are missing from the license application package:

1. Passing score on the CRT examination,
 2. Verification of license from another state in which the applicant is or was licensed,
 3. Certified copy of course transcripts and descriptive information regarding the applicant's course of study at a foreign respiratory therapy school, or
 4. Completed federal and state criminal background check.
- B.** An applicant who is issued a temporary license shall:
1. ~~perform~~ Perform respiratory care services only under direct supervision,
 2. Not supervise a licensee or another temporary licensee, and
 3. Work as an instructor or in a management position only if issued the temporary license under A.R.S. 32-3524.
- C.** A temporary licensee who applied for licensure under A.R.S. § 32-3524 may renew the temporary license for an additional 120 days by submitting a request for renewal to the Board on a form prescribed by the Board.
- D.** A temporary licensee who is required by A.R.S. § 32-3523 and R4-45-201 to pass the CRT examination before becoming licensed may renew the temporary license for an additional 120 days by submitting to the Board:
1. A request for renewal on a form prescribed by the Board, and
 2. Evidence that the temporary licensee has either:
 - a. Passed the CRT examination, or
 - b. Attempted to pass the CRT examination and is registered to take the next scheduled CRT examination.
- E.** The request for a renewed temporary license shall:
1. Include an address of record,
 2. Be typed or written in black ink,
 3. Be signed by the applicant, and
 4. Be accompanied by the following:
 - a. The fee prescribed in R4-45-102(A)(5), and
 - b. A statement under oath that the temporary license has not expired.
- F.** A temporary licensee who is required but unable to submit the evidence under subsection (D)(2) may request an opportunity to explain this inability to the Board.
- G.** The Board shall administratively close an application for licensure if the applicant fails to apply for renewal of the applicant's temporary license. The temporary licensee shall apply for renewal no more than 60 days before expiration of the temporary license. An individual who wishes to be considered for licensure after the individual's file is administratively closed shall reapply.
- H.** Reapplication under subsection (G) does not qualify an individual for a second temporary license. The Board shall not issue more than one temporary license to an individual.
- I.** A temporary licensee is subject to disciplinary action by the Board under A.R.S. § 32-3553.

R4-45-214. Standards of Professional Conduct

Conduct or practice that is contrary to recognized standards of ethics of the respiratory therapy profession, as used in A.R.S. § 32-3501(10)(i), includes the following:

1. Engaging in the practice of respiratory care in a manner that harms or may harm a patient or that the Board determines falls below the community standard;
2. Procuring or attempting to procure by fraud or misrepresentation a license or renewal of a license to practice respiratory care;
3. Violating a formal order, condition of probation, or stipulation issued by the Board;
4. Obtaining a fee by fraud, deceit, or misrepresentation;
5. Falsely claiming attendance at an approved continuing education to meet license renewal requirements;
6. Endangering a patient's or the public's physical or emotional health or safety or engaging in conduct or practice that may reasonably be expected to do so;
7. Engaging in sexual intimacies with a patient unless the sexual intimacies were initiated before the practitioner-patient relationship was established;
8. Committing an act of sexual abuse, misconduct, harassment, or exploitation;
9. Acting in a manner that the Board determines, based on community standards, constitutes incompetence, gross negligence, repeated negligence, or negligence that results in harm or death of a patient;
10. Abandoning or neglecting a patient, including ~~failing to report for or~~ leaving a respiratory therapy assignment before properly advising appropriate personnel;
11. Failing to report for scheduled duty without properly advising appropriate personnel;
- ~~12.~~ Using or being under the influence of alcohol, illegal drugs or substances, or drugs or substances that impair judgment, while on duty in any health care work location;

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- ~~12-13.~~ Impersonating another licensed practitioner;
- ~~13-14.~~ Knowingly employing, directing, or supervising an individual in the performance of respiratory care who is not authorized to practice respiratory care;
- ~~14-15.~~ Violating the confidentiality of information concerning a patient;
- ~~15-16.~~ Inaccurately recording, falsifying, or altering a patient record, including a patient chart or medication administration record;
- ~~16-17.~~ Misrepresenting or omitting a fact on an application for employment as a respiratory care practitioner;
- ~~17-18.~~ Retaliating against any person who reports in good faith to the Board alleged incompetence or illegal or unethical conduct of any practitioner;
- ~~18-19.~~ Using, removing, or possessing property that belongs to an individual or entity without authorization;
- ~~19-20.~~ Threatening the physical health or safety of a Board member or the Board's staff; and
- ~~20-21.~~ Knowingly exceeding the scope of practice for a respiratory care practitioner at any health care location as the scope of practice is defined by the entity responsible for that health care location.

ARTICLE 3. HEARINGS

R4-45-301. Hearing Procedures

The Board shall conduct all hearings, including those held under A.R.S. § 32-3553, according to the procedures in A.R.S. Title 41, Chapter 6, Article 10 and rules issued by the Office of Administrative Hearings.

NOTICE OF PROPOSED RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION
TITLE, REGISTRATION, AND DRIVER LICENSES

[R07-403]

PREAMBLE

1. **Sections Affected**

R17-4-401	Amend
R17-4-404	Amend
Table 1	New
2. **The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 28-366
Implementing statute: A.R.S. § 28-3306(A)(3)
3. **A list of all previous notices appearing in the Register addressing the proposed rulemaking:**

Notice of Rulemaking Docket Opening: 13 A.A.R. 3700, November 2, 2007
4. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name:	Celeste M. Cook, Administrative Rules Analyst
Address:	Administrative Rule Unit Department of Transportation, Motor Vehicle Division 1801 W. Jefferson St., Mail Drop 530M Phoenix, AZ 85007
Telephone:	(602) 712-7624
Fax:	(602) 712-3081
E-mail:	ccook@azdot.gov

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

The Arizona Department of Transportation, Motor Vehicle Division proposes to adopt rulemaking to revise the current point value system and to ensure conformity to Arizona Administrative Procedures Act, Secretary of State, and Governor's Regulatory Review Council rulemaking format and style requirements.

6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None

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

Not applicable

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

The Division anticipates the only economic impacts as a result of this rulemaking are the resources necessary for rule-making.

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

See item 4.

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

Date: January 14, 2008

Time: 1:00 p.m.

Location: 1801 W. Jefferson St., Room 410
Phoenix, AZ 85007

Nature: Oral Proceeding

Close of record: January 7, 2008

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

Not applicable

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

Not applicable

13. The full text of the rules follows:

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION
TITLE, REGISTRATION, AND DRIVER LICENSES

ARTICLE 4. DRIVER LICENSES

Section

R17-4-401. Definitions

R17-4-404. Driver ~~Point System~~ Point Assessment

Table 1. Driver Point Valuation

ARTICLE 4. DRIVER LICENSES

R17-4-401. Definitions

In addition to the definitions provided in A.R.S. §§ 28-101, 28-1301, and 28-3001, the following definitions apply to this Article unless otherwise specified:

“Certified ignition interlock device has the meaning prescribed in A.R.S. § 28-1301(1).

“Director” means the Division Director or the Division Director’s designee.

“Division” means the Arizona Department of Transportation, Motor Vehicle Division.

“Education” has the meaning prescribed in A.R.S. § 28-1301(3).

“Financial responsibility (accident) suspension” means a suspension, by the Division, of:

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The Arizona driver license or driving privilege of an owner of a vehicle that:

Lacks the coverage required by A.R.S. § 28-4135, and

Is involved in an accident in Arizona; and

The Arizona registration of a vehicle ~~specified under R17-4-402(A)~~, unless the Division receives proof the vehicle was sold.

“Gore area” is defined in A.R.S. § 28-644.

~~“Ignition interlock device” has the meaning prescribed in A.R.S. § 28-1301(4).~~

“Proof the vehicle was sold” means a written statement to the Division from an owner that includes the following:

The seller’s name,

The VIN,

The sale date, and

The purchaser’s name and address.

“Restricted permit” means written permission from the Division for:

A person subject to a financial responsibility (accident) suspension to operate a motor vehicle only:

Between the person’s home and workplace,

During the person’s work-related activities, or

Between the person’s home and school; and

A vehicle with an Arizona registration subject to a financial responsibility (accident) suspension to be operated by a person specified under R17-4-402 only:

Between the person’s home and workplace;

During the person’s work-related activities; or

Between the person’s home and school.

~~“Screening” has the meaning prescribed in A.R.S. § 28-1301(8).~~

“State” means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

“SR22” means a certificate of insurance that complies with requirements under A.R.S. § 28-4077(A).

~~“Tampering” has the meaning prescribed in A.R.S. § 28-1301(9).~~

“Thirty-six-month period” means the time measured from the date of the most recent violation with assigned points for which a driver has a conviction or judgment to that day and month three years before the date of the violation.

“Traffic survival school” means a Division-licensed business that offers training and educational sessions to improve the safety and habits of drivers required to successfully complete the training and educational sessions under Arizona Revised Statutes, Title 28.

~~“Treatment” has the meaning prescribed in A.R.S. § 28-1301(10).~~

“Twelve-month period” means the time measured from the date of the most recent violation with assigned points for which a driver has a conviction or judgment to that day and month one year before the date of the violation.

“Twenty-four-month period” means the time measured from the date of the most recent violation with assigned points for which a driver has a conviction or judgment to that day and month two years before the date of the violation.

“VIN” or “vehicle identification number” is defined in A.R.S. § 13-4701(4).

“Withdrawal action” means a Division action that invalidates a person’s Arizona driving privilege or a vehicle’s Arizona registration ~~that~~, which includes:

A cancellation;

A suspension;

A revocation;

Any outstanding warrant; or

Any unresolved citation.

R17-4-404. Driver Point System Point Assessment

A: The following definitions apply to this Chapter unless otherwise specified:

1. ~~“Conviction” is defined in A.R.S. § 28-101(12).~~

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- 2. "Driver" is defined in A.R.S. § 28-101(18).
- 3. "Gore area" is defined in A.R.S. § 28-644.
- 4. "Judgment" is defined in A.R.S. § 28-3001(11).
- 5. "Suspension" is defined in A.R.S. § 28-3001(16).
- 6. "Thirty-six month period" means the time measured:
 - a. From the date of the most recent violation with assigned points for which a driver has a conviction or judgment, and
 - b. To that day and month three years before the date of the violation under subsection (A)(8)(a).
- 7. "Traffic survival school" means a Division licensed business that offers training and educational sessions to improve the safety and habits of drivers required to successfully complete the training and educational sessions under Arizona Revised Statutes, Title 28.
- 8. "Twelve month period" means the time measured:
 - a. From the date of the most recent violation with assigned points for which a driver has a conviction or judgment, and
 - b. To that day and month one year before the date of the violation under subsection (A)(10)(a).
- 9. "Twenty-four month period" means the time measured:
 - a. From the date of the most recent violation with assigned points for which a driver has a conviction or judgment, and
 - b. To that day and month two years before the date of the violation under subsection (A)(11)(a).

A. The Division shall assign points to a driver, as prescribed under Table 1. Driver Point Valuation, for each violation resulting in a conviction or judgment.

B. Under A.R.S. § 28-3306(A)(3), if a driver accumulates eight or more points in the 12-month period defined in subsection (A)(8) Section R17-4-401, the Division shall:

- 1. Order the driver to successfully complete the curriculum of a licensed traffic survival school; or
- 2. Suspend the driver's Arizona driver license driving privilege; or
- 3. Suspend the Arizona driving privilege of a driver not licensed by the Division under A.R.S. § 28-3152.

C. The Division shall assign points to a driver for each violation resulting in a conviction or judgment as follows:

	Points
1. A.R.S. § 28-1381, driving or actual physical control of a vehicle while under the influence of intoxicating liquor or drugs;	8
2. A.R.S. § 28-1382, driving or actual physical control of a vehicle while under the extreme influence of intoxicating liquor;	8
3. A.R.S. § 28-693, reckless driving;	8
4. A.R.S. § 28-708, racing on highways;	8
5. A.R.S. § 28-695, aggressive driving;	8
6. A.R.S. §§ 28-662, 28-663, 28-664, or 28-665, relating to a driver's duties after an accident;	6
7. A.R.S. § 28-672(A), failure to comply with a red traffic control signal, failure to yield the right of way when turning left at an intersection, or failure to comply with a stop sign, and the failure results in an accident causing death to another person;	6
8. A.R.S. § 28-672(A), failure to comply with a red traffic control signal, failure to yield the right of way when turning left at an intersection, or failure to comply with a stop sign, and the failure results in an accident causing serious physical injury to another person;	4
9. A.R.S. § 28-701, speeding;	3
10. A.R.S. § 28-644(A)(2), driving over or across, or parking in any part of a gore area; and	3
11. Any other traffic regulation that governs a vehicle moving under its own power.	2

D-C. Traffic survival school order of assignment. The Division shall send a dated order of assignment to traffic survival school, as prescribed under A.R.S. § 28-3318, to a driver ~~with~~ who accumulates 8 to 12 points in the 12-month period defined in subsection (A)(10) Section R17-4-401, and who did not previously complete traffic survival school in the 24-month period defined in subsection (A)(11) Section R17-4-401.

- 1. The order of assignment shall:
 - a. Instruct the driver to submit any hearing request to the Division within 15 days after the date of the order of assignment; and
 - b. Instruct the driver that failure to successfully complete traffic survival school within 60 days after the date of the order of assignment will result in the Division issuing a six-month order of suspension.

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2. The Division shall record that a driver completed traffic survival school if:
 - a. A licensed traffic survival school reports that the driver successfully completed the curriculum, or
 - b. The driver presents to the Division an original certificate of completion issued by a licensed traffic survival school, within 30 days of issuance of the certificate.
- 3- ~~The Division shall send a driver a six-month order of suspension under A.R.S. § 28-3318, if the driver does not establish completion of traffic survival school in accordance with subsections (C)(1) and (C)(2).~~
- 4- ~~The Division shall specify on an order of suspension:~~
 - a- ~~The period within which the driver may make a hearing request to the Division, and~~
 - b- ~~The effective date of the suspension.~~
- D.** Suspension for failure to complete traffic survival school. The Division shall send a driver a six-month order of suspension, as prescribed under A.R.S. § 28-3318, if the driver does not establish completion of traffic survival school in accordance with subsections (C)(1) and (C)(2). The order of suspension shall:
 1. Specify the period within which the driver may submit any hearing request to the Division; and
 2. Specify the effective date of the suspension.
- E.** Suspension for accumulation of excessive points. The Division shall: send an order of suspension as prescribed under A.R.S. § 28-3318 to a driver who accumulates an excessive amount of points. The order of suspension shall:
 - 1- ~~Send a driver an order of suspension under A.R.S. § 28-3318 when the driver comes under subsections (B) or (C);~~
 - 2-1. Specify the length of the suspension on the order of suspension as follows:
 - a. A three-month suspension for accumulation of 13 to 17 points in the 12-month period defined in ~~subsection (A)(10) Section R17-4-401,~~
 - b. A three-month suspension for accumulation of 8 to 12 points in the 12-month period defined in ~~subsection (A)(10) Section R17-4-401~~ and traffic survival school successfully completed in the 24-month period defined in ~~subsection (A)(11) Section R17-4-401,~~
 - c. A six-month suspension for accumulation of 18 to 23 points in the 12-month period defined in ~~subsection (A)(10) Section R17-4-401,~~ and
 - d. A 12-month suspension for accumulation of 24 or more points in the 36-month period defined in ~~subsection (A)(8) Section R17-4-401; and~~
 - 3-2. Specify, on the order of suspension: the period within which the driver may submit a hearing request to the Division and the effective date of the suspension.
 - a- ~~The period within which the driver may make a hearing request to the Division, and~~
 - b- ~~The effective date of the suspension.~~
- F.** Approved Licensed schools.
 1. Under the provisions of A.R.S. § 28-3307, the ~~Department Division~~ will assign licensees an individual only to schools approved licensed by the ~~Assistant~~ Director ~~in writing.~~
 2. Governmental agencies, corporations, or other individuals conducting training and educational sessions designed to improve the safety and habits of drivers may, upon request, receive the approval of the ~~Assistant~~ Director when they offer the approved curriculum taught by qualified instructors.
- G.** Approved curriculum. The ~~Assistant~~ Director shall approve in writing a uniform curriculum that the traffic survival school shall teach to licensees individuals assigned to schools. The curriculum will be selected and approved on the basis of effectiveness in improving the safety and habits of drivers.
- H.** Qualified instructors. Only those persons who meet the following qualifications will be deemed qualified instructors and allowed to teach licensees individuals assigned by the ~~Department Division~~ to approve schools:
 1. Instructors shall be high school graduates and shall have successfully completed an examination given for qualifications of instructors by the ~~Department Division,~~ or shall be certified to teach driver education by the State Department of Education.
 2. Instructors shall complete a curriculum workshop approved by the ~~Assistant~~ Director. An instructor may be temporarily certified if the instructor successfully completes, as a student, a course using Division approved curriculum and agrees ~~that the instructor will~~ to attend the next available curriculum workshop for complete orientation.
 3. The instructors shall be at least 21 years of age, have an acceptable personal driving record, be accepted for employment by an approved school, and be of good moral character.
- I.** Withdrawal of approval. The ~~Assistant~~ Director is authorized, after affording a party a hearing, to withdraw approval of any training and education school and is authorized to withdraw ~~his the~~ approval of any instructor when satisfactory evidence, ~~satisfactory to him,~~ shows a school or instructor, individually or collectively, has failed to maintain the approved standards or has given the ~~Department Division~~ false information in their application for approval.
- J.** Conflict of interest. No full-time employee of the state of Arizona shall receive any direct pecuniary payments from registration fees paid by those who attend approved schools.

Table 1. Driver Point Valuation

<u>Violation</u>	<u>Points</u>
<u>A.R.S. § 28-1381, driving or actual physical control of a vehicle while under the influence.</u>	<u>8</u>
<u>A.R.S. § 28-1382, driving or actual physical control of a vehicle while under the extreme influence of intoxicating liquor.</u>	<u>8</u>
<u>A.R.S. § 28-1383, aggravated driving or actual physical control while under the influence.</u>	<u>8</u>
<u>A.R.S. § 28-693, reckless driving.</u>	<u>8</u>
<u>A.R.S. § 28-708, racing on highways.</u>	<u>8</u>
<u>A.R.S. § 28-695, aggressive driving.</u>	<u>8</u>
<u>A.R.S. §§ 28-662, 28-663, 28-664, or 28-665, relating to a driver's duties after an accident.</u>	<u>6</u>
<u>A.R.S. § 28-672(A), failure to comply with a red traffic-control signal, failure to yield the right of way when turning left at an intersection, failure to yield the right of way to a pedestrian, failure to exercise due care, failure to stop for a school bus stop signal, or failure to comply with a stop sign, and the failure results in an accident causing death to another person.</u>	<u>6</u>
<u>A.R.S. § 28-672(A), failure to comply with a red traffic-control signal, failure to yield the right of way when turning left at an intersection, failure to yield the right of way to a pedestrian, failure to exercise due care, failure to stop for a school bus stop signal, or failure to comply with a stop sign, and the failure results in an accident causing serious physical injury to another person.</u>	<u>4</u>
<u>A.R.S. § 28-701, reasonable and prudent speed.</u>	<u>3</u>
<u>A.R.S. § 28-644(A)(2), driving over, across, or parking in any part of a gore area.</u>	<u>3</u>
<u>Any other traffic regulation that governs a vehicle moving under its own power.</u>	<u>2</u>

NOTICE OF PROPOSED RULEMAKING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 4. DEPARTMENT OF FINANCIAL INSTITUTIONS

[R07-405]

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
| R20-4 216 | New Section |
| R20-4-332 | New Section |
| R20-4-403 | New Section |
| R20-4-709 | New Section |
| R20-4-927 | New Section |
| R20-4-1813 | New Section |
| R20-4-1912 | New Section |
- 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. § 23-1361
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**
 Notice of Rulemaking Docket Opening: 13 A.A.R. 4332, December 7, 2008 (*in this issue*)
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
 Name: John P. Hudock
 Address: Department of Financial Institutions
 2910 N. 44th St., Suite 310
 Phoenix, AZ 85018

Telephone: (602) 255-4421, ext. 167

Fax: (602) 381-1225

E-mail: jhudock@azdfi.gov

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

These new Sections will require licensee-employers to report on employees terminated for certain specified kinds of misconduct. The event that triggers a duty to report is an employee's termination.

A.R.S. § 23-1361, a long standing Arizona labor relations statute, provides civil immunity for communications between banks, credit unions, escrow agents, mortgage brokers, mortgage bankers, and commercial mortgage bankers about dishonest employees. The statute deems such communications, concerning employees or prospective employees, privileged when the information exchanged between companies is reported to DFI "... pursuant to written rules or policies..." A.R.S. § 23-1361(E).

This rulemaking proposes new Sections that will trigger the protections of A.R.S. § 23-1361. They will require the licensees to report information about errant former employees whose conduct warranting termination falls under any of the categories of A.R.S. § 6-161, which authorizes the Superintendent to remove dishonest and unfit employees. The new Sections will work with A.R.S. § 23-1361 to provide civil immunity to employers and allow them to help DFI eliminate unfit and dishonest employees from these licensed and chartered financial services entities.

To cure the increasing perception of illegal conduct in these industries, members of the regulated community have approached the Department over the last year and a half requesting assistance in creating a way for industries to self-police. The new rule recognizes this need and creates an avenue for industry to safely share information about employee misconduct with the Department and with each other. The free exchange of information would prevent dishonest employees from moving from one employer to another when their misconduct is discovered. It would also aid the Department's supervisory task of removing bad actors from these industries. Both these goals would be invaluable in protecting Arizona consumers. The Department would not propose these new Sections if it were not for the requests of the regulated community and the existence of A.R.S. § 23-1361.

The new Sections work together with existing statutory law in the following way. The proposed Sections require licensees to report the conduct of only those employees terminated as a result of certain misconduct. Licensee-employers will be protected because A.R.S. § 23-1361(E) grants privileged status to communications between a prospective employer and a former employer if the information relayed by the former employer was communicated to the Department under a written rule or policy. At the same time, A.R.S. § 23-1361(F) grants employers immunity from civil liability for privileged communications made under subsection 23-1361(E).

These two subsections of § 23-1361 make a communication privileged and immune from civil liability only if the information conveyed was also reported to the Department under a written rule or policy. The Department's administrative rules do not currently require these reports, so the rule is being adopted to make those privileges and immunities available to licensees.

The combination of these new Sections and the existing statutes gives licensees a greater opportunity to self-police and remove the worst actors from the financial services industry. In the past, the Department and licensee-employers have found it difficult to obtain information about employee misconduct. The rule is designed to change that.

The new Sections will ease communication and permit licensees to provide each other with protected information, so that bad actors have less chance of moving from one unsuspecting employer to the next. The reporting process will also allow the Department to make better use of its removal power.

The removal process requires some explanation. Since 1973 when the legislature enacted A.R.S. § 6-161, the Superintendent has had the power to remove persons from the financial services industry as a penalty for having committed certain forms of misconduct. Information reported under the new Sections is confidential under A.R.S. § 6-129. The Department will investigate and consider whether to seek removal of the employee. A decision to remove a reported employee will be pursued under A.R.S. § 6-161.

Several industry leaders have already commented on the rule and it has gone through several revisions. These are the issues already addressed:

1. The earliest version of the rule required the licensee-employer to report all persons who have knowledge of the misconduct. One writer suggested that a licensee should have to report only those persons the reporting licensee knows about. The rule now contains this more feasible reporting duty.
2. The same writer pointed out that the rule required the licensee to search for and describe all records evidencing the reported misconduct in the licensee's possession. The suggestion was that the company should only be required to assemble and describe the records it compiles for its own termination investigation.

On the other hand, the Department's interest is in having all pertinent records. The more information the Department has, the greater likelihood it can make a sound decision on whether to seek removal. The current language of the new

Sections balances these competing interests in favor of feasibility and permits supplementation of the licensee's report to include after-acquired or later-discovered information and records.

3. It has also been noted that early versions of these proposed Sections required the licensee to retain all records of reported misconduct indefinitely and to destroy those records only with the Department's consent. The Sections were modified to remedy the problem of an indefinite retention period. In drafting the modifications, the Department assumed any licensee that fires an employee for the kind of conduct that would trigger a reporting duty would retain its records of any pre-termination investigation at least until the statute of limitations has run on any claims the terminated employee might assert. In the proposed Sections' language it states no definite retention period but obligates the Department not to withhold consent without a reason.

4. Several commentators were bothered by the definition of misconduct in the draft rule, noting that the language of A.R.S. § 23-1361(G) is a more narrow definition of misconduct than the broader language of A.R.S. § 6-161(A)(1). How is a licensee-employer to know what misconduct to report? The definitions in the two statutes are different, but overriding concerns lead the Department to conclude that the rules must contain the broader definition of "misconduct" set out in the current drafts.

First, A.R.S. § 6-161 gives the Department the power and authority to remove persons committing the kinds of misconduct described in the statute. The concern is that, if this rule does not require reports of any and all forms of misconduct that can lead to removal, this rulemaking project will be less effective at achieving the goals contemplated by the legislature when it enacted A.R.S. § 6-161. That statute lists statutory grounds for removal, and the rules that implement it would be less than effective if they did not include all the statutory grounds.

Also, the duty to report stated in the current draft is triggered by termination. Other forms of employee discipline are not implicated in the new Sections. The Department believes that if a licensee has done an investigation sufficient to conclude an employee should be terminated, it will also have the information it needs to decide if the employee's misconduct should be reported under any criteria set out or incorporated into the rules. And in the end, the Department has to make its own determination whether to seek removal of a reported employee. Under the statutes and this rule, a report of misconduct is privileged and cloaked in immunity from suit. Therefore, in its broader form, the rule works in favor of licensees by providing immunity from civil liability.

5. One commentator inquired as to the penalty for failure to comply with the rule. Under the authority of A.R.S. § 6-132, the penalty for a licensee's failure to comply with any statute, rule, or order adopted or issued under A.R.S. Title 6 is a civil money penalty not to exceed \$5,000 per violation per day.

6. A commentator suggested that the Department develop a form to use in making the required reports. This is a welcome suggestion and one the Department believes it has fulfilled by drafting the rule so that it can serve as its own checklist.

7. How will a licensee know when it is prohibited from employing a given person? For the use of all licensees as well as the general public, the Department's web site contains a chart of Final Orders, including a list of all Removal Orders. In response to this question, we plan to have a separate link placed on the Department's home page that will link directly to the Removal Orders. Each linked Removal Order is identified by the name of the person removed from the financial services industry. Likewise, each Removal Order is posted as a link so that the full text of the order can be downloaded, printed, or saved by licensees.

8. Finally, a concern has been expressed about the privacy and safety of employees identified in reports as persons known to have knowledge of the reported misconduct. Both the privacy and safety concerns are related, and we believe the rule safeguards both interests.

First of all, any information contained in a "report" is confidential in the hands of the Department under A.R.S. § 6-129. Neither the rule nor the statute requires disclosure of the "report" to the accused employee.

The provision of the Labor Code, A.R.S. § 23-1361, deals with "reports," made by an employer to the Department that trigger the privileged status of the information conveyed to the Department. The confidentiality of the reports protects the witnesses' privacy.

The statute also deals with "employment references." As the term is used in the statute, employment references are made by a previous employer to a prospective employer. There is no requirement in the statute that the information conveyed in the employment reference should include the identity of any witnesses or persons with knowledge of the misconduct.

It is true that, as a condition of immunity, A.R.S. § 23-1361(G) requires a previous employer that makes an "employment reference" disclosing reported misconduct to send a copy of the "employment reference" to the applicant in question. But that requirement is only as to "employment references." The proposed Sections do not affect the contents of "employment references," nor do they require that copies of "reports" be sent to accused employees. The information shared with the terminated employee need not include witnesses' names, and that circumstance also protects the witness's privacy. In this context, all privacy protections also safeguard the witnesses' safety.

6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data

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underlying each study, and any analysis of each study and other supporting material:

The Department has not reviewed, and 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 Department of Financial Institutions

The Department will incur the costs of completing this rulemaking and of putting the new Sections into effect. It expects to receive the offsetting benefits of an open channel of communication with protected licensees about employee misconduct. The Department will then have an easier task of removing dishonest or corrupt employees from the vital financial services industry and will, therefore, be better able to protect Arizona consumers.

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. Some of the Sections' recordkeeping and reporting requirements will marginally increase licensees' cost of doing business in compliance with these rules. At the same time, licensees will have statutorily conferred immunity for making the required reports. In the long term, licensees will have decreased risk of liability for the actions of dishonest or corrupt employees.

D. Consumers

Consumers will be better protected against dishonest conduct in their financial transactions. If licensees pass on compliance costs, consumers may pay more for financial services.

E. Private and Public Employment

The Department expects 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: Department of Financial Institutions
2910 N. 44th St., Suite 310
Phoenix, AZ 85018
Telephone: (602) 255-4421, ext. 167
Fax: (602) 381-1225
E-mail: jhudock@azdfi.gov

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 proceeding is 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, under the provisions of A.R.S. § 41-1023(C). Send requests for an oral proceeding to the Department personnel listed in items 4 and 9. 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 item 9, 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:

There is no material incorporated by reference in these rules.

13. The full text of the rules follows:

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 4. DEPARTMENT OF FINANCIAL INSTITUTIONS

ARTICLE 2. BANK ORGANIZATION AND REGULATION

Section
R20-4-216. Reports of Employee Misconduct

ARTICLE 3. SAVINGS AND LOAN ASSOCIATIONS

Section
R20-4-332. Reports of Employee Misconduct

ARTICLE 4. CREDIT UNIONS

Section
R20-4-403. Reports of Employee Misconduct

ARTICLE 7. ESCROW AGENTS

Section
R20-4-709. Reports of Employee Misconduct

ARTICLE 9. MORTGAGE BROKERS

Section
R20-4-927. Reports of Employee Misconduct

ARTICLE 18. MORTGAGE BANKERS

Section
R20-4-1813. Reports of Employee Misconduct

ARTICLE 19. COMMERCIAL MORTGAGE BANKERS

Section
R20-4-1912. Reports of Employee Misconduct

ARTICLE 2. BANK ORGANIZATION AND REGULATION

R20-4-216. Reports of Employee Misconduct

A. As the term is used in this Section:

1. “Employee” has the meaning stated in R20-4-102 and also includes directors, officers, agents, and other persons participating in the conduct of the affairs of the bank.
2. “Misconduct” means any conduct listed in this subsection that occurs in Arizona or harms an Arizona resident.
 - a. Any act, omission, or practice in any business transaction that demonstrates personal dishonesty;
 - b. A willful violation of an order of the superintendent;
 - c. A refusal to testify or produce records in response to a subpoena issued by the superintendent;
 - d. A conviction of a crime, an essential element of which is fraud, misrepresentation, or deceit;
 - e. Any activity described in 12 U.S.C. 1818(e)(1). For purposes of this subsection, any references in the federal statute to the appropriate federal banking agency are to the superintendent;
 - f. Any act, practice, or transaction which in any way would jeopardize the safety and soundness of the bank;
 - g. A theft;
 - h. An embezzlement;
 - i. A misappropriation;
 - j. Any other defalcation;
 - k. Any violation of A.R.S. Title 6, Chapter 2; or
 - l. Any violation of Title 20, Chapter 4, Article 2 of the *Arizona Administrative Code*.

B. In the event a bank terminates an employee for misconduct, as that term is defined in subsection (A)(2) of this Section, the bank shall report the employee’s misconduct to the Department within 30 days of the employee’s termination.

C. The initial report required by subsection (B) of this Section shall contain all the information specified in this subsection and known to the bank at the time the report is made. The bank shall supplement its report within 10 days of the bank learning new information.

1. The employee’s name and other identifying information including any of the employee’s fictitious names or aliases

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- known to the bank at the time of the report;
 - 2. The capacity in which the employee worked for the reporting bank;
 - 3. The employee's misconduct;
 - 4. The names of all persons known to the bank that have been, or may have been, injured or damaged by the reported misconduct;
 - 5. The employee's last known business and residence addresses;
 - 6. The names of all persons known to the bank to have knowledge of the reported misconduct; and
 - 7. A description of all records evidencing the reported misconduct in the bank's possession.
- D.** A bank shall retain all records of reported misconduct described under subsection (C)(7) of this Section, and shall obtain the Department's consent before the bank destroys any of the retained records. The Department's consent shall not be unreasonably withheld.

ARTICLE 3. SAVINGS AND LOAN ASSOCIATIONS

R20-4-332. Reports of Employee Misconduct

- A.** As the term is used in this Section:
- 1. "Employee" has the meaning stated in R20-4-102 and also includes directors, officers, agents, and other persons participating in the conduct of the affairs of the savings and loan.
 - 2. "Misconduct" means any conduct listed in this subsection that occurs in Arizona or harms an Arizona resident.
 - a. Any act, omission, or practice in any business transaction that demonstrates personal dishonesty;
 - b. A willful violation of an order of the superintendent;
 - c. A refusal to testify or produce records in response to a subpoena issued by the superintendent;
 - d. A conviction of a crime, an essential element of which is fraud, misrepresentation, or deceit;
 - e. Any activity described in 12 U.S.C. 1818(e)(1). For purposes of this subsection, any references in the federal statute to the appropriate federal banking agency are to the superintendent;
 - f. Any act, practice, or transaction which in any way would jeopardize the safety and soundness of the savings and loan;
 - g. A theft;
 - h. An embezzlement;
 - i. A misappropriation;
 - j. Any other defalcation;
 - k. Any violation of A.R.S. Title 6, Chapter 3; or
 - l. Any violation of Title 20, Chapter 4, Article 3 of the *Arizona Administrative Code*.
- B.** In the event a savings and loan terminates an employee for misconduct, as that term is defined in subsection (A)(2) of this Section, the savings and loan shall report the employee's misconduct to the Department within 30 days of the employee's termination.
- C.** The initial report required by subsection (B) of this Section shall contain all the information specified in this subsection and known to the savings and loan at the time the report is made. The savings and loan shall supplement its report within 10 days of the savings and loan learning new information.
- 1. The employee's name and other identifying information including any of the employee's fictitious names or aliases known to the savings and loan at the time of the report;
 - 2. The capacity in which the employee worked for the reporting savings and loan;
 - 3. The employee's misconduct;
 - 4. The names of all persons known to the savings and loan that have been, or may have been, injured or damaged by the reported misconduct;
 - 5. The employee's last known business and residence addresses;
 - 6. The names of all persons known, to the savings and loan, to have knowledge of the reported misconduct; and
 - 7. A description of all records evidencing the reported misconduct in the savings and loan's possession.
- D.** A savings and loan shall retain all records of reported misconduct described under subsection (C)(7) of this Section, and shall obtain the Department's consent before the savings and loan destroys any of the retained records. The Department's consent shall not be unreasonably withheld.

ARTICLE 4. CREDIT UNIONS

R20-4-403. Reports of Employee Misconduct

- A.** As the term is used in this Section:
- 1. "Employee" has the meaning stated in R20-4-102 and also includes directors, officers, agents, and other persons participating in the conduct of the affairs of the credit union.
 - 2. "Misconduct" means any conduct listed in this subsection that occurs in Arizona or harms an Arizona resident.
 - a. Any act, omission, or practice in any business transaction that demonstrates personal dishonesty;

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- b. A willful violation of an order of the superintendent;
 - c. A refusal to testify or produce records in response to a subpoena issued by the superintendent;
 - d. A conviction of a crime, an essential element of which is fraud, misrepresentation, or deceit;
 - e. Any activity described in 12 U.S.C. 1818(e)(1). For purposes of this subsection, any references in the federal statute to the appropriate federal banking agency are to the superintendent;
 - f. Any act, practice, or transaction which in any way would jeopardize the safety and soundness of the credit union;
 - g. A theft;
 - h. An embezzlement;
 - i. A misappropriation;
 - j. Any other defalcation;
 - k. Any violation of A.R.S. Title 6, Chapter 4; or
 - l. Any violation of Title 20, Chapter 4, Article 4 of the Arizona Administrative Code.
- B.** In the event a credit union terminates an employee for misconduct, as that term is defined in subsection (A)(2) of this Section, the credit union shall report the employee's misconduct to the Department within 30 days of employee's termination.
- C.** The initial report required by subsection (B) of this Section shall contain all the information specified in this subsection and known to the credit union at the time the report is made. The credit union shall supplement its report within 10 days of the credit union learning new information.
- 1. The employee's name and other identifying information including any of the employee's fictitious names or aliases known to the credit union at the time of the report;
 - 2. The capacity in which the employee worked for the reporting credit union;
 - 3. The employee's misconduct;
 - 4. The names of all persons known to the credit union that have been, or may have been, injured or damaged by the reported misconduct;
 - 5. The employee's last known business and residence addresses;
 - 6. The names of all persons known to the credit union to have knowledge of the reported misconduct; and
 - 7. A description of all records evidencing the reported misconduct in the credit union's possession.
- D.** A credit union shall retain all records of reported misconduct described under subsection (C)(7) of this Section, and shall obtain the Department's consent before the credit union destroys any of the retained records. The Department's consent shall not be unreasonably withheld.

ARTICLE 7. ESCROW AGENTS

R20-4-709. Reports of Employee Misconduct

- A.** As the term is used in this Section:
- 1. "Employee" has the meaning stated in R20-4-102 and also includes directors, officers, agents, and other persons participating in the conduct of the affairs of the escrow agent.
 - 2. "Misconduct" means any conduct listed in this subsection that occurs in Arizona or harms an Arizona resident.
 - a. Any act, omission, or practice in any business transaction that demonstrates personal dishonesty;
 - b. A willful violation of an order of the superintendent;
 - c. A refusal to testify or produce records in response to a subpoena issued by the superintendent;
 - d. A conviction of a crime, an essential element of which is fraud, misrepresentation, or deceit;
 - e. A theft;
 - f. An embezzlement;
 - g. A misappropriation;
 - h. Any other defalcation;
 - i. Any violation of Title 6, A.R.S. Title 6, Chapter 7; or
 - j. Any violation of Title 20, Chapter 4, Article 7 of the Arizona Administrative Code.
- B.** In the event an escrow agent terminates an employee for misconduct, as that term is defined in subsection (A)(2) of this Section, the escrow agent shall report the employee's misconduct to the Department within 30 days of the employee's termination.
- C.** The initial report required by subsection (B) of this Section shall contain all the information specified in this subsection and known to the escrow agent at the time the report is made. The escrow agent shall supplement its report within 10 days of the escrow agent learning new information.
- 1. The employee's name and other identifying information including any of the employee's fictitious names or aliases known to the escrow agent at the time of the report;
 - 2. The capacity in which the employee worked for the reporting escrow agent;
 - 3. The employee's misconduct;
 - 4. The names of all persons known to the escrow agent that have been, or may have been, injured or damaged by the reported misconduct;

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5. The employee's last known business and residence addresses;
 6. The names of all persons known to the escrow agent to have knowledge of the reported misconduct; and
 7. A description of all records evidencing the reported misconduct in the escrow agent's possession.
- D.** An escrow agent shall retain all records of reported misconduct described under subsection (C)(7) of this Section, and shall obtain the Department's consent before the escrow agent destroys any of the retained records. The Department's consent shall not be unreasonably withheld.

ARTICLE 9. MORTGAGE BROKERS

R20-4-927. Reports of Employee Misconduct

- A.** As the term is used in this Section:
1. "Employee" has the meaning stated in R20-4-102 and also includes directors, officers, agents, and other persons participating in the conduct of the affairs of the mortgage broker.
 2. "Misconduct" means any conduct listed in this subsection that occurs in Arizona or harms an Arizona resident.
 - a. Any act, omission, or practice in any business transaction that demonstrates personal dishonesty;
 - b. A willful violation of an order of the superintendent;
 - c. A refusal to testify or produce records in response to a subpoena issued by the superintendent;
 - d. A conviction of a crime, an essential element of which is fraud, misrepresentation, or deceit;
 - e. A theft;
 - f. An embezzlement;
 - g. A misappropriation;
 - h. Any other defalcation;
 - i. Any violation of A.R.S. Title 6, Chapter 9, Article 1; or
 - j. Any violation of Title 20, Chapter 9, Article 7 of the *Arizona Administrative Code*.
- B.** In the event a mortgage broker terminates an employee for misconduct, as that term is defined in subsection (A)(2) of this Section, the mortgage broker shall report the employee's misconduct to the Department within 30 days of the employee's termination.
- C.** The initial report required by subsection (B) of this Section shall contain all the information specified in this subsection and known to the mortgage broker at the time the report is made. The mortgage broker shall supplement its report within 10 days of the mortgage broker learning new information.
1. The employee's name and other identifying information including any of the employee's fictitious names or aliases known to the mortgage broker at the time of the report;
 2. The capacity in which the employee worked for the reporting mortgage broker;
 3. The employee's misconduct;
 4. The names of all persons known to the mortgage broker that have been, or may have been, injured or damaged by the reported misconduct;
 5. The employee's last known business and residence addresses;
 6. The names of all persons known to the mortgage broker to have knowledge of the reported misconduct; and
 7. A description of all records evidencing the reported misconduct in the mortgage broker's possession.
- D.** A mortgage broker shall retain all records of reported misconduct described under subsection (C)(7) of this Section, and shall obtain the Department's consent before the mortgage broker destroys any of the retained records. The Department's consent shall not be unreasonably withheld.

ARTICLE 18. MORTGAGE BANKERS

R20-4-1813. Reports of Employee Misconduct

- A.** As the term is used in this Section:
1. "Employee" has the meaning stated in R20-4-102 and also includes directors, officers, agents, and other persons participating in the conduct of the affairs of the mortgage banker.
 2. "Misconduct" means any conduct listed in this subsection that occurs in Arizona or harms an Arizona resident.
 - a. Any act, omission, or practice in any business transaction that demonstrates personal dishonesty;
 - b. A willful violation of an order of the superintendent;
 - c. A refusal to testify or produce records in response to a subpoena issued by the superintendent;
 - d. A conviction of a crime, an essential element of which is fraud, misrepresentation, or deceit;
 - e. A theft;
 - f. An embezzlement;
 - g. A misappropriation;
 - h. Any other defalcation;
 - i. Any violation of A.R.S. Title 6, Chapter 9, Article 2; or
 - j. Any violation of Title 20, Chapter 4, Article 18 of the *Arizona Administrative Code*.

- B.** In the event a mortgage banker terminates an employee for misconduct, as that term is defined in subsection (A)(2) of this Section, the mortgage banker shall report the employee's misconduct to the Department within 30 days of the employee's termination.
- C.** The initial report required by subsection (B) of this Section shall contain all the information specified in this subsection and known to the mortgage banker at the time the report is made. The mortgage banker shall supplement its report within 10 days of the mortgage banker learning new information.
1. The employee's name and other identifying information including any of the employee's fictitious names or aliases known to the mortgage banker at the time of the report;
 2. The capacity in which the employee worked for the reporting mortgage banker;
 3. The employee's misconduct;
 4. The names of all persons known to the mortgage banker that have been, or may have been, injured or damaged by the reported misconduct;
 5. The employee's last known business and residence addresses;
 6. The names of all persons known to the mortgage banker to have knowledge of the reported misconduct; and
 7. A description of all records evidencing the reported misconduct in the mortgage banker's possession.
- D.** A mortgage banker shall retain all records of reported misconduct described under subsection (C)(7) of this Section, and shall obtain the Department's consent before the mortgage banker destroys any of the retained records. The Department's consent shall not be unreasonably withheld.

ARTICLE 19. COMMERCIAL MORTGAGE BANKERS

R20-4-1912. Reports of Employee Misconduct

- A.** As the term is used in this Section:
1. "Employee" has the meaning stated in R20-4-102 and also includes directors, officers, agents, and other persons participating in the conduct of the affairs of the commercial mortgage banker.
 2. "Misconduct" means any conduct listed in this subsection that occurs in Arizona or harms an Arizona resident.
 - a. Any act, omission, or practice in any business transaction that demonstrates personal dishonesty;
 - b. A willful violation of an order of the superintendent;
 - c. A refusal to testify or produce records in response to a subpoena issued by the superintendent;
 - d. A conviction of a crime, an essential element of which is fraud, misrepresentation, or deceit;
 - e. A theft;
 - f. An embezzlement;
 - g. A misappropriation;
 - h. Any other defalcation;
 - i. Any violation of A.R.S. Title 6, Chapter 9, Article 3; or
 - j. Any violation of Title 20, Chapter 4, Article 19 of the *Arizona Administrative Code*.
- B.** In the event a commercial mortgage banker terminates an employee for misconduct, as that term is defined in subsection (A)(2) of this Section, the commercial mortgage banker shall report the employee's misconduct to the Department within 30 days of the employee's termination.
- C.** The initial report required by subsection (B) of this Section shall contain all the information specified in this subsection and known to the commercial mortgage banker at the time the report is made. The commercial mortgage banker shall supplement its report within 10 days of the commercial mortgage banker learning new information.
1. The employee's name and other identifying information including any of the employee's fictitious names or aliases known to the commercial mortgage banker at the time of the report;
 2. The capacity in which the employee worked for the reporting commercial mortgage banker;
 3. The employee's misconduct;
 4. The names of all persons known to the commercial mortgage banker that have been, or may have been, injured or damaged by the reported misconduct;
 5. The employee's last known business and residence addresses;
 6. The names of all persons known to the commercial mortgage banker to have knowledge of the reported misconduct; and
 7. A description of all records evidencing the reported misconduct in the commercial mortgage banker's possession.
- D.** A commercial mortgage banker shall retain all records of reported misconduct described under subsection (C)(7) of this Section, and shall obtain the Department's consent before the commercial mortgage banker destroys any of the retained records. The Department's consent shall not be unreasonably withheld.