Senate Engrossed House Bill

FILED
JANICE K. BREWER
SECRETARY OF STATE

State of Arizona
House of Representatives
Forty-sixth Legislature
Second Regular Session
2004

CHAPTER 188

HOUSE BILL 2241

AN ACT

AMENDING SECTIONS 5-324, 6-101, 6-110, 6-111, 6-122, 6-123.01, 6-131.01, 6-135, 6-135.01, 6-407, 6-474, 6-851, 10-2258, 10-2259, 10-2260, 10-2261, 10-2265, 13-2301, 14-3603, 14-5411, 14-10702, 20-1593, 23-1361, 25-519, 28-450, 28-4301, 28-5104, 28-5105, 32-1001, 32-1391.01, 32-1391.03, 32-1391.04, 32-1391.05, 32-1391.16, 35-311, 35-321, 35-323, 38-871, 41-3004.05, 44-281, 44-287, 44-1601, 44-3101, 46-138.01, 46-300.03, 48-101 AND 48-3204, ARIZONA REVISED STATUTES; RELATING TO FINANCIAL INSTITUTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 5-324, Arizona Revised Statutes, is amended to read:

5-324. Public records; identification of requester; supplying information by mail; records custodians; certification of records

A. All records of the department made or kept pursuant to this article are public records.

B. The department shall furnish information or copies from the records kept pursuant to this section subject to sections 39-121.01 and 39-121.03.

C. Persons requesting a copy of a public record pursuant to this section shall identify themselves and state the reason for making the request. The department shall verify the name and address of the person making the request by requiring the person to produce necessary information to ensure that the information given is true and correct.

D. The department shall not divulge any information from a watercraft registration record unless the person requesting the information provides the following:

1. The name of the owner.

2. The hull identification number of the watercraft.

3. The department issued number assigned to the watercraft.

E. The procedures required by subsections C and D of this section do not apply to:

1. This state or any of its departments, agencies or political subdivisions.

2. A court.

3. A law enforcement officer.

4. A licensed private investigator.

5. Financial institutions and enterprises under the jurisdiction of the ~~state banking~~ department OF FINANCIAL INSTITUTIONS or a federal monetary authority.

6. The federal government or any of its agencies.

7. An attorney admitted to practice in this state who alleges the information is relevant to any pending or potential court proceeding.

8. An operator of a self-service storage facility located in this state who alleges both of the following:

(a) That the watercraft on which the operator is requesting the record is in the operator's possession.

(b) That the record is requested to allow the operator to notify the registered owner and any lienholders of record of the operator's intent to foreclose its lien and to sell the watercraft.

9. A towing company located in this state that alleges both of the following:

(a) That the watercraft on which the towing company is requesting the record is in the towing company's possession.

(b) That the record is requested to allow the towing company to notify the registered owner and any lienholders of record, if known, of the towing company's intent to sell the watercraft.

F. The department may supply the requested information by mail or telecommunications.

G. The director may designate as custodian of the department's public records those department employees the director deems necessary. If a public record of the department has been certified by a records custodian and authenticated as required under proof of records (records of public officials), rules of civil procedure and the rules of evidence for courts in this state, it is admissible in evidence without further foundation.

H. Notwithstanding subsection D of this section, information may be supplied for commercial purposes, as defined in section 39-121.03, if the information is transmitted in a machine readable form such as computer magnetic tape to the person making the request.

I. The department shall maintain for a period of at least one year a file of requests for information that shall be maintained by the name of the person whose record was requested, except those requests made by government agencies.

Sec. 2. Section 6-101, Arizona Revised Statutes, is amended to read:

6-101. Definitions

In this title, unless the context otherwise requires:

1. "Automated teller machine" means an automated device that is established by a bank, savings and loan association or credit union and that facilitates customer-bank communications activities, including taking deposits and disbursing cash drawn against a customer's deposit account or a customer's preapproved loan account, at a location separate from the home office or a branch.

2. "Bank" means a corporation that holds a banking permit issued pursuant to chapter 2 of this title.

3. "Banking office" means any place of business of the bank at which deposits are received, checks are paid or money is loaned but does not include the premises used for computer operations, proofing, record keeping, accounting, storage, maintenance or other administrative or service functions.

4. "Branch" means any banking office other than the principal banking office.

5. "Department" means the ~~state banking~~ department OF FINANCIAL INSTITUTIONS.

6. "Enterprise" means any person under the jurisdiction of the department other than a financial institution.

7. "Federal deposit insurance corporation" includes any successor to the corporation or other agency or instrumentality of the United States which undertakes to discharge the purposes of the corporation.

8. "Financial institution" means banks, trust companies, savings and loan associations, credit unions, consumer lenders, international banking facilities and financial institution holding companies under the jurisdiction of the department.

9. "Home state" means the state that has granted the bank its charter, permit or license to operate.

10. "Host state" means the state in which a financial institution is doing business and not the state that has granted the bank its charter, permit or license to operate.

11. "In-state financial institution" means a state or federal bank, savings bank, savings and loan association or holding company with its home office located in this state.

12. "International banking facility" means a facility represented by a set of asset and liability accounts segregated on the books and records of a commercial bank, the principal office of which is located in this state, and which is incorporated and doing business under the laws of the United States or of this state, a United States branch or agency of a foreign bank, an edge corporation organized under section 25(a) of the federal reserve act (12 United States Code sections 611 through 631) or an agreement corporation having an agreement or undertaking with the board of governors of the federal reserve system under section 25 of the federal reserve act (12 United States Code sections 601 through 604(a)) that includes only international banking facility time deposits and international banking facility extensions of credit as defined in 12 Code of Federal Regulations part 204.

13. "National credit union administration" includes any successor to the ~~corporation~~ ORGANIZATION or other agency or instrumentality of the United States which undertakes to discharge the purposes of the ~~corporation~~ ORGANIZATION.

14. "Out-of-state bank" means a bank, savings bank or savings and loan association that is approved by the superintendent pursuant to section 6-322 and that has a charter, a permit or any other license to operate that is issued by a state other than this state.

15. "Out-of-state financial institution" means a state or federal bank, savings bank, savings and loan association or holding company with its home office in a state other than this state.

16. "Superintendent" means the superintendent of ~~banks~~ FINANCIAL INSTITUTIONS.

17. "Title" includes this title, title 32, chapter 9 and title 44, chapter 2.1.

Sec. 3. Section 6-110, Arizona Revised Statutes, is amended to read:

6-110. Department of financial institutions

~~There shall be a state banking~~ THE department OF FINANCIAL INSTITUTIONS IS ESTABLISHED. ~~which shall have~~ THE DEPARTMENT HAS charge of the execution of the laws of this state relating to financial institutions and enterprises.

Sec. 4. Section 6-111, Arizona Revised Statutes, is amended to read:

6-111. Superintendent; appointment; term; qualifications; salary

A. The chief officer of the department shall be the superintendent who shall be appointed by the governor pursuant to section 38-211.

B. The superintendent in office on the effective date of this section shall hold office until the expiration of his term. The term of the superintendent first appointed after January 1, 1974 shall end January 17, 1977, and, thereafter the term of office of the superintendent shall be four years and shall expire on the third Monday in January of the appropriate year. The superintendent may be removed by the governor for cause.

C. Any person appointed as superintendent shall have had, within fifteen years preceding his first appointment, at least five years active experience in the ~~banking~~ FINANCIAL INSTITUTION business as an executive officer or shall have served a like period of time in a ~~bank~~ FINANCIAL INSTITUTION examining or supervisory capacity for this state or for any other state or for an agency or instrumentality of the United States.

D. The salary of the superintendent shall be determined pursuant to section 38-611.

Sec. 5. Section 6-122, Arizona Revised Statutes, is amended to read:

6-122. Superintendent; authority; duties; exemption

A. The superintendent has the authority and responsibility for the discharge of all duties imposed by law on the department.

B. The superintendent shall:

1. Examine or cause to be examined each financial institution annually, except financial institution holding companies, banks, savings and loan associations, credit unions and consumer lenders, and more frequently if the superintendent considers it necessary.

2. Examine or cause to be examined each bank, credit union and savings and loan association at the superintendent's discretion but at least once in every twenty-four month period.

3. Examine or cause to be examined the business and affairs of any enterprise and any consumer lender for the purpose of administering and enforcing this title at the superintendent's discretion but at least once in a five year period.

4. Examine or cause to be examined financial institution holding companies as frequently as the superintendent considers necessary to administer and enforce this title.

5. Notwithstanding paragraph 3, examine or cause to be examined the accounts held in trust by each escrow agent at least once in every two year period in accordance with section 20-1593 and examine or cause to be examined each escrow agent at least once in every four year period or more frequently if the superintendent considers it necessary.

6. Notwithstanding paragraph 3, examine or cause to be examined each premium finance company at least once in every three year period and more frequently if the superintendent considers it necessary.

7. Publish a consumer information brochure that includes:

(a) The finance charges permitted by this state.

(b) The types of insurance that may be offered but THAT are not required by law to be purchased with the granting of a loan.

(c) Interest rate limitations on all lenders including amounts that may not be charged to borrowers.

(d) Consumer rights and means of recourse from unfair practitioners.

8. Conduct a survey in January and July of each calendar year of each escrow agent that is regulated by the department. The superintendent shall compile the results of each survey and make those results available to the public. The survey shall be in substantially the following format:

"Please rate the performance of the ~~state banking~~ department OF FINANCIAL INSTITUTIONS as one of the following: excellent, very good, good, fair, poor.

Please describe any problems that you believe should be addressed by the department."

C. Notwithstanding subsection B, paragraph 5 of this section an escrow agent shall be examined within twelve months when an escrow agent's license is transferred or assigned pursuant to section 6-813 or when control of the license is otherwise acquired.

D. ~~The provisions of~~ Subsection B, paragraph 3 of this section ~~do~~ DOES not apply to motor vehicle dealers, sales finance companies or persons licensed under chapter 12 of this title.

Sec. 6. Section 6-123.01, Arizona Revised Statutes, is amended to read:

6-123.01. Fingerprint requirements; fees

A. Before receiving and holding a license, permit, certificate or permission to organize a bank, savings and loan or credit union, the superintendent may require an applicant, licensee, active manager or responsible individual or an organizer, director or officer of any corporate applicant or licensee to submit a full set of fingerprints and fees to the department. The ~~state banking~~ department OF FINANCIAL INSTITUTIONS shall submit the fingerprints and fees to the department of public safety for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.

B. The fees that the department collects under subsection A of this section shall be credited pursuant to section 35-148.

C. The applicant is responsible for providing the department with readable fingerprints. The applicant shall pay any costs that are attributable to refingerprinting due to the unreadability of any fingerprints and any fees that are required for the resubmission of fingerprints.

D. The department may issue a license or certificate or grant permission to organize to an original applicant before the department receives the results of a criminal records check if there is not evidence or reasonable suspicion that the applicant has a criminal history background that would be cause for denial of a license, certificate or permission to organize. The department may suspend the license or certificate or permission to organize if a fingerprint card is returned as unreadable and the applicant fails to submit new fingerprints within ten days after being notified by the department that the original card was unreadable.

E. The superintendent may require a current licensee, organizer, director, active manager, responsible individual or officer of any corporate licensee to submit a full set of fingerprints to the department. The ~~state banking~~ department OF FINANCIAL INSTITUTIONS shall submit the fingerprints and fees to the department of public safety for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.

F. This section does not affect the department's authority to otherwise issue, deny, cancel, terminate, suspend or revoke a license.

Sec. 7. Section 6-131.01, Arizona Revised Statutes, is amended to read:

6-131.01. Appointment of superintendent as receiver; award of property, fees and costs

A. The superintendent may be appointed as a receiver of a financial institution or enterprise under his supervision. No bond is required of the superintendent for acting as a receiver.

B. All reasonable expenses of the department relating or apportioned to a receivership, including receiver fees and attorney fees, costs of preliminary or other examinations of the person placed into receivership and expenses relating to the management of any office or other asset of the person placed in receivership, shall be awarded by the court for payment to the department out of the assets of the receivership. The department shall assess those expenses against the receivership quarterly and shall deposit those amounts in the ~~banking~~ department receivership revolving fund, as provided in section 6-135.01. Those assessments have priority over the other creditors of the receivership. Notwithstanding the other provisions of this subsection, on request by the superintendent, the court may award personal property of the receivership to the department as partial compensation for the services rendered during the administration of the receivership.

C. The superintendent shall maintain a complete accounting of each receivership in which he is appointed as receiver.

Sec. 8. Section 6-135, Arizona Revised Statutes, is amended to read:

6-135. Department revolving fund; use of fund

A. There is established a ~~banking~~ department revolving fund to be administered by the superintendent under the conditions and for the purposes

provided by this section. Monies in the fund ~~shall be~~ ARE exempt from the provisions of section 35-190, relating to the lapsing of appropriations.

B. Any investigative costs, ~~attorney's~~ ATTORNEY fees or civil penalties recovered for the state by the attorney general or the superintendent as a result of actions brought pursuant to this title, whether by final judgment, settlement~~,~~ or otherwise, shall be deposited in the ~~banking~~ department revolving fund. If the unencumbered portion of the fund exceeds fifty thousand dollars at the end of the fiscal year, all unencumbered monies in excess of fifty thousand dollars shall be deposited in the ~~banking~~ department receivership revolving fund, pursuant to section 6-135.01.

C. The monies in the fund shall be used by the superintendent and the attorney general for investigative proceedings or for purposes of instituting and prosecuting civil actions pursuant to this title.

D. On or before the fifteenth day of February, May, August and November, the superintendent shall file with the governor, with copies to the director of the department of administration, the president of the senate and the speaker of the house of representatives, a full and complete account of the receipts and disbursements from the fund in the previous calendar quarter.

Sec. 9. Section 6-135.01, Arizona Revised Statutes, is amended to read:

6-135.01. Department receivership revolving fund; use of fund

A. A ~~banking~~ department receivership revolving fund is established to be administered by the superintendent. The fund shall consist of monies from the following sources:

1. Monies awarded and received as fees and costs in receiverships in which the superintendent was the receiver, as provided in section 6-131.01.

2. Monies received from the ~~banking~~ department revolving fund, as provided in section 6-135, subsection B.

B. Monies in the fund may be used to pay any costs incurred by the department arising out of the administration of a receivership in which the superintendent is the receiver.

C. The superintendent shall submit to the legislature with the department's annual budget request a full and complete account of the ~~banking~~ department receivership revolving fund through the end of its most recent fiscal year.

Sec. 10. Section 6-407, Arizona Revised Statutes, is amended to read:

6-407. Applicants and initial capital

A. Any five or more adult individuals, residents of this state, may apply for a permit to organize an association under this article. The minimum initial capital which an association must have shall be determined by the superintendent ~~of banks~~, but in no event shall it be less than the amount determined by the following table, based upon the population of the community in which the association's business office is to be located:

Population		Minimum
More than	Not more than	capital
00	10,000	$ 50,000.00
10,000	50,000	100,000.00
50,000	------	200,000.00

B. If the association's business office is to be located in an unincorporated area more than five miles from the limits of any community, then the required minimum capital shall be that for a community of ten thousand population or less; otherwise, the required capital shall be that of the community to which it is adjacent, or if near several communities, that of the community with the highest population classification in the above schedule. Minimum capital to be paid in may consist of withdrawable capital and guaranty capital as provided in this chapter. If the capital of the association to be organized includes guaranty capital, the amount of minimum initial guaranty capital shall not be less than fifty thousand dollars, and not less than one hundred thousand dollars if the association is to be located in a county with more than seventy-five thousand population.

Sec. 11. Section 6-474, Arizona Revised Statutes, is amended to read:

6-474. Accounting practices and records

A. Every association shall maintain in ~~the~~ THIS state ~~of Arizona~~ a detailed record of all transactions of the association at its home office, or at a branch office or at a central accounting or computer center servicing one or more associations~~,~~, provided that general accounting records and their maintenance shall not be transferred by an association from its home office to a branch office, or from a branch office to its home office or to another branch office or to a central accounting or computer center, unless and until:

1. The board of directors of ~~such~~ THE association has by resolution authorized such transfer and maintenance.

2. ~~Such~~ THE association has sent a certified copy of the resolution required by paragraph 1 ~~of this subsection~~ to the superintendent ~~of banks~~.

B. Each branch office shall keep detailed records of all transactions at such branch office and shall furnish full control records to the home office, or such branch office or central accounting or computer center as has been designated by appropriate resolution of the board of directors adopted and filed as provided in subsection A ~~of this section~~.

C. Every association shall observe such generally accepted accounting principles and practices as are approved by the superintendent.

D. No association by any system of accounting or any device of bookkeeping shall, either directly or indirectly, enter any of its assets upon its books in the name of any other person, partnership, association or corporation, or under any title or designation that is not truly descriptive of such assets.

E. The superintendent may order that assets in the aggregate, to the extent that such assets have depreciated in value, be charged off or that a

special reserve or reserves equal to such depreciation in value be set up by transfers from undivided profits.

F. Except notes secured by first lien mortgages insured or guaranteed, wholly or in part, by an agency of the United States government, all bonds or other ~~interest-bearing~~ INTEREST BEARING obligations purchased by the association shall be carried at par with provision for amortization of premiums and discounts.

Sec. 12. Section 6-851, Arizona Revised Statutes, is amended to read:

6-851. Definitions

A. In this chapter, unless the context otherwise requires:

~~1. "Superintendent" means the state superintendent of banks.~~

~~2.~~ 1. "Trust business" means the holding out by a person to the public at large by advertising, solicitation or other means that such person is available to act as a fiduciary in this state and accepting and undertaking to perform the duties as such fiduciary in the regular course of his business.

~~3.~~ 2. "Trust company" means a corporation holding a certificate issued under this article.

B. In this article, unless the context otherwise requires:

1. "Agent" means a person who receives compensation to regularly perform services specifically related to the conduct of the trust business.

2. "Asset" means any property or property right held by a licensee for the benefit of another.

3. "Capital" means the total of outstanding common stock, preferred stock and surplus and undivided profits.

4. "Certificate" means a certificate of authority issued under the provisions of this chapter to engage in trust business.

5. "Contingency plan" means a document stating a trust company's means of conducting business and preserving records in the event of any power outage, flood or other physical emergency.

6. "Discretionary assets" means those assets in which the trust company has the unilateral authority to determine investment strategies and execute investment transactions without seeking the concurrence, approval or authority from the customer or any other external party.

7. "Fiduciary" means a personal representative, administrator, guardian, conservator, trustee, agent or other person who acts in a fiduciary capacity and who is not exempt by section 6-852.

8. "Impaired" or "insolvent" means the trust company does not possess assets that are at least equal to liabilities, required reserves and total issued and outstanding capital.

9. "Liquid capital" means capital in the form of certificates of deposit issued by banks, savings banks or savings and loan associations doing business in this state and insured by the federal deposit insurance corporation or any successor institution or direct obligations of the United States government with maturity of not more than five years.

10. "Nondiscretionary assets" means those assets ~~in~~ FOR which the trust company must obtain from the customer, broker or investment advisor specific direction and instructions regarding both investment strategies and investment executions.

11. "Surplus" means the total amount paid by shareholders in excess of the par or stated value of the shares of capital stock of a trust business in consideration for the shares.

Sec. 13. Section 10-2258, Arizona Revised Statutes, is amended to read:

10-2258. Board of directors

A. The affairs of a corporation shall be conducted by a board of directors, consisting of fifteen persons, who shall all be at least eighteen years of age and be citizens of the United States. In addition, the executive director of the Arizona development board or its successor, shall act as a nonvoting ex officio member of the board of directors.

B. At the first meeting of the shareholders and members of a corporation and at each annual meeting thereafter, six directors shall be elected by the shareholders and nine directors shall be elected by the members. Each member shall have one vote for each one thousand dollars of the member's outstanding loans to the corporation and the uncalled balance of the member's loan agreement with the corporation. A member shall be entitled to cast his votes for directors on a cumulative basis.

C. The first meeting of the shareholders and members of the corporation shall be held at a time and place to be fixed by the temporary board of directors, which shall be as soon as reasonably possible after the certificate required by section 10-2261 has been filed with the superintendent of ~~banks~~ FINANCIAL INSTITUTIONS.

Sec. 14. Section 10-2259, Arizona Revised Statutes, is amended to read:

10-2259. Method of incorporation

A. A corporation may be formed by five or more residents of the state of Arizona who each subscribe to at least one share of stock of the corporation.

B. The articles of incorporation shall set forth:

1. The name of the proposed corporation which shall include the words "business development corporation".

2. The purpose for which it is to be formed which shall be within the purposes and powers set forth in this chapter.

3. The location of the principal place of business of the corporation, but the corporation may have offices in such other places in the state as may be fixed by the board of directors.

4. The term of its existence.

5. The authorized capital stock of the corporation.

6. The names and addresses of the incorporators and the amount of their capital stock subscriptions.

7. The names and addresses of eight temporary directors.

8. The name and address of the treasurer.

9. The names and addresses of five qualified banks which have obligated themselves to become members of the corporation at the time of its incorporation.

10. Any other provisions not inconsistent with law which the proposed corporation may adopt governing the regulation and conduct of its affairs.

C. A corporation formed under this chapter may amend its articles of incorporation provided that prior to the filing of articles of amendment with the corporation commission the same shall have been approved by the superintendent of ~~banks~~ FINANCIAL INSTITUTIONS in the manner and as provided for in section 10-2260.

Sec. 15. Section 10-2260, Arizona Revised Statutes, is amended to read:

10-2260. Approval of articles of incorporation; incorporation

A. The articles of incorporation required by this chapter shall be filed with the superintendent of ~~banks~~ FINANCIAL INSTITUTIONS. Within sixty days after the receipt of the articles of incorporation, the superintendent ~~of banks~~ shall approve or disapprove the articles of incorporation.

B. If the superintendent ~~of banks shall disapprove~~ DISAPPROVES the articles, ~~he~~ THE SUPERINTENDENT shall ~~forthwith~~ PROMPTLY give notice ~~thereof~~ OF THE DISAPPROVAL to the incorporators, stating in detail the reason for his action. Upon remedying the defect or defects, the incorporators may, in the same manner, refile the articles.

C. If the superintendent ~~of banks~~ finds that the articles of incorporation are in the form prescribed by this chapter or have been made to conform ~~therewith~~ WITH THIS CHAPTER, ~~he~~ THE SUPERINTENDENT shall conduct ~~such~~ ANY investigation ~~as he may deem~~ DEEMED necessary to ascertain from the best sources of information ~~at his command~~ AVAILABLE:

1. Whether the name of the proposed corporation is likely to mislead the public as to its character or purposes.

2. Whether the convenience and advantage of the public will be served by the proposed corporation.

3. Whether the economic condition of the area in which the corporation may be expected to do most of its business affords reasonable promise of adequate support for the activities of such corporation.

4. Whether the responsibility, character and general fitness for the business of the incorporators, directors and officers named in the articles are such as to command confidence and to warrant the belief that the business of the proposed corporation will be honestly and efficiently conducted, in accordance with the intent and purpose of this chapter.

D. If the superintendent ~~of banks shall~~ FINDS, ~~upon~~ ON the basis of the facts disclosed by ~~his~~ THE SUPERINTENDENT'S investigation, ~~find~~ that the proposed incorporation meets all the requirements of this chapter, ~~he~~ THE SUPERINTENDENT shall endorse ~~his~~ approval on the articles of incorporation

and the ~~same~~ ARTICLES may then be filed with the corporation commission. The corporation commission shall not issue a certificate of incorporation to a business development corporation without the approval by the superintendent ~~of banks~~ endorsed on the articles of incorporation.

E. If the superintendent ~~of banks shall~~ FINDS, ~~upon~~ ON the basis of the facts disclosed by ~~his~~ THE SUPERINTENDENT'S investigation, ~~find~~ that the proposed incorporation does not meet all the requirements of this chapter, ~~he~~ THE SUPERINTENDENT shall disapprove the articles and return them to the incorporators stating in detail ~~his~~ THE reasons for doing so.

Sec. 16. Section 10-2261, Arizona Revised Statutes, is amended to read:

10-2261. Authorization to commence business

A corporation formed under ~~the provisions of~~ this chapter shall not begin the transaction of any business, except such as ~~shall be~~ IS incident to its organization or to the obtaining of members of subscriptions to or payment for its shares, until it ~~shall certify~~ CERTIFIES to the superintendent of ~~banks~~ FINANCIAL INSTITUTIONS that there has been paid into the corporate treasury a minimum of one hundred thousand dollars from the sale at par value of the capital stock of the corporation.

Sec. 17. Section 10-2265, Arizona Revised Statutes, is amended to read:

10-2265. Supervision and reports

The superintendent of ~~banks shall have the power to~~ FINANCIAL INSTITUTIONS MAY supervise, examine and control a corporation in the same manner as financial institutions are so supervised, examined and controlled by ~~him~~ THE SUPERINTENDENT pursuant to law, except that it shall not be the duty of the superintendent to supervise the investment or lending policies of a corporation. In addition to such other reports as are required by law, a corporation shall make an annual report of its condition to the superintendent ~~of banks~~ on or before March 1 of each year. An audit report prepared by a certified public accountant shall accompany the annual report of condition. ~~Such~~ THE audit may be accepted by the superintendent ~~of banks~~ in lieu of ~~his~~ AN examination.

Sec. 18. Section 13-2301, Arizona Revised Statutes, is amended to read:

13-2301. Definitions

A. For the purposes of sections 13-2302, 13-2303 and 13-2304:

1. "Collect an extension of credit" means to induce in any way any person to make repayment of that extension.

2. "Creditor" means any person making an extension of credit or any person claiming by, under or through any person making an extension of credit.

3. "Debtor" means any person to whom an extension of credit is made or any person who guarantees the repayment of an extension of credit, or in any manner undertakes to indemnify the creditor against loss resulting from

the failure of any person to whom an extension is made to repay the extension.

4. "Extend credit" means to make or renew any loan or to enter into any agreement, tacit or express, whereby the repayment or satisfaction of any debt or claim, whether acknowledged or disputed, valid or invalid, and however arising, may or shall be deferred.

5. "Extortionate extension of credit" means any extension of credit with respect to which it is the understanding of the creditor and the debtor at the time the extension is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person or the reputation or property of any person.

6. "Extortionate means" means the use, or an express or implicit threat of use, of violence or other criminal means to cause harm to the person or the reputation or property of any person.

7. "Repayment of any extension of credit" means the repayment, satisfaction or discharge in whole or in part of any debt or claim, acknowledged or disputed, valid or invalid, resulting from or in connection with that extension of credit.

B. For the purposes of section 13-2305, 13-2306 or 13-2307:

1. "Dealer in property" means a person who buys and sells property as a business.

2. "Stolen property" means property of another as defined in section 13-1801 that has been the subject of any unlawful taking.

3. "Traffic" means to sell, transfer, distribute, dispense or otherwise dispose of stolen property to another person, or to buy, receive, possess or obtain control of stolen property, with the intent to sell, transfer, distribute, dispense or otherwise dispose of the property to another person.

C. For the purposes of this chapter:

1. "Biological agent" means any microorganism, virus, infectious substance or biological product that may be engineered through biotechnology or any naturally occurring or bioengineered component of any microorganism, virus, infectious substance or biological product and that is capable of causing any of the following:

(a) Death, disease or physical injury in a human, animal, plant or other living organism.

(b) The deterioration or contamination of air, food, water, equipment, supplies or material of any kind.

2. "Combination" means persons who collaborate in carrying on or furthering the activities or purposes of a criminal syndicate even though such persons may not know each other's identity, membership in the combination changes from time to time or one or more members may stand in a wholesaler-retailer or other arm's length relationship with others as to activities or dealings between or among themselves in an illicit operation.

3. "Communication service provider" has the same meaning prescribed in section 13-3001.

4. "Criminal syndicate" means any combination of persons or enterprises engaging, or having the purpose of engaging, on a continuing basis in conduct that violates any one or more provisions of any felony statute of this state.

5. "Explosive agent" means an explosive as defined in section 13-3101 and flammable fuels or fire accelerants in amounts over fifty gallons but excludes:

(a) Fireworks as defined in section 36-1601.

(b) Firearms.

(c) A propellant actuated device or propellant actuated industrial tool.

(d) A device that is commercially manufactured primarily for the purpose of illumination.

(e) A rocket having a propellant charge of less than four ounces.

6. "Material support or resources" includes money or other financial securities, financial services, lodging, sustenance, training, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, disguises and other physical assets but does not include medical assistance, legal assistance or religious materials.

7. "Public establishment" means a structure that is owned, leased or operated by this state or a political subdivision of this state or a health care institution as defined in section 36-401.

8. "Terrorism" means any felony, including any completed or preparatory offense, that involves the use of a deadly weapon or a weapon of mass destruction or the intentional or knowing infliction of serious physical injury with the intent to either:

(a) Influence the policy or affect the conduct of this state or any of the political subdivisions, agencies or instrumentalities of this state.

(b) Cause substantial damage to or substantial interruption of public communications, communication service providers, public transportation, common carriers, public utilities, public establishments or other public services.

9. "Toxin" means the toxic material of plants, animals, microorganisms, viruses, fungi or infectious substances or a recombinant molecule, whatever its origin or method of reproduction, including:

(a) Any poisonous substance or biological product that may be engineered through biotechnology and that is produced by a living organism.

(b) Any poisonous isomer or biological product, homolog or derivative of such substance.

10. "Vector" means a living organism or molecule, including a recombinant molecule or biological product that may be engineered through

biotechnology, that is capable of carrying a biological agent or toxin to a host.

11. "Weapon of mass destruction" means:

(a) Any device or object that is designed or that the person intends to use to cause multiple deaths or serious physical injuries through the use of an explosive agent or the release, dissemination or impact of a toxin, biological agent, poisonous chemical, or its precursor, or any vector.

(b) Except as authorized and used in accordance with a license, registration or exemption by the radiation regulatory agency pursuant to section 30-672, any device or object that is designed or that the person intends to use to release radiation or radioactivity at a level that is dangerous to human life.

D. For the purposes of sections 13-2312, 13-2313, 13-2314 and 13-2315, unless the context otherwise requires:

1. "Control", in relation to an enterprise, means the possession of sufficient means to permit substantial direction over the affairs of an enterprise and, in relation to property, means to acquire or possess.

2. "Enterprise" means any corporation, partnership, association, labor union or other legal entity or any group of persons associated in fact although not a legal entity.

3. "Financial institution" means any business under the jurisdiction of the ~~state banking~~ department OF FINANCIAL INSTITUTIONS or a banking or securities regulatory agency of the United States, a business coming within the definition of a bank, financial agency or financial institution as prescribed by 31 United States Code section 5312 or 31 Code of Federal Regulations section 103.11 or a business under the jurisdiction of the securities division of the corporation commission, the state real estate department or the department of insurance.

4. "Racketeering" means any act, including any preparatory or completed offense, that is chargeable or indictable under the laws of the state or country in which the act occurred and, if the act occurred in a state or country other than this state, that would be chargeable or indictable under the laws of this state if the act had occurred in this state, and that would be punishable by imprisonment for more than one year under the laws of this state and, if the act occurred in a state or country other than this state, under the laws of the state or country in which the act occurred, regardless of whether the act is charged or indicted, and the act involves either:

(a) Terrorism that results or is intended to result in a risk of serious physical injury or death.

(b) Any of the following acts if committed for financial gain:

(i) Homicide.

(ii) Robbery.

(iii) Kidnapping.

(iv) Forgery.

(v) Theft.
(vi) Bribery.
(vii) Gambling.
(viii) Usury.
(ix) Extortion.
(x) Extortionate extensions of credit.
(xi) Prohibited drugs, marijuana or other prohibited chemicals or substances.
(xii) Trafficking in explosives, weapons or stolen property.
(xiii) Participating in a criminal syndicate.
(xiv) Obstructing or hindering criminal investigations or prosecutions.
(xv) Asserting false claims including, but not limited to, false claims asserted through fraud or arson.
(xvi) Intentional or reckless false statements or publications concerning land for sale or lease or sale of subdivided lands or sale and mortgaging of unsubdivided lands.
(xvii) Resale of realty with intent to defraud.
(xviii) Intentional or reckless fraud in the purchase or sale of securities.
(xix) Intentional or reckless sale of unregistered securities or real property securities.
(xx) A scheme or artifice to defraud.
(xxi) Obscenity.
(xxii) Sexual exploitation of a minor.
(xxiii) Prostitution.
(xxiv) Restraint of trade or commerce in violation of section 34-252.
(xxv) Terrorism.
(xxvi) Money laundering.
(xxvii) Obscene or indecent telephone communications to minors for commercial purposes.
(xxviii) Counterfeiting marks as proscribed in section 44-1453.

5. "Records" means any book, paper, writing, computer program, data, image or information that is collected, recorded, preserved or maintained in any form of storage medium.

6. "Remedy racketeering" means to enter a civil judgment pursuant to this chapter or chapter 39 of this title against property or a person who is subject to liability, including liability for injury to the state that is caused by racketeering or by actions in concert with racketeering.

E. For the purposes of sections 13-2316, 13-2316.01 and 13-2316.02:

1. "Access" means to instruct, communicate with, store data in, retrieve data from or otherwise make use of any resources of a computer, computer system or network.

2. "Access device" means any card, token, code, account number, electronic serial number, mobile or personal identification number, password,

encryption key, biometric identifier or other means of account access, including a canceled or revoked access device, that can be used alone or in conjunction with another access device to obtain money, goods, services, computer or network access or any other thing of value or that can be used to initiate a transfer of any thing of value.

3. "Computer" means an electronic device that performs logic, arithmetic or memory functions by the manipulations of electronic or magnetic impulses and includes all input, output, processing, storage, software or communication facilities that are connected or related to such a device in a system or network.

4. "Computer contaminant" means any set of computer instructions that is designed to modify, damage, destroy, record or transmit information within a computer, computer system or network without the intent or permission of the owner of the information, computer system or network. Computer contaminant includes a group of computer instructions, such as viruses or worms, that is self-replicating or self-propagating and that is designed to contaminate other computer programs or computer data, to consume computer resources, to modify, destroy, record or transmit data or in some other fashion to usurp the normal operation of the computer, computer system or network.

5. "Computer program" means a series of instructions or statements, in a form acceptable to a computer, that permits the functioning of a computer system in a manner designed to provide appropriate products from the computer system.

6. "Computer software" means a set of computer programs, procedures and associated documentation concerned with the operation of a computer system.

7. "Computer system" means a set of related, connected or unconnected computer equipment, devices and software, including storage, media and peripheral devices.

8. "Critical infrastructure resource" means any computer or communications system or network that is involved in providing services necessary to ensure or protect the public health, safety or welfare, including services that are provided by any of the following:

(a) Medical personnel and institutions.

(b) Emergency services agencies.

(c) Public and private utilities, including water, power, communications and transportation services.

(d) Fire departments, districts or volunteer organizations.

(e) Law enforcement agencies.

(f) Financial institutions.

(g) Public educational institutions.

(h) Government agencies.

9. "False or fraudulent pretense" means the unauthorized use of an access device or the use of an access device to exceed authorized access.

10. "Financial instrument" means any check, draft, money order, certificate of deposit, letter of credit, bill of exchange, credit card or marketable security or any other written instrument as defined in section 13-2001 that is transferable for value.

11. "Network" includes a complex of interconnected computer or communication systems of any type.

12. "Property" means financial instruments, information, including electronically produced data, computer software and programs in either machine or human readable form, and anything of value, tangible or intangible.

13. "Proprietary or confidential computer security information" means information about a particular computer, computer system or network that relates to its access devices, security practices, methods and systems, architecture, communications facilities, encryption methods and system vulnerabilities and that is not made available to the public by its owner or operator.

14. "Services" includes computer time, data processing, storage functions and all types of communication functions.

Sec. 19. Section 14-3603, Arizona Revised Statutes, is amended to read:

14-3603. Bond required; exceptions

A. A bond is required of a personal representative unless either:

1. The will expressly waives the bond.

2. All of the heirs if no will has been probated, or all of the devisees under a will which does not provide for waiver of the bond, file with the court a written waiver of the bond requirement. A duly appointed guardian or conservator may waive on behalf of his ward or protected person unless the guardian or conservator is the personal representative.

3. The personal representative is a national banking association, a holder of a banking permit under the laws of this state, a savings and loan association authorized to conduct trust business in this state, a title insurance company which is qualified to do business under the laws of this state, a trust company holding a certificate to engage in trust business from the ~~state~~ superintendent of ~~banks~~ FINANCIAL INSTITUTIONS or the public fiduciary.

4. The petition for formal or informal appointment alleges that the probable value of the entire estate will permit summary procedures under section 14-3973 and the surviving spouse, or the nominee of the surviving spouse, is applying for appointment as personal representative.

B. In any case where a bond is not required under subsection A of this section, the court may, upon petition of any interested person and upon reasonable proof that the interest of the petitioning person is in danger of being lost because of the administration of the estate, require a bond in such amount as the court may direct to protect the interest of the petitioner

or of the petitioner and others. An heir or devisee who initially waived bond may be a petitioner under this subsection.

C. If a bond is not initially required because the petition for appointment alleges that the probable value of the entire estate will permit summary procedures under section 14-3973, and it later appears from the inventory and appraisal that the value of the estate will not permit use of such procedures, then the personal representative must promptly file a bond unless one is not required for some other reason under subsection A of this section.

Sec. 20. Section 14-5411, Arizona Revised Statutes, is amended to read:

14-5411. Bond; exception

A. Except as otherwise provided in subsection B, the court shall require a conservator to furnish a bond conditioned upon faithful discharge of all duties according to law, with sureties as it shall specify. Unless otherwise directed, the bond shall be in the amount of the aggregate capital value of the property of the estate in the conservator's control plus one year's estimated income minus the value of securities deposited under arrangements requiring an order of the court for their removal and the value of any land which the fiduciary, by express limitation of power, lacks power to sell or convey without court authorization. For good cause shown the court may reduce or eliminate the bond to the extent of regular fixed expenses paid for the benefit of the protected person. The court in lieu of sureties on a bond may accept other security for the performance of the bond, including a pledge of securities or a mortgage of land.

B. A bond is not required of a conservator which is a national banking association, a holder of a banking permit under the laws of this state, a savings and loan association authorized to conduct trust business in this state, a title insurance company qualified to do business under the laws of this state, a trust company holding a certificate to engage in trust business from the ~~state~~ superintendent of ~~banks~~ FINANCIAL INSTITUTIONS or the public fiduciary.

Sec. 21. Section 14-10702, Arizona Revised Statutes, is amended to read:

14-10702. Trustee's bond

A. A trustee shall give bond to secure performance of the trustee's duties only if the court finds that a bond is needed to protect the interests of the beneficiaries or is required by the terms of the trust and the court has not dispensed with the requirement.

B. The court may specify the amount of a bond, its liabilities and whether sureties are necessary. The court may modify or terminate a bond at any time.

C. Notwithstanding the terms of the trust, the following are not required to give a bond:

1. A national banking association.

2. A holder of a banking permit under the laws of this state.

3. A savings and loan association authorized to conduct trust business in this state.

4. A title insurance company qualified to do business under the laws of this state.

5. A trust company holding a certificate to engage in trust business from the ~~state~~ superintendent of ~~banks~~ FINANCIAL INSTITUTIONS.

6. The public fiduciary.

Sec. 22. Section 20-1593, Arizona Revised Statutes, is amended to read:

20-1593. Joint examination; department of financial institutions; powers and duties

A. The director and the superintendent of ~~banks~~ FINANCIAL INSTITUTIONS shall conduct their examinations of title insurers and title insurance agents according to the following:

1. The director shall notify the superintendent of ~~banks~~ FINANCIAL INSTITUTIONS at least thirty days before an examination by the director of a title insurer or title insurance agent.

2. If the examination of the title insurer or title insurance agent as an escrow agent is required under section 6-122, the superintendent shall conduct that examination under section 6-122 at the same time as the director conducts his examination.

B. Beginning January 1, 1994, the ~~state banking~~ department OF FINANCIAL INSTITUTIONS shall regulate all escrow activities that are regulated under this title, including the filing of escrow rates or fees for escrow services performed by a title insurer or title insurance agent that is a licensed escrow agent under title 6.

Sec. 23. Section 23-1361, Arizona Revised Statutes, is amended to read:

23-1361. Blacklist; definition; exceptions; privileged communications; immunity

A. "Blacklist" means any understanding or agreement whereby the names of any person or persons, list of names, descriptions or other means of identification shall be spoken, written, printed or implied for the purpose of being communicated or transmitted between two or more employers of labor, or their bosses, foremen, superintendents, managers, officers or other agents, whereby the laborer is prevented or prohibited from engaging in a useful occupation. Any understanding or agreement between employers, or their bosses, foremen, superintendents, managers, officers or other agents, whether written or verbal, comes within the meaning of this section and it makes no difference whether the employers, or their bosses, foremen, superintendents, managers, officers or other agents, act individually or for some company, corporation, syndicate, partnership or society and it makes no difference whether they are employed or acting as agents for the same or different companies, corporations, syndicates, partnerships or societies.

B. It is not unlawful for a former employer to provide to a requesting employer, or agents acting in the employer's behalf, information concerning a person's education, training, experience, qualifications and job performance to be used for the purpose of evaluating the person for employment. It is not unlawful for a school district to provide information received as a result of a fingerprint check required by section 15-512 to any other school district if requested to do so by the person who was the subject of the fingerprint check. A copy of any written communication regarding employment must be sent by the employer providing the information to the former employee's last known address.

C. An employer who in good faith provides information requested by a prospective employer about the reason for termination of a former employee or about the job performance, professional conduct or evaluation of a current or former employee is immune from civil liability for the disclosure or the consequences of providing the information. There is a presumption of good faith if either:

1. The employer employs less than one hundred employees and provides only the information authorized by this subsection.

2. The employer employs at least one hundred employees and has a regular practice in this state of providing information requested by a prospective employer about the reason for termination of a former employee or about the job performance, professional conduct or evaluation of a current or former employee.

D. The presumption of good faith under subsection C of this section is rebuttable by showing that the employer disclosed the information with actual malice or with intent to mislead. This subsection and subsection C of this section do not alter any privileges that exist under common law. For THE purposes of this subsection, "actual malice" means knowledge that the information was false or was provided with reckless disregard of its truth or falsity.

E. Communications concerning employees or prospective employees that are made by an employer or prospective employer, or by a labor organization, to a government body or agency and that are required by law or that are furnished pursuant to written rules or policies of the government body or agency are privileged.

F. An employer, including this state and its agencies, a labor organization or an individual is not civilly liable for privileged communications made pursuant to subsection E of this section.

G. In response to a request by another bank, savings and loan association, credit union, escrow agent, commercial mortgage banker, mortgage banker or mortgage broker it is not unlawful for a bank, a savings and loan association, a credit union, an escrow agent, a commercial mortgage banker, a mortgage banker or a mortgage broker to provide a written employment reference ~~which~~ THAT advises of the ~~applicants'~~ APPLICANT'S involvement in any theft, embezzlement, misappropriation or other defalcation that has been

reported to federal authorities pursuant to federal banking guidelines or reported to the ~~Arizona state banking~~ department OF FINANCIAL INSTITUTIONS. In order for the immunity provided in subsection H of this section to apply, a copy of the written employment reference must be sent by the institution providing the reference to the last known address of the applicant in question.

H. No bank, savings and loan association, credit union, escrow agent, commercial mortgage banker, mortgage banker or mortgage broker shall be civilly liable for providing an employment reference unless the information provided is false and the bank, savings and loan association, credit union, escrow agent, commercial mortgage banker, mortgage banker or mortgage broker providing the false information does so with knowledge and malice.

I. A court shall award court costs, attorney fees and other related expenses to any party that prevails in any civil proceeding in which a violation of this section is alleged.

Sec. 24. Section 25-519, Arizona Revised Statutes, is amended to read:

25-519. Regulatory entities; suspension of license

The following are subject to the requirements of section 25-518:

1. All boards established under title 32.

2. The superintendent of ~~banks~~ FINANCIAL INSTITUTIONS.

3. The registrar of contractors.

4. The department of public safety.

5. Boards and agencies that provide occupational, recreational and professional licenses or certificates pursuant to titles 3, 4, 5, 6, 8, 15, 17, 20, 36 and 41 and title 28, chapter 8.

Sec. 25. Section 28-450, Arizona Revised Statutes, is amended to read:

28-450. Release of information prohibited; classification; definition

A. Notwithstanding section 28-447, the department shall not:

1. Divulge information from a vehicle title or registration record unless the person who requests the information provides to the department all of the following:

(a) The name of the owner.

(b) The vehicle identification number of the vehicle.

(c) The vehicle license plate number assigned to the vehicle.

2. Release a copy of a record or divulge information concerning a person's driving record unless the person requesting the driving record provides to the department all of the following:

(a) The name of the licensee or the name of the person whose record is requested.

(b) The driver license number of the licensee, a statement that the person whose record is requested has not applied for a license or a statement that the license has been suspended or revoked.

(c) The date of birth of the licensee or the expiration date of the driver license of the licensee.

B. Subsection A of this section does not apply to:

1. A licensed private investigator.

2. A financial institution or enterprise under the jurisdiction of the ~~state banking~~ department OF FINANCIAL INSTITUTIONS or a federal monetary authority.

3. A federal, state or local governmental agency, including any court, law enforcement agency or political subdivision, that is carrying out its functions or any private person or entity that is acting on behalf of the governmental agency and that is carrying out the person's or entity's functions.

4. An attorney who is admitted to practice in this state and who alleges that the information is relevant to a pending or potential court proceeding.

5. A motor vehicle dealer who is licensed and bonded by the department or a state organization of licensed and bonded motor vehicle dealers.

6. The release of any of the following information to a person who is involved in an accident or to the owner of a vehicle involved in an accident if the person who requests the information submits proof to the department of involvement in the accident:

(a) The driving record of a person who operates a motor vehicle involved in the accident.

(b) The vehicle title or registration record of a vehicle involved in the accident.

7. The release of the driving record or title and registration record if that record is for the requester's vehicle or is the requester's own driving record, except that the director may require any information from the requester that is deemed necessary to ensure that the requester is entitled to receive the record.

8. An insurer that writes automobile liability or motor vehicle liability policies and that is under the jurisdiction of the department of insurance, except that an insurer or its authorized agent requesting information pursuant to subsection A of this section shall provide two of the three requirements under subsection A, paragraph 1 or 2 of this section before the department divulges or releases the information.

9. The release of a title and registration record if all of the following conditions exist:

(a) The requester verifies to the satisfaction of the director that the vehicle on which the requester is requesting the record is in the requester's possession.

(b) The record is requested in order for the requester to notify the registered owner of the requester's intent to apply to the department for a bonded title.

(c) The requester provides a verification of a vehicle inspection that was performed by an authorized department employee or agent.

10. An operator of a self-service storage facility located in this state who alleges all of the following:

(a) That the vehicle on which the operator is requesting the record is in the operator's possession.

(b) That the record is requested to allow the operator to notify the registered owner and any lienholders of record of the operator's intent to foreclose its lien and to sell the vehicle.

(c) That the operator obtained a verification of a vehicle inspection that was performed by an authorized department employee or agent.

C. An authorized agent shall promptly deliver information received from the department pursuant to subsection A of this section and subsection B, paragraph 8 of this section to the insurer that originally requested the information. An authorized agent shall not copy, retain or transfer by any means any of the information for the authorized agent's own use or for use by persons other than the insurer that originally requested the information.

D. The department shall not release to an insurer, broker, managing general agent, authorized agent or insurance producer any information in a person's driving record pertaining to a traffic violation that occurred forty months or more before the date of the request for the release of the information.

E. An authorized agent who commits any of the following acts with regard to information received pursuant to subsection A of this section and subsection B, paragraph 8 of this section is guilty of a class 1 misdemeanor:

1. Uses a false representation to obtain information from a department record.

2. Sells or otherwise distributes the information obtained from the department to a person or organization for purposes that are not disclosed in the request.

3. Violates subsection C of this section.

F. For the purposes of this section, "authorized agent" means a third party retained by an insurer for the purpose of requesting department information pursuant to subsection A of this section and subsection B, paragraph 8 of this section but does not include an insurance producer as defined in section 20-281 or a managing general agent as defined in section 20-311.

Sec. 26. Section 28-4301, Arizona Revised Statutes, is amended to read:

28-4301. <u>Definitions</u>

In this chapter, unless the context otherwise requires:

1. "Area of responsibility" means the area surrounding an individual dealer that the factory designates as that dealer's individual primary geographic territory for the purpose of marketing, promoting, selling and leasing new motor vehicles. In the absence of the factory designated area, the area of responsibility is that geographical area surrounding a dealer

that lies closer to that dealer than to other dealers of the same line-make.

2. "Automotive recycler" means a person who is engaged in the business of buying or acquiring a motor vehicle solely for the purpose of dismantling, selling or otherwise disposing of the parts or accessories and who dismantles six or more vehicles in a calendar year.

3. "Branch license" means a license that is issued by the director to a licensed motor vehicle dealer and that permits the licensee to sell motor vehicles from an established place of business within the same county but other than the original or principal place of business for which the license was issued.

4. "Broker" means a person who for any fee, commission or other valuable consideration offers to provide, provides or represents that the person will provide a service of arranging or assisting in effecting the purchase of a motor vehicle and who is not:

(a) A new motor vehicle dealer or an employee or agent of a new motor vehicle dealer.

(b) A used motor vehicle dealer or an employee or agent of a used motor vehicle dealer.

(c) A manufacturer or employee or agent of a manufacturer.

(d) An auctioneer or engaged in the auto auction business.

(e) A wholesale motor vehicle dealer.

5. "Community" means the relevant market area. For the purposes of this paragraph, "relevant market area" means the incorporated city or town in which the franchise is located.

6. "Distributor" means a person who either:

(a) Sells or distributes new motor vehicles to new motor vehicle dealers in this state.

(b) Maintains distributor representatives in this state.

7. "Distributor branch" means a branch office maintained or availed of by a distributor for either:

(a) The sale of new motor vehicles to new motor vehicle dealers in this state.

(b) Directing or supervising its representatives in this state.

8. "Established place of business":

(a) Means a permanent enclosed building or structure that is owned either in fee or leased with sufficient space to display two or more motor vehicles of a kind and type that the dealer is licensed to sell and that is devoted principally to the use of a motor vehicle dealer in the conduct of the business of the dealer.

(b) In the case of a used motor vehicle dealer, trailer dealer or semitrailer dealer:

(i) Need not be a permanent building or structure or part of a permanent building or structure.

(ii) May be a vacant lot or part of a vacant lot.

(iii) Does not mean or include a residence, tent, temporary stand or temporary quarters or permanent quarters occupied pursuant to a temporary arrangement.

(c) In the case of an automotive recycler, means a permanent site or location at which the business of an automotive recycler is or will be conducted.

9. "Exhibitor" means a manufacturer of new motor homes that exhibits new motor homes at a special event.

10. "Factory branch" means a branch office maintained or availed of by a manufacturer for either:

(a) The sale of new motor vehicles to distributors or the sale of new motor vehicles to new motor vehicle dealers in this state.

(b) Directing or supervising its representatives in this state.

11. "Financial institution" means a bank, trust company, savings and loan association, credit union, consumer lender, international banking facility or holding company that is licensed, regulated or insured by the ~~state banking~~ department OF FINANCIAL INSTITUTIONS, the federal deposit insurance corporation, the office of thrift supervision, the comptroller of the currency, the national credit union share insurance fund or the national credit union administration.

12. "Franchise" means a contract between two or more persons if all of the following conditions are included:

(a) A commercial relationship of definite duration or continuing indefinite duration is involved.

(b) The franchisee is granted the right to offer, sell and service in this state new motor vehicles manufactured or distributed by the franchisor.

(c) The franchisee, as a separate business, constitutes a component of the franchisor's distribution system.

(d) The operation of the franchisee's business is substantially associated with the franchisor's trademark, service mark, trade name, advertising or other commercial symbol designating the franchisor.

(e) The operation of the franchisee's business is substantially reliant on the franchisor for the continued supply of new motor vehicles, parts and accessories.

13. "Franchisee" means a person who both:

(a) Receives new motor vehicles from the franchisor under a franchise.

(b) Offers and sells to and services new motor vehicles for the general public.

14. "Franchisor" means a person who both:

(a) Manufactures or distributes new motor vehicles.

(b) May enter into a franchise.

15. "Importer" means a person who transports or arranges for the transportation of a foreign manufactured new motor vehicle into the United States for sale in this state.

16. "Lead" means any retail consumer who satisfies all of the following:

(a) Responds to a factory-directed program that obtains consumer contact information and that provides such information to one or more dealers.

(b) Expresses an interest to the factory in purchasing, leasing or acquiring any vehicle or product, service or financing available from the dealers of that factory.

(c) Does not qualify for any reasonable factory sponsored employee, retiree or vendor new vehicle purchase program or any other reasonable similar factory new vehicle purchase program.

17. "Line-make" means those motor vehicles that are offered for sale, lease or distribution under a common name, trademark, service mark or brand name of the manufacturer of those same motor vehicles.

18. "Major component part" includes a motor vehicle or vehicle part that the manufacturer has assigned any factory, motor, serial or other identification number or mark.

19. "Manufacturer" means any person who either:

(a) Manufactures or assembles new motor vehicles.

(b) Manufactures or installs on previously assembled truck chassis special bodies or equipment that when installed forms an integral part of the new motor vehicle and that constitutes a major manufacturing alteration, excluding the installation of a camper on a pickup truck.

20. "Motor home" means a motor vehicle that is primarily designed as temporary living quarters and that:

(a) Is built onto as an integral part of, or is permanently attached to, a motor vehicle chassis.

(b) Contains at least four of the following independent life support systems if each is permanently installed and designed to be removed only for purposes of repair or replacement:

(i) A cooking facility with an on board fuel source.

(ii) A gas or electric refrigerator.

(iii) A toilet with exterior evacuation.

(iv) A heating or air conditioning system with an on board power or fuel source separate from the vehicle engine.

(v) A potable water supply system that includes at least a sink, a faucet and a water tank with an exterior service supply connection.

(vi) A 110-125 volt electric power supply.

21. "Motor vehicle" means an automobile, motor bus, motorcycle, truck or truck tractor or any other self-propelled vehicle, trailer or semitrailer.

22. "Motor vehicle dealer" means a new motor vehicle dealer, a used motor vehicle dealer, a broker or a wholesale motor vehicle auction dealer, excluding a person who comes into possession of a motor vehicle as an incident to the person's regular business and who sells or exchanges the motor vehicle.

23. "New house trailer dealer" means a person who buys, sells, exchanges or offers or attempts to negotiate a sale or exchange of an interest in, or who is engaged in the business of selling, new house trailers or used house trailers taken in trade on new house trailers. For the purposes of this paragraph, "house trailer" means a vehicle, other than a motor vehicle, that is built on a chassis designed for being drawn on the highways by a motor vehicle and that is designed for human habitation.

24. "New motor vehicle" means a motor vehicle, other than a used motor vehicle, that is held either for:

(a) Sale by the franchisee who first acquired the vehicle from the manufacturer or distributor of the vehicle.

(b) Sale by another franchisee of the same line-make.

25. "New motor vehicle dealer" means a person who buys, sells, exchanges or offers or attempts to negotiate a sale or exchange of an interest in, or who is engaged in the business of selling, new motor vehicles or used motor vehicles taken in trade on new motor vehicles or used vehicles purchased for resale.

26. "Off-premises display and sales" means a promotion or sale of motor vehicles for a period of time as specified by the director that both:

(a) Is sponsored by a licensed motor vehicle dealer, the licensed motor vehicle dealer's agents or the manufacturer.

(b) Takes place at a location within the same county but not at the licensee's established place of business.

27. "Off-premises exhibition" means the exhibition of a motor vehicle for a period of time as specified by the director at a location within the same county but not at the established place of business of a licensed motor vehicle dealer and at which a solicitation or sale does not occur.

28. "Provisional automotive recycler's license" means a license that both:

(a) Is issued by the department only in conjunction with an application for an automotive recycler's license.

(b) Permits the applicant or applicants to conduct the business of an automotive recycler regulated by this chapter pending completion of the criminal records check pursuant to section 28-4361.

29. "Provisional dealer's license" means a license that both:

(a) Is issued by the department only in conjunction with an application for a dealer's license.

(b) Permits the applicant or applicants to conduct the business of a motor vehicle dealer regulated by this chapter pending completion of the criminal records check pursuant to section 28-4361.

30. "Retail consumer" means any person purchasing, leasing or acquiring or possibly purchasing, leasing or acquiring a vehicle or product, service or financing not for resale.

31. "Service" means any service that is sold, leased or provided to retail consumers and that directly relates to the ownership or leasing of a

new or used motor vehicle, including extended service contracts or motor vehicle warranty and nonwarranty repairs or maintenance, including both parts and labor.

32. "Special event" means an exhibition of new motor homes by a motor vehicle dealer licensed to sell new motor homes or an exhibitor for a period of time specified by the director at a location in this state other than the licensee's or exhibitor's established place of business.

33. "Used motor vehicle" means a motor vehicle that has been sold, bargained, exchanged or given away or the title to the motor vehicle has been transferred from the person who first acquired the vehicle from the manufacturer, or importer, dealer or agent of the manufacturer or importer, and that has been placed in bona fide consumer use. For the purposes of this paragraph, "bona fide consumer use" means actual operation by an owner who acquired a new motor vehicle both:

(a) For use in the owner's business or for pleasure or otherwise.

(b) For which a certificate of title has been issued or that has been registered as provided by law.

34. "Used motor vehicle dealer" means a person, other than a new motor vehicle dealer, who buys, sells, exchanges or offers or attempts to negotiate a sale or exchange of an interest in, or who is engaged in the business of selling, four or more used motor vehicles in a continuous twelve month period. Used motor vehicle dealer does not include a person who buys, sells, exchanges or offers or attempts to negotiate a sale of or exchange an interest in a classic car as defined in section 28-2483 or a historic vehicle as defined in section 28-2484.

35. "Wholesale motor vehicle auction dealer" means a person who both:

(a) Is in the business of providing auction services solely in wholesale transactions to motor vehicle dealers licensed by this state or any other jurisdiction.

(b) Does not buy, sell or own the motor vehicles the auction dealer auctions in the ordinary course of business.

36. "Wholesale motor vehicle dealer" means a person who sells used motor vehicles only to licensed motor vehicle dealers.

Sec. 27. Section 28-5104, Arizona Revised Statutes, is amended to read:

28-5104. <u>Bond requirement</u>

A. A person who applies for authorization pursuant to this article shall submit with the application a bond in a form to be approved by the director and in an amount of at least twenty-five thousand dollars.

B. A surety company authorized to transact business in this state shall execute the bond with the applicant as principal obligor on the bond and the state as obligee. The bond shall be conditioned that the applicant will faithfully comply with all of the provisions of law and that the bond is noncancellable without at least sixty days' prior notice to the

director. Any future liability of the surety company terminates on the director's termination of a third party's authorization.

C. The bond inures to the benefit of any person who suffers loss because of any of the following:

1. Nonpayment by the authorized person of any fee or tax paid to the third party by that person.

2. Insolvency or discontinuance of business.

3. Failure of the authorized third party to comply with the authorized third party's duties pursuant to this article.

D. The aggregate liability of a surety company for any breach of the conditions of a bond required pursuant to this section shall not exceed the amount of the bond.

E. The bond requirement of this section does not apply to:

1. A department, agency or political subdivision of this state.

2. An Arizona court.

3. An Arizona law enforcement agency or department.

4. A financial institution or enterprise under the jurisdiction of the ~~state banking~~ department OF FINANCIAL INSTITUTIONS or a federal monetary authority.

5. The federal government or any of its agencies.

6. A motor vehicle dealer that is licensed and bonded by the department of transportation or a state organization of licensed and bonded motor vehicle dealers.

7. A manufacturer, importer, factory branch or distributor licensed by the department of transportation.

8. An insurer under the jurisdiction of the department of insurance.

9. An owner of a fleet as defined in section 28-2201.

10. A public utility.

11. A tribal government.

12. A title service company that is bonded by the department of transportation.

13. An employer or association that has at least five hundred employees or members.

Sec. 28. Section 28-5105, Arizona Revised Statutes, is amended to read:

28-5105. <u>Criminal records check; provisional authorization or certification</u>

A. An applicant, and each partner, officer, director or agent or each stockholder owning twenty per cent or more of a corporation, seeking authorization or certification, or both, pursuant to this article shall provide:

1. A full set of fingerprints to the department of transportation for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.

2. A nonrefundable fee to be paid to the department of public safety for the criminal records check.

B. The director may deny an application for authorization or certification, or both, if any individual included in the application has either:

1. Made a misrepresentation or misstatement in the application to conceal a matter that would cause the application to be denied.

2. Been convicted of fraud or an auto related felony in any state, territory or possession of the United States or any foreign country within the ten years immediately preceding the date the criminal records check is complete.

3. Been convicted of a felony, other than a felony described in paragraph 2 of this subsection, in a state, territory or possession of the United States or a foreign country within the five years immediately preceding the date the criminal records check is complete.

4. Violated a rule or policy of the department.

5. Been involved in any activity that the director determines to be inappropriate in relation to the authority granted.

C. The director may approve an application for provisional authorization or certification, or both, pending completion of the criminal records check if the applicant meets all other requirements of this article. The director may revoke a provisional authorization or certification, or both, for a violation of this title. A provisional authorization or certification, or both, is valid unless revoked by the director or until the applicant receives approval or denial of the application for authorization or certification, or both.

D. Within twenty days of completion of the criminal records check, the director shall approve or deny the application. If the application is denied, the director shall advise the applicant in writing of the denial and the grounds for denial. The department or its employees are not liable for any costs incurred by an applicant seeking authorization or certification, or both, under this article.

E. Within thirty days after receipt of the notice of denial, the applicant may petition the director in writing for a hearing on the application pursuant to section 28-5107.

F. If the authorized third party adds a partner, officer, director or agent, or a stockholder who owns twenty per cent or more of the corporation, who was not included in the criminal records check on a prior application, the authorized third party shall notify the department within thirty days of the change.

G. At the time of notification pursuant to subsection F of this section, the third party shall submit to the department of transportation an application and, if applicable, a full set of fingerprints and the fee to be paid to the department of public safety for a criminal records check. On completion of the investigation if the individual added or changed by the

authorized third party is found to be ineligible pursuant to subsection B of this section, the director of the department of transportation shall advise the authorized third party and the individual in writing of the grounds for the action and that the authorization will be revoked unless the individual is removed from the position.

H. The requirement for a criminal records check does not apply to an applicant who is seeking third party authorization and who is:

1. A department, agency or political subdivision of this state.

2. An Arizona court.

3. An Arizona law enforcement agency or department.

4. A financial institution or enterprise under the jurisdiction of the ~~state banking~~ department OF FINANCIAL INSTITUTIONS or a federal monetary authority.

5. The federal government or any of its agencies.

6. A motor vehicle dealer that is licensed and bonded by the department of transportation or a state organization of licensed and bonded motor vehicle dealers.

7. A manufacturer, importer, factory branch or distributor licensed by the department of transportation.

8. An insurer under the jurisdiction of the department of insurance.

9. An owner or registrant of a fleet of one hundred or more vehicles.

10. A public utility.

11. A tribal government.

12. A title service company that is bonded by the department of transportation.

13. An employer or association that has at least five hundred employees or members.

Sec. 29. Section 32-1001, Arizona Revised Statutes, is amended to read:

32-1001. Definitions

~~A.~~ In this chapter, unless the context otherwise requires:

1. "Claim" means an obligation for the payment of money or its equivalent and a sum or sums owed, due or asserted to be owed or due to another, for which a person is employed to demand payment and collect or enforce such payment, and includes:

(a) Obligations for the payment of money to another, in the form of conditional sales agreements, notwithstanding the personal property sold thereunder, for which payment is claimed or may be or is repossessed in lieu of payment.

(b) An obligation for the payment of money or its equivalent and a sum or sums owed, due or asserted to be owed or due which is sold or assigned to a purchaser or assignee for which either:

(i) The final payment has not been tendered to the seller or assignor.

(ii) Title has not yet passed.

(iii) The purchaser or assignee has a right of recourse against the seller or assignor.

2. "Collection agency" means:

(a) All persons engaged directly or indirectly in soliciting claims for collection or in collection of claims owed, due or asserted to be owed or due.

(b) Any person who, in the process of collecting debts occurring in the operation of his own business, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts.

3. "Department" means the ~~state banking~~ department OF FINANCIAL INSTITUTIONS.

4. "Financial institution" means a person who does business under any other law of this state or law of another state or the United States relating to banks, trust companies, savings and loan associations, credit unions and savings banks.

5. "Person" means an individual, firm, partnership, association or corporation.

6. "Superintendent" means the superintendent of ~~banks~~ FINANCIAL INSTITUTIONS.

Sec. 30. Section 32-1391.01, Arizona Revised Statutes, is amended to read:

32-1391.01. Powers and duties of board

A. The board shall adopt rules that:

1. Describe or define deceptive, misleading or professionally negligent practices concerning the offer or sale of prearranged funeral agreements funded by trust and the handling of these funds or accounts.

2. Implement and interpret consumer disclosure requirements of this article to provide adequate information to purchasers of prearranged funerals.

3. Prescribe funeral establishment record keeping requirements concerning prearranged funeral trust sales and trust accounts and the handling and disposition of trust funds.

4. Define terms and develop forms and procedures to implement this article.

B. The board shall enter into an intergovernmental agreement with the ~~state banking~~ department OF FINANCIAL INSTITUTIONS to examine and report on prearranged funeral trust accounts of funeral establishments and to review prearranged funeral trust sales and trust account forms and procedures used by funeral establishments.

Sec. 31. Section 32-1391.03, Arizona Revised Statutes, is amended to read:

32-1391.03. Department of financial institutions powers and duties; prearranged funeral trust accounts

A. The ~~state banking~~ department OF FINANCIAL INSTITUTIONS shall determine all of the following in its examinations of prearranged funeral trust accounts:

1. The names and addresses of purchasers of prearranged funerals and the amount each purchaser paid to the funeral establishment.

2. The location and status of all monies received.

3. The total amount in trust accounts.

4. Whether a funeral establishment is complying with this article and rules adopted pursuant to this article.

5. Whether a funeral establishment is following recognized accounting procedures for prearranged funeral trust accounts and handling monies received from prearranged funeral sales.

B. The ~~state banking~~ department shall:

1. Conduct examinations on a random basis or in connection with an investigation pursuant to procedures established by the board.

2. Examine the prearranged funeral trust accounts of each funeral establishment at least once within the first twelve months after it begins to sell prearranged funerals and at least once every three years thereafter.

3. Include prearranged funeral trust accounts established before January 1, 1985 in its examinations.

C. The ~~state banking~~ department may examine and investigate prearranged funeral trust accounts pursuant to title 6, chapter 1, article 3 and pursuant to the powers of the board concerning prearranged funeral sales and trust accounts.

D. If the ~~state banking~~ department determines after investigation or examination of a prearranged funeral trust account that a violation of any provision of this article has occurred, it shall send a written report to the board within thirty days of completion of the investigation or examination which includes an identification of the violation and any relevant documents.

E. The ~~state banking~~ department shall assess each funeral establishment at the rate of not to exceed five hundred twenty dollars per day for each examiner employed in the examination of the establishment's prearranged funeral trust accounts pursuant to the requirements of this section.

Sec. 32. Section 32-1391.04, Arizona Revised Statutes, is amended to read:

32-1391.04. Prearranged funeral trust accounts; books and records; inspection and examination

A. All funeral establishments and financial institutions shall, on request of the ~~state banking~~ department OF FINANCIAL INSTITUTIONS, make their

prearranged funeral trust account books and records available for inspection and examination by the state banking department.

B. All financial institutions with trust funds deposited pursuant to this article shall at least quarterly send a copy to the ~~state banking~~ department of each cancellation request or death certificate it has received which resulted in a withdrawal of funds from the trust account.

C. A financial institution shall have no legal duty to inquire about the disbursement of any trust funds deposited pursuant to this article if the financial institution has received the properly executed notifications or certifications required by this article.

D. A financial institution or funeral establishment operating according to the trust provisions established in this article shall not be considered in the trust business under title 6, chapter 8.

Sec. 33. Section 32-1391.05, Arizona Revised Statutes, is amended to read:

32-1391.05. Prearranged funeral agreements funded by trusts

A. All monies paid under a prearranged funeral agreement funded by trust shall be deposited, within five business days after the receipt of the monies, in a prearranged funeral trust account with a financial institution doing business in this state. The ~~account~~ MONIES shall be invested either in federally insured ~~deposits~~ ACCOUNTS, in which case the amounts so deposited shall not exceed the amount of the deposit insurance, or in direct obligations of the United States government. Federally insured ~~deposits~~ ACCOUNTS are defined as ~~deposits~~ ACCOUNTS insured by the federal deposit insurance corporation or the national credit union administration board. If invested in direct obligations of the United States government, the maturity dates of such obligations shall not exceed three years, unless rules adopted by the superintendent of ~~banks~~ FINANCIAL INSTITUTIONS permit a longer period and not less than five per cent of the amounts so deposited shall at all times be deposited in federally insured ~~deposits~~ ACCOUNTS.

B. Except as provided in this article:

1. All monies deposited in a prearranged funeral trust account and all accrued interest shall be held in the trust account for and remain the property of the beneficiary during the beneficiary's life and of the beneficiary's estate after the beneficiary's death.

2. A funeral establishment or another person shall not withdraw, transfer, remove, commingle, encumber or use as collateral any monies paid to the establishment under a prearranged funeral agreement funded by trust.

3. All monies deposited and accrued interest in a prearranged funeral trust account shall be exempt from attachment, garnishment, execution and claims of creditors, receivers and trustees of the funeral establishment other than the claims of the beneficiary or the beneficiary's estate.

4. All monies deposited and accrued interest in a prearranged funeral trust account up to a total of five thousand dollars shall be exempt from attachment, garnishment, execution and claims of creditors, receivers and

trustees of the beneficiary other than the claims of the funeral establishment.

C. A funeral establishment may direct the financial institution in which the trust monies are deposited to transfer the trust account to another financial institution after providing each participant in the trust with the name and location of the institution and the new trust account number.

Sec. 34. Section 32-1391.16, Arizona Revised Statutes, is amended to read:

32-1391.16. Annual trust report

A. On or before May 1, each funeral establishment holding a prearranged funeral sales endorsement shall file an annual report with the board concerning its prearranged funeral sales and trust account activities during the preceding calendar year.

B. The funeral establishment shall pay the annual report fee prescribed in section 32-1309 when the annual report is filed.

C. The annual report shall contain the following information sworn to by the owner or owners of the funeral establishment:

1. The names and addresses of persons who were sold prearranged funerals funded by trust by the funeral establishment during the preceding calendar year, the names of the persons who are to be the beneficiaries of the prearranged funerals and the name of the registered salesperson selling each prearranged funeral.

2. The total contract amount for each purchaser listed in paragraph 1, the total monies previously paid on each contract and the monies paid by and refunded to the purchaser on each contract during the preceding calendar year.

3. The total trust funds contained in the funeral establishment's prearranged funeral trust accounts as of the end of the preceding calendar year and the total funds received in the trust accounts during that year.

4. The total monies, if any, received from purchasers but not deposited in the trust accounts as of the end of the preceding calendar year, excluding initial service fees received by the funeral establishment.

5. The names, registration numbers and addresses of all salespersons employed or otherwise engaged by the funeral establishment during the preceding calendar year and the names and registration numbers of all salespersons terminated during that year.

6. The names and addresses of the financial institutions where the trust funds are on deposit and the account number of each account.

7. A statement of the owner of the funeral establishment that the establishment has complied with this article and rules adopted pursuant to this article.

8. Other information required by the board.

D. Each funeral establishment that does not offer or sell prearranged funerals funded by trust or hold a prearranged funeral sales endorsement shall file with the board the annual report described in subsection C of this

section concerning all prearranged funeral trust accounts established before January 1, 1985 and in existence during the preceding calendar year on or before May 1. For THE purposes of this subsection, "prearranged funeral trust account" includes all prearranged funeral trust accounts or funds established pursuant to laws in existence before January 1, 1985.

E. The board shall provide the ~~state banking~~ department OF FINANCIAL INSTITUTIONS with a copy of each annual report filed pursuant to this section.

Sec. 35. Section 35-311, Arizona Revised Statutes, is amended to read:

35-311. State board of investment; membership; powers and duties

A. A state board of investment is established consisting of the state treasurer, the director of the department of administration, the superintendent of ~~banks~~ FINANCIAL INSTITUTIONS and two individuals appointed by the state treasurer, one of whom shall have verifiable expertise in investment management and one of whom shall represent a public entity with current deposits in a local government investment pool. The state treasurer shall be chairman of the board. The board shall keep an accurate record of its proceedings. A certified copy of the record is prima facie evidence of the matters appearing in the record in any court. A meeting of the board may be called at any time by the chairman or a majority of the board members.

B. The state board of investment shall:

1. Hold regular monthly meetings.

2. Review investments of treasury monies.

3. Serve as trustees of the permanent state land funds and provide management of the assets of the funds consistent with the requirements of article X, section 7, Constitution of Arizona.

C. The state treasurer shall furnish to the board of investment at its regular monthly meeting a report of the performance of current investments and a report of the current investments as of the close of business of the preceding month. The state treasurer shall make these reports available for inspection by the public during normal working hours at the office of the state treasurer for a period of time of not less than two years after the date of the report.

D. The board of investment may order the state treasurer to sell any of the securities, and any order shall specifically describe the securities and fix the time period during which they are to be sold. Securities so ordered to be sold shall be sold for cash by the state treasurer at the current market price. The state treasurer and the members of the board are not accountable for any loss occasioned by sales of securities at prices lower than their book value. Any loss shall be charged against earnings received from interest or capital gains on the applicable treasury monies.

E. The board may establish standards in addition to those established by section 35-317, subsection A for the qualification of agents acting pursuant to section 35-317, subsection B.

Sec. 36. Section 35-321, Arizona Revised Statutes, is amended to read:

35-321. Definitions

In this article, unless the context otherwise requires:

1. "Agency pool participant" means a subdivision or an entity of a subdivision that has monies maintained by the treasurer and that has the authority to draw negotiable instruments on the treasurer or make other disbursements from monies that the treasurer holds for the subdivision or entity.

2. "Board of deposit" means, in the case of a county, the board of supervisors, and in the case of a city or town, the board of trustees or common council.

3. "Capital structure" means the amount of the capital of the eligible depository shown by the latest call statement of condition as defined by rule of the superintendent of ~~banks~~ FINANCIAL INSTITUTIONS for the purpose of administration of this article.

4. "Collecting entity" means the entity from which the treasurer receives general funding including the county for collections performed by a county treasurer, the city for collections performed by a city treasurer or the district for collections performed by a district treasurer.

5. "Eligible depository" means any:

(a) Commercial or savings bank or savings and loan association having either a branch in this state or its principal place of business in this state and insured by the federal deposit insurance corporation or its successor or any other insuring instrumentality of the United States according to the applicable federal law.

(b) Credit union that is insured by the national credit union administration or its successor.

6. "Involuntary pool participant" means a subdivision that only receives the principal ratio of the monies collected, for which the principal monies are mandated to be distributed on a specific date and for which the interest earned on the monies between the time of collection and other statutory requirements reverts to the general fund of the collecting entity.

7. "Permissible rate of interest" means a rate of interest which an eligible financial institution is permitted to pay by state or federal law or valid state rules or federal regulations.

8. "Public deposit" means public monies deposited in an eligible depository pursuant to this article.

9. "Public monies" includes subdivision monies.

10. "State monies" means all monies in the treasury of this state or coming lawfully into the possession or custody of the state treasurer.

11. "Subdivision" means any county, noncharter city or town. Cities governed by charter have the option of operating under this article.

12. "Subdivision monies" means all monies in the treasury of a subdivision or coming lawfully into the possession or custody of the treasurer.

~~13. "Supervisory banking authority" means the state superintendent of banks in respect to the affairs of state financial institutions and the comptroller of currency or the federal home loan bank board in respect to national financial associations.~~

~~14.~~ 13. "Treasurer" includes the treasurer or officer exercising the functions of treasurer of any subdivision but excludes the state treasurer.

~~15.~~ 14. "Trust funds" means those monies entrusted to a public body or official for preservation and investment, as prescribed by the instrument establishing such funds.

Sec. 37. Section 35-323, Arizona Revised Statutes, is amended to read:

35-323. Investing public monies; bidding; security and other requirements

A. The treasurer shall invest and reinvest public monies in securities and deposits with a maximum maturity of five years. All public monies shall be invested in eligible investments. Eligible investments are:

1. Certificates of deposit in eligible depositories.

2. Interest bearing savings accounts in banks and savings and loan institutions doing business in this state whose accounts are insured by federal deposit insurance for their industry, but only if deposits in excess of the insured amount are secured by the eligible depository to the same extent and in the same manner as required under this article.

3. Repurchase agreements with a maximum maturity of one hundred eighty days.

4. The pooled investment funds established by the state treasurer pursuant to section 35-326.

5. Obligations issued or guaranteed by the United States or any of the senior debt of its agencies, sponsored agencies, corporations, sponsored corporations or instrumentalities.

6. Bonds or other evidences of indebtedness of this state or any of its counties, incorporated cities or towns or school districts.

7. Bonds, notes or evidences of indebtedness of any county, municipal district, municipal utility or special taxing district within this state that are payable from revenues, earnings or a special tax specifically pledged for the payment of the principal and interest on the obligations, and for the payment of which a lawful sinking fund or reserve fund has been established and is being maintained, but only if no default in payment on principal or interest on the obligations to be purchased has occurred within five years of the date of investment, or, if such obligations were issued less than five years before the date of investment, no default in payment of principal or interest has occurred on the obligations to be purchased nor any other obligations of the issuer within five years of the investment.

8. Bonds, notes or evidences of indebtedness issued by any county improvement district or municipal improvement district in this state to finance local improvements authorized by law, if the principal and interest

of the obligations are payable from assessments on real property within the improvement district. An investment shall not be made if:

(a) The face value of all such obligations, and similar obligations outstanding, exceeds fifty per cent of the market value of the real property, and if improvements on which the bonds or the assessments for the payment of principal and interest on the bonds are liens inferior only to the liens for general ad valorem taxes.

(b) A default in payment of principal or interest on the obligations to be purchased has occurred within five years of the date of investment, or, if the obligations were issued less than five years before the date of investment, a default in the payment of principal or interest has occurred on the obligations to be purchased or on any other obligation of the issuer within five years of the investment.

9. Commercial paper of prime quality that is rated "P1" by Moody's investors service or rated "A1" or better by Standard and Poor's rating service or their successors. All commercial paper must be issued by corporations organized and doing business in the United States.

10. Bonds, debentures and notes that are issued by corporations organized and doing business in the United States and that are rated "A" or better by Moody's investor service or Standard and Poor's rating service or their successors.

B. Certificates of deposit shall be purchased from the eligible depository bidding the highest permissible rate of interest. No monies over one hundred thousand dollars may be awarded at any interest rate less than one hundred three per cent of the equivalent bond yield of the offer side of United States treasury bills having a similar term. If the eligible depository offering to pay the highest rate of interest has bid only for a portion of the monies to be awarded, the remainder of the monies shall be awarded to eligible depositories bidding the next highest rates of interest.

C. An eligible depository is not eligible to receive total aggregate deposits from this state and all its subdivisions in an amount exceeding twice its capital structure as outlined in the last call of condition of the superintendent of ~~banks~~ FINANCIAL INSTITUTIONS.

D. If two or more eligible depositories submit bids of an identical rate of interest for all or any portion of the monies to be deposited, the award of the deposit of the monies shall be made to the eligible depository among those submitting identical bids having, at the time of the bid opening, the lowest ratio of total public deposits in relation to its capital structure.

E. Each bid submitted, and not withdrawn prior to the time specified, constitutes an irrevocable offer to pay interest as specified in the bid on the deposit, or portion bid for, and the award of a deposit in accordance with this section obligates the depository to accept the deposit and pay interest as specified in the bid pursuant to which the deposit is awarded.

F. The treasurer shall maintain a record of all bids received and shall make available to the board of deposit at its next regularly scheduled meeting a correct list showing the bidders, the bids received and the amount awarded. These records shall be available to the public and shall be kept in the possession of the treasurer for not less than two years from the date of the report.

G. Any eligible depository, before receiving a deposit in excess of the insured amount under this article, shall deliver collateral for the purposes of this subsection equal to at least one hundred one per cent of the deposit. The collateral shall be any of the following:

1. A bond executed by a surety company that is approved by the treasury department of the United States and authorized to do business in this state. The bond shall be approved as to form by the legal advisor of the treasurer.

2. Securities or instruments of the following character:

(a) United States government or agency obligations.

(b) State, county, school district and other district municipal bonds.

(c) Registered warrants of this state, a county or other political subdivisions of this state, when offered as security for monies of the state, county or political subdivision by which they are issued.

(d) First mortgages and trust deeds on improved, unencumbered real estate located in this state. No single first mortgages or trust deeds may represent more than ten per cent of the total collateral. The treasurer may require that the first mortgages or trust deeds comprising the total collateral security be twice the amount the eligible depository receives on deposit. First mortgages or trust deeds qualify as collateral subject to the following limitations:

(i) The promissory note or other evidences of indebtedness secured by such first mortgage or trust deed shall have been in existence for at least three years and shall not have been in default during this period.

(ii) An eligible depository shall at its own expense execute, deposit with the treasurer and record with the appropriate county recorder a complete sale and assignment with recourse in a form approved by the attorney general, together with an unconditional assumption of obligation to promptly pay to the entitled parties public monies in its custody upon lawful demand and tender of resale and assignment.

Eligible depositories may deposit the security described in this subdivision with the state treasurer, and county, city or town treasurers may accept the security described in this subdivision at their option.

3. The safekeeping receipt of a federal reserve bank or any bank located in a reserve city, or any bank authorized to do business in this state, whose combined capital, surplus and outstanding capital notes and debentures on the date of the safekeeping receipt are ten million dollars or more, evidencing the deposit therein of any securities or instruments described in this section. A safekeeping receipt shall not qualify as

security, if issued by a bank to secure its own public deposits, unless issued directly through its trust department. The safekeeping receipt shall show upon its face that it is issued for the account of the treasurer and shall be delivered to the treasurer. The safekeeping receipt may provide for the substitution of securities or instruments which qualify under this section with the affirmative act of the treasurer.

H. The securities, instruments or safekeeping receipt for the securities, instruments or warrants shall be accepted at market value if not above par, and, if at any time their market value becomes less than the deposit liability to that treasurer, additional securities or instruments required to guarantee deposits shall be deposited immediately with the treasurer who made the deposit and deposited by the eligible depository in which the deposit was made.

I. The condition of the surety bond, or the deposit of securities, instruments or a safekeeping receipt, must be such that the eligible depository will promptly pay to the parties entitled public monies in its custody, upon lawful demand, and will, when required by law, pay the monies to the treasurer making the deposit.

J. Notwithstanding the requirements of this section, any institution qualifying as an eligible depository may accept deposits of public monies to the total then authorized insurance of accounts, insured by federal deposit insurance, without depositing a surety bond or securities in lieu of the surety bond.

K. An eligible depository shall report monthly to the treasurer the total deposits of that treasurer and the par value and the market value of any pledged collateral securing those deposits.

L. When a security or instrument pledged as collateral matures or is called for redemption, the cash received for the security or instrument shall be held in place of the security until the depository has obtained a written release or provided substitute securities or instruments.

M. The surety bond, securities, instruments or safekeeping receipt of an eligible depository shall be deposited with the treasurer making the deposit, and he shall be the custodian of the bond, securities, instruments or safekeeping receipt. The treasurer may then deposit with the depository public monies then in his possession in accordance with this article, but not in an amount in excess of the surety bond, securities, instruments or safekeeping receipt deposited, except for federal deposit insurance.

N. The following restrictions on investments are applicable:

1. An investment of public operating fund monies shall not be invested for a duration of longer than three years.

2. The board of deposit may order the treasurer to sell any of the securities, and any order shall specifically describe the securities and fix the date upon which they are to be sold. Securities so ordered to be sold shall be sold for cash by the treasurer on the date fixed in the order, at the then current market price. The treasurer and the members of the board

are not accountable for any loss occasioned by sales of securities at prices lower than their cost. Any loss or expense shall be charged against earnings received from investment of public funds.

O. If the total amount of subdivision monies available for deposit at any time is less than one hundred thousand dollars, the subdivision board of deposit shall award the deposit of the funds to an eligible depository in accordance with an ordinance or resolution of the governing body of the subdivision.

Sec. 38. Section 38-871, Arizona Revised Statutes, is amended to read:

38-871. Annuity and deferred compensation governing committee; members; powers and duties

A. A governing committee for tax deferred annuity and deferred compensation plans is established that consists of the following seven members:

1. Three employees of the state appointed by the governor.

2. The director of the department of administration or the director's designee.

3. The superintendent of ~~the state banking department~~ FINANCIAL INSTITUTIONS or the superintendent's designee.

4. The director of insurance or the director's designee.

5. The director of the Arizona state retirement system or the director's designee.

B. The governing committee may:

1. Investigate and approve tax deferred compensation and annuity programs which give employees of the state income tax benefits authorized by title 26, United States Code Annotated.

2. In carrying out the purposes of this article, enter into agreements with life insurance companies authorized to do business in this state and with bank trustees or custodians and investment counseling firms registered with the securities exchange commission.

C. The governing committee shall:

1. Arrange for consolidated billing and efficient administrative services in order that any such plans approved shall operate without cost or contribution from the state except for the incidental expense of administering the payroll salary deduction or reduction and remittance thereof to the trustee or custodian of the plan or plans.

2. Meet monthly or more frequently as the chairman of the committee deems necessary.

3. Arrange for an annual financial audit of the programs and a performance audit of the programs at least once every three years.

4. Adopt rules governing the solicitation of employees by persons offering tax deferred compensation or annuity plans to such employees.

Sec. 39. Section 41-3004.05, Arizona Revised Statutes, is amended to read:

41-3004.05. Department of financial institutions; termination July 1, 2004

A. The ~~state banking~~ department OF FINANCIAL INSTITUTIONS terminates on July 1, 2004.

B. Title 6 is repealed on January 1, 2005.

Sec. 40. Section 44-281, Arizona Revised Statutes, is amended to read:

44-281. Definitions

In this article, unless the context otherwise requires:

1. "Administrator" means the superintendent of ~~banks~~ FINANCIAL INSTITUTIONS.

2. "Cash sale price" means the price stated in a retail installment contract for which the seller would have sold to the buyer, and the buyer would have bought from the seller, the motor vehicle which is the subject matter of the retail installment contract, if such sale had been a sale for cash instead of a retail installment transaction. The cash sale price may include charges for accessories and their installation and for delivery, and servicing, repairing or improving the motor vehicle, and for charges for other costs that are necessary or incidental to the transaction and that the seller furnishes or agrees to pay on behalf of the buyer, including taxes, assessor's fees, license fees~~,~~ and fees for filing, recording or otherwise perfecting or releasing a reserved title or lien, and may include a reasonable charge for the seller's services.

3. "Dealer" means any person who in any year sells on a noncash basis three or more motor vehicles at retail.

4. "Finance charge" means the amount agreed upon between the buyer and the seller, as limited herein, which in determining the cost of the motor vehicle is added to the aggregate of the following: The cash sale price and the amount, if any, included for insurance and other benefits where a separate cost is assigned thereto.

5. "Holder" of a retail installment contract means the retail seller of the motor vehicle under or subject to the contract or, if the contract is purchased by a sales finance company or other assignee, the sales finance company or other assignee.

6. "Motor vehicle" means any self-propelled device in or by which any person or property is or may be transported or drawn on a public highway, except:

(a) Devices that move upon or are guided by a track or travel through the air.

(b) The following, if not designed primarily for highway transportation, but which may incidentally be operated on a public highway:

(i) Tractors.

(ii) Buses.

(iii) Trucks.

(iv) Power shovels.
(v) Road machinery.
(vi) Agricultural machinery.
7. "Person" means an individual, partnership, association, trust, corporation, or other legal entity.
8. "Retail buyer" or "buyer" means a person who buys a motor vehicle from a retail seller, not for the purpose of resale, and who executes a retail installment contract in connection therewith.
9. "Retail installment contract" or "contract":
(a) Means an agreement, entered into in this state, pursuant to which the title to or a lien upon the motor vehicle, which is the subject matter of a retail installment transaction, is retained or taken by a retail seller from a retail buyer as security for the buyer's obligation.
(b) Includes:
(i) A conditional sales contract and a contract for the bailment or leasing of a motor vehicle by which the bailee or lessee contracts to pay as compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed that the bailee or lessee is bound to become, or has the option of becoming, the owner of the motor vehicle for no other or a nominal consideration upon full compliance with the provisions of the contract.
(ii) A secondary motor vehicle finance transaction.
10. "Retail installment transaction" means any transaction evidenced by a retail installment contract entered into between a retail buyer and a retail seller wherein the retail buyer buys a motor vehicle from the retail seller at a cost payable in one or more deferred installments. The cash sale price of the motor vehicle, the amount included for insurance if a separate charge is made and the finance charge shall together constitute the cost of the motor vehicle.
11. "Retail seller" or "seller" means a person who sells a motor vehicle to a retail buyer for purposes other than resale under or subject to a retail installment contract. For the purposes of paragraph 13 of this section "seller" means a person who sells and retains the use of the motor vehicle.
12. "Sales finance company":
(a) Means a person engaged, in whole or in part, in the business of purchasing retail installment contracts from one or more retail sellers.
(b) Includes a person engaged, in whole or in part, in the business of creating or holding retail installment contracts that exceed a total aggregate outstanding indebtedness of twenty-five thousand dollars.
(c) Does not include the pledgee of an aggregate number of retail installment contracts to secure a bona fide loan thereon.
13. "Secondary motor vehicle finance transaction":
(a) Means any contract that includes provisions for either:

(i) Obtaining a security interest in or lien on a motor vehicle other than in connection with the sale of that motor vehicle.

(ii) The sale or conditional sale of a motor vehicle and the seller's right to retain use of the motor vehicle after the sale or conditional sale.

(b) Includes any conditional sales contract or contract for the bailment or leasing of a motor vehicle in which the bailee or lessee agrees to pay for use of the motor vehicle and the bailee or lessee is required to become or has the option of becoming the owner of the vehicle for any or no compensation.

(c) Does not include any commercial transaction as defined in section 44-291.

Sec. 41. Section 44-287, Arizona Revised Statutes, is amended to read:

44-287. Contents of contract

A. The contract shall contain the names of the seller and the buyer, the place of business of the seller, the residence or place of business of the buyer as specified by the buyer and a description of the motor vehicle including its make, year, model and identification number or marks.

B. The contract shall contain the following items:

1. The cash sale price of the motor vehicle.

2. The amount of the buyer's down payment, and whether made in money or goods, or partly in money and partly in goods.

3. The difference between paragraphs 1 and 2.

4. The amount, if any, included for insurance specifying the term and types of coverage. If the contract does not include liability insurance coverage for bodily injuries and property damage, such fact shall be so set forth in capital letters immediately above the signatures of the parties to the contract.

5. The final cash price balance, which is the sum of paragraph 3 and paragraph 4.

6. The amount of the finance charge and the rate at which it is computed.

7. The time balance, which is the sum of paragraphs 5 and 6, payable in installments by the buyer to the seller, the number of installments, the amount of each installment and the due date or period thereof.

8. A statement, adjacent to the signature line of the contract, in bold-faced type, setting forth the ~~state banking department's~~ telephone number and address OF THE DEPARTMENT OF FINANCIAL INSTITUTIONS and stating that the seller is regulated by the ~~state banking~~ department OF FINANCIAL INSTITUTIONS and that any complaints concerning the contract may be addressed to the ~~state banking~~ department OF FINANCIAL INSTITUTIONS.

C. The items set forth in subsection B need not be stated in the sequence or order set forth, and additional items may be included to explain the calculations involved in determining the stated time balance to be paid by the buyer.

D. Notwithstanding any other law, in the case of motor vehicles, trailers or semitrailers, a transaction does not create a sale or security interest merely because it provides that the rental price is permitted or required to be adjusted under the agreement either upward or downward by reference to the amount realized upon sale or other disposition of the motor vehicle, trailer or semitrailer.

Sec. 42. Section 44-1601, Arizona Revised Statutes, is amended to read:

44-1601. Definitions

In this article, unless the context otherwise requires:

1. "Dealer" means a person engaged in conducting, managing or carrying on the business of purchasing solely precious items or precious items in addition to other tangible personal property. Dealer does not include:

(a) Investment brokerage houses.

(b) Financial institutions regulated by the ~~state banking~~ department OF FINANCIAL INSTITUTIONS.

(c) Securities brokerage houses regulated by a recognized national stock exchange.

2. "Investment brokerage house" means a house with commissioned agents who execute buy and sell orders for their customers and who:

(a) Execute orders for investment items.

(b) Do not assume the risks of ownership in the normal course of providing their brokerage services.

(c) Do not maintain or deal from an inventory of investment items.

3. "Investment items" means commodities which possess the characteristics of those items commonly traded in internationally recognized markets.

4. "Local law enforcement agency" means the police department of an incorporated city or town or, in areas outside of incorporated cities and towns, the county sheriff.

5. "Person" means an individual, partnership, corporation, association or any other entity of whatever kind or nature.

6. "Precious item" means:

(a) Secondhand gold, silver, platinum or jewelry, flatware or holloware containing gold, silver or platinum.

(b) Secondhand precious or semiprecious stones whether mounted or unmounted.

(c) Secondhand pearls. Precious item does not include coins and unmounted gemstones accompanied by a certificate from an independent, internationally recognized gem grading laboratory.

7. "Purchase" means to buy, trade, exchange or receive a precious item.

8. "Secondhand" means that the precious item has previously been owned by someone other than the manufacturer or dealer whose business it is to sell such items to the public.

1 Sec. 43. Section 44-3101, Arizona Revised Statutes, is amended to
2 read:
3 44-3101. Definitions
4 In this chapter, unless the context otherwise requires:
5 1. "Closed-end company" means any management company other than an
6 open-end company or unit investment trust.
7 2. "Depository institution" means a bank, savings and loan association
8 or trust company whose business is supervised and regulated by an agency of
9 this state or the United States, or an employee, as defined in title 10,
10 chapter 1, of any such bank, savings and loan association or trust company
11 while acting within the scope of the employee's employment.
12 3. "Federal covered adviser" means an investment adviser registered
13 under the investment advisers act of 1940.
14 4. "IARD" means the investment adviser registration depository
15 operated by the national association of securities dealers.
16 5. "Investment adviser" means any person who, for compensation,
17 engages in the business of advising others, either directly or through
18 publications or writings, as to the value of securities or as to the
19 advisability of investing in, purchasing or selling securities or who, for
20 compensation and as a part of a regular business, issues or promulgates
21 analyses or reports concerning securities. Investment adviser includes
22 financial planners and other persons who, as an integral component of other
23 financially related services, provide the foregoing investment advisory
24 services to others for compensation and as part of a business or who hold
25 themselves out as providing the foregoing investment advisory services to
26 others for compensation. Investment adviser does not include:
27 (a) An investment adviser representative.
28 (b) A depository institution.
29 (c) A lawyer, law firm, certified public accountant or accounting firm
30 whose performance of the investment advisory services is solely incidental
31 to the practice of the person's profession or who does not do any of the
32 following:
33 (i) Exercise investment discretion with respect to the assets of
34 clients or maintain custody of the assets of clients for the purpose of
35 investing the assets, except if the person is acting in a bona fide fiduciary
36 capacity such as an executor, trustee, personal representative, estate or
37 trust agent, guardian or conservator.
38 (ii) Accept or receive directly or indirectly any commission, fee or
39 other remuneration contingent on the purchase or sale of any specific
40 security by a client of the person.
41 (iii) Give advice on the purchase or sale of specific securities other
42 than advice about specific securities that is based on financial statement
43 analysis or tax considerations that are reasonably related to and in
44 connection with the person's profession.

(d) A publisher, employee or columnist of any newspaper, news column, newsletter, news magazine or business or financial publication or service, whether communicated in hard copy form, by electronic means or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client.

(e) An insurance company or insurance producer that is licensed or authorized by the department of insurance to transact the business of insurance, including the sale of annuities, whose performance of the investment advisory services is solely incidental to the conduct of business as an insurance company or insurance producer and that receives no special compensation for providing investment advisory services.

(f) A real estate salesperson or real estate broker who is licensed or authorized by the state real estate department to transact the business of real estate, whose performance as an investment adviser is solely incidental to the conduct of the individual's business as a broker or salesman and who receives no special compensation for providing investment advisory services.

(g) Any officer, director, partner or employee of an entity engaged in selling interest in entities that invest in real property, including partnerships, corporations or sole proprietorships, if such transactions are otherwise subject to the securities laws of the United States or this state.

(h) Mortgage brokers or mortgage bankers who are licensed by the ~~state banking~~ department OF FINANCIAL INSTITUTIONS to transact the business of a mortgage broker or mortgage banker, and their employees, whose performance of any investment advisory service is solely incidental to the conduct of the business of a mortgage broker or mortgage banker and who receives no special compensation for providing investment advisory services.

6. "Investment adviser representative" means any partner, officer or director of an investment adviser, any individual who occupies a status or performs functions similar to a partner, officer or director of an investment adviser or any other individual who is employed by or associated with an investment adviser, except clerical or ministerial personnel, and who does any of the following:

(a) Makes any recommendations or otherwise renders advice regarding securities.

(b) Manages accounts or portfolios of clients.

(c) Determines which recommendation or advice regarding securities should be given to a client if the individual is a member of the investment adviser's investment committee that determines general investment advice to be given to clients or the individual determines general client advice if the investment adviser has no investment committee, except that if an investment adviser has more than five individuals who make recommendations or give advice, only the supervisors of those individuals are investment adviser representatives.

(d) Solicits, offers or negotiates for the sale of or sells investment advisory services.

(e) Directly supervises employees who perform any of the acts described in this paragraph.

7. "Investment advisers act of 1940" means the act of Congress known as the investment advisers act of 1940 (15 United States Code section 80b).

8. "Investment company" means any company that is registered under the investment company act of 1940.

9. "Investment company act of 1940" means the act of Congress known as the investment company act of 1940 (15 United States Code section 80a).

10. "Licensed investment adviser" means an investment adviser licensed under this chapter.

11. "Licensed investment adviser representative" means an investment adviser representative licensed under this chapter.

12. "Open-end company" means a management company that is offering for sale or has outstanding any redeemable security of which it is the issuer.

13. "Solely incidental to the practice of the person's profession" and "solely incidental to the conduct of the person's business" means that the person does not hold itself out to the public as a provider of investment advisory services, the investment advisory services are rendered in connection with and reasonably related to the professional services or business transactions being provided or consummated and the fee charged for the investment advisory services is based on the same factors used by the person to determine the fees for the person's professional or business services.

14. "Unit investment trust" means an investment company that is organized under a trust indenture, contract of custodianship or agency or similar instrument, that does not have a board of directors and that issues only redeemable securities, each of which represents an undivided interest in a unit of specified securities, but does not include a voting trust.

Sec. 44. Section 46-138.01, Arizona Revised Statutes, is amended to read:

46-138.01. <u>Public assistance and administration revolving fund</u>

A. There is created the permanent public assistance and administration revolving fund in the amount of four hundred thousand dollars for use of the state department for the purpose of disbursing:

1. Initial public assistance payments to those individuals and families newly certified as eligible for one or more public assistance programs contained in this title.

2. Refunds for federal food stamp coupons.

3. Replacements of lost or stolen state warrants or revolving fund payments.

4. Reimbursements for federal food stamp job search clients.

5. Immediate outlays for postage, C.O.D. packages, supplies, travel or other miscellaneous and minor items. No check shall be drawn against the

fund unless state or federal funds are available at the time for reimbursing the fund as provided for in subsection C.

B. The fund shall be deposited in a bank checking account in a bank ~~listed by the superintendent of banks as being qualified to be the state servicing bank for active deposits of state monies~~ and shall be secured by collateral in the same manner as are state monies. No check drawn against the fund shall be paid unless presented to the bank for payment within ninety days after the date on which it was issued which shall be stated on the face of each check.

C. The director of the department of administration from time to time at the request of the state department shall reimburse the fund for amounts paid for the purposes set forth in subsection A from state appropriated and federal funds respectively available for payment for such purposes. Such reimbursements shall be based upon checks drawn against the fund rather than checks paid by the bank.

D. The manner of accounting for the fund and all procedures relating to disbursement of money from the fund shall be subject to the approval of the department of administration.

Sec. 45. Section 46-300.03, Arizona Revised Statutes, is amended to read:

46-300.03. Individual development accounts; definition

A. A financial instrument known as an individual development account is established. An individual development account shall be in the name of an individual account holder who is a member of an assistance unit that is receiving cash assistance benefits.

B. Deposits to an individual development account may be made by:

1. The individual account holder.

2. A member of the individual account holder's assistance unit.

3. A nonprofit organization.

4. Individual contributors.

C. The department shall:

1. Adopt rules regarding:

(a) The establishment and administration of the individual development accounts. These rules shall include provisions which stipulate that the department may not qualify an assistance unit for benefits by prospectively budgeting the availability of an individual development account.

(b) The criteria a nonprofit organization must satisfy before making deposits to individual development accounts.

(c) Penalties for fraud or abuse with respect to the individual development account.

2. Not approve more than one individual development account per assistance unit.

3. Issue a request for proposals to financial institutions to establish and, together with the department, administer individual development accounts.

4. Not approve an individual development account for any recipient who has been found by either the department or a court of law to have committed any act of fraud or abuse with respect to any cash or in-kind benefit program including aid to families with dependent children, food stamps or medicaid.

5. Investigate all cases for possible fraud or abuse when there is evidence or other reason to believe that income sources for an account holder's deposits were previously available to the account holder but undeclared during application or subsequent redetermination for assistance, or that individual contributions to an account should have been declared as income or child support payments or represent proceeds from illegal activities.

D. The individual development accounts shall be administered by a financial institution that is licensed by the ~~state banking~~ department OF FINANCIAL INSTITUTIONS. These accounts shall earn interest at rates that are competitive with savings account rates.

E. The balance of an individual development account at any one time may not exceed nine thousand dollars. Total deposits to an individual development account over the life of the account shall not exceed twelve thousand dollars. Deposits from income earned by a member or members of an assistance unit may not exceed two hundred dollars per month.

F. The account holder whose assistance unit is receiving cash assistance benefits from the department may withdraw monies from his individual development account for:

1. Educational costs at an accredited institution of higher education that are paid directly to the institution.

2. Training costs for an accredited, licensed or certified training program that are paid directly to an eligible education institution.

3. Purchase costs for a first home to be used as a qualified principal residence by the account holder. These costs shall be paid directly to the persons or organizations to which the amounts are due.

4. Business capitalization expenses paid directly to a business capitalization account, which is held in a federally insured financial institution. The business capitalization account shall be restricted to use solely for qualified business capitalization expenses.

G. Unless the monies would have been otherwise disregarded from an income calculation, the department shall consider withdrawals from an individual development account, for purposes other than those established in subsection F, by an account holder whose assistance unit is receiving cash assistance or both cash assistance and food stamp program benefits, as income to the assistance unit in the month that it is withdrawn.

H. The department shall disregard from an assistance unit's earned income calculation fifty per cent of a deposit made to an individual development account from the proceeds of an account holder's or assistance unit member's earned income. The maximum monthly disregard under this subsection shall not exceed one hundred dollars.

I. Subject to the limitations prescribed in this section, deposits made into an individual development account and the account balance, including interest earned, shall be disregarded by the department in determining the account holder's and the assistance unit's eligibility for the cash assistance and food stamp programs as well as any other assistance or services in which eligibility for receipt is directly linked to eligibility for cash assistance and food stamp programs. If an assistance unit with an individual development account experiences any break in eligibility for cash assistance, and then subsequently reapplies for either cash assistance or food stamp program benefits, the department shall consider any remaining account monies, unless otherwise excludable, as countable assets and shall not disregard, for purposes of eligibility in either program, future deposits into an individual development account.

J. The account holder shall name contingent beneficiaries at the time he establishes the account and may change beneficiaries at any time after the account is established. If the named beneficiary is deceased or otherwise cannot accept the transfer, the monies shall be deemed unclaimed property.

K. A holder of an individual development account whose assistance unit is no longer receiving cash assistance benefits from the department may withdraw his deposited monies from his account for any purpose. The account holder is responsible to abide by any regulations or guidelines regarding the use of any monies contained in the account which are from a nonprofit or governmental organization.

L. For THE purposes of this section "department" means the department of economic security.

M. The legislature intends by this section to address the problem faced by many assistance beneficiaries of being unable to either achieve educational goals or accumulate resources during a stay on welfare due to the effects of financial eligibility criteria. The inability to meet educational goals or accumulate some financial resources is a significant reason why many beneficiaries do not permanently transition off of welfare programs and instead shuttle back and forth between periods of eligibility and ineligibility. The purpose of the individual development accounts is to provide an additional tool to assistance beneficiaries to use during and after a stay on welfare, in order to help facilitate a permanent transition off of welfare programs and into self-sufficiency.

Sec. 46. Section 48-101, Arizona Revised Statutes, is amended to read:

48-101. State certification board

A. The state certification board shall consist of the attorney general, the director of water resources and the superintendent of ~~banks~~ FINANCIAL INSTITUTIONS.

B. The board shall elect one of its members chairman, and appoint a secretary who shall keep the records and minutes of the board. One or more members of the board shall from time to time, as may be required, designate from his or their regularly employed personnel the secretary and such clerks

and assistants as are necessary to perform the duties of the board but without extra compensation.

Sec. 47. Section 48-3204, Arizona Revised Statutes, is amended to read:

48-3204. Issuance of certificate; form

A. When any bond of a district, including any bond authorized but not sold, which is eligible for certification by the director of the department of administration as provided by section 48-3202 is presented to the director of the department of administration, he shall attach a certificate to the bond in substantially the following form:

Phoenix, Arizona

_____
(insert date)

I, _____ director of the department of administration of the state of Arizona, do hereby certify that the within bond, number _____, of series number _____ of the _____ district, issued _____ (insert date), is, in accordance with an act of the legislature of the state of Arizona, approved _____ (insert date), a legal investment for the funds of savings banks in the state of Arizona, and may be deposited to secure public monies, it being entitled to such privilege by virtue of an examination by the director of water resources, the attorney general and the superintendent of ~~banks~~ FINANCIAL INSTITUTIONS of the state of Arizona in pursuance of said act.

_____
Director of the department of
administration of the state
of Arizona.

B. A facsimile of the signature of the director of the department of administration impressed upon the certificate shall be a sufficient signing thereof, provided that the imprint of the seal of the director of the department of administration shall appear upon both the certificate and the bond over the facsimile signature.

Sec. 48. Delayed effective date

This act is effective from and after December 31, 2005.

APPROVED BY THE GOVERNOR MAY 4, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 4, 2004.