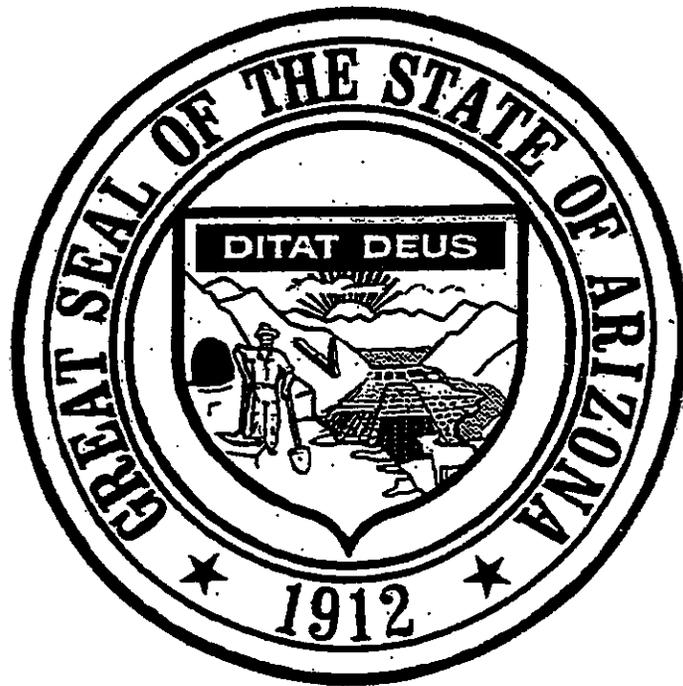


# 2022 BLENDS



Arizona Legislative Council



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August 16, 2022

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Pursuant to authority of section 41-1304.03, Arizona Revised Statutes, the attached sections are presented as blends of multiple amendment activity that occurred in the Fifty-fifth Legislature, Second Regular Session.

For each blend, the publisher will be instructed to indicate in the source note each of the Laws 2022 chapter versions and to include a reviser's note to explain the blend.

Unless otherwise noted, the effective date of each of the following blends is September 24, 2022.

The following blend sections are included:

- |               |   |
|---------------|---|
| 1. 4-210      | Chs. 59 and 282                                     |
| 2. 4-244      | Chs. 146 and 282                                    |
| 3. 6-903      | Chs. 45, 59 and 172                                 |
| 4. 6-943      | Chs. 45 and 59                                      |
| 5. 8-221      | Chs. 5 and 6  |
| 6. 8-872      | Chs. 5 and 30                                       |
| 7. 11-594     | Chs. 82 and 257                                     |
| 8. 13-705     | Chs. 197 and 245                                    |
| 9. 13-1204    | Chs. 8 and 190                                      |
| 10. 13-3560   | Chs. 197 and 245                                    |
| 11. 15-102    | Chs. 200 and 205                                    |
| 12. 15-341    | Chs. 8 and 237                                      |
| 13. 15-501.01 | Chs. 120 and 337                                    |
| 14. 15-701.01 | Chs. 60 and 303                                     |
| 15. 15-945    | Chs. 290 and 317                                    |
| 16. 15-951    | Chs. 168 and 285                                    |
| 17. 15-972    | Chs. 300 and 341 ( <i>Conditionally Effective</i> ) |
| 18. 16-165    | Chs. 99, 270 and 370                                |
| 19. 16-411    | Chs. 271 and 277                                    |
| 20. 16-544    | Chs. 270 and 277                                    |
| 21. 28-2351   | Chs. 28, 29, 75, 110, 127, 143, 193, 248 and 294    |

22.	28-2403	Chs. 28, 29, 110, 127, 143, 193, 248 and 294
23.	28-3053	Chs. 290 and 347
24.	28-3228	Chs. 59 and 290
25.	28-6501	Chs. 28, 29, 110, 127, 143, 193, 248 and 294
26.	28-6991	Chs. 28, 29, 110, 127, 143, 193, 248 and 294
27.	28-6993	Chs. 28, 29, 110, 127, 143, 193, 248 and 294
28.	28-8335	Chs. 264 and 321
29.	31-412	Chs. 197 and 245
30.	32-1234	Chs. 59 and 135
31.	32-1296	Chs. 59 and 135
32.	32-1901	Chs. 98 and 362
33.	32-1901.01	Chs. 59 and 362
34.	32-2101	Chs. 126 and 298
35.	32-2124	Chs. 59 and 298
36.	32-2153	Chs. 59 and 126
37.	32-4222	Chs. 59 and 281
38.	33-1261	Chs. 125 and 272
39.	33-1808	Chs. 125 and 272
40.	36-422	Chs. 34 and 128
41.	36-446.04	Chs. 15 and 59
42.	36-501	Chs. 250 and 299
43.	36-524	Chs. 250 and 299
44.	36-533	Chs. 250 and 299
45.	36-1606	Chs. 18 and 372
46.	36-2907	Chs. 314 and 328
47.	38-737	Chs. 145 and 324
48.	38-848	Chs. 72 and 73
	(L21, Ch. 34, sec. 4 & Ch. 251, sec. 2)	
49.	38-1106	Chs. 139 and 175
50.	38-1110	Chs. 175 and 378
51.	41-619.51	Chs. 23, 55 and 281 ( <i>Effective 1/1/23</i> )
52.	41-621	Chs. 239 and 308
53.	41-622	Chs. 239 and 308
54.	41-1005	Chs. 276 and 292
55.	41-1304.05	Chs. 345 and 357
56.	41-1604.11	Chs. 197 and 245
57.	41-1604.13	Chs. 197 and 245
58.	41-1750	Chs. 163 and 186 ( <i>Effective 1/1/23</i> )
59.	41-1758	Chs. 23, 55 and 281 ( <i>Effective 1/1/23</i> )
60.	41-1758.01	Chs. 23, 55 and 281 ( <i>Effective 1/1/23</i> )
61.	41-2501	Chs. 31 and 238
62.	41-4025	Chs. 55 and 59
63.	41-4254	Chs. 44 and 50
64.	41-5605	Chs. 187 and 236
65.	42-2003	Chs. 235 and 387

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|-----|---|--|
| 66. | 42-5061<br>(L21, Ch. 266, sec. 3,<br>Ch. 412, sec. 7, Ch. 417,<br>sec. 4 & Ch. 443, sec. 2) | Chs. 43 and 321  |
| 67. | 42-5061<br>(L21, Ch. 266, sec. 4,<br>Ch. 412, sec. 8, Ch. 417,<br>sec. 5 & Ch. 443, sec. 3) | Chs. 43 and 321 ( <i>Conditionally Effective</i> )       |
| 68. | 42-5075   | Chs. 235 and 321   |
| 69. | 42-6004<br>(L21, Ch. 417, sec. 10)  | Chs. 43 and 321  |
| 70. | 42-6004<br>(L21, Ch. 417, sec. 11)  | Chs. 43 and 321 ( <i>Conditionally Effective</i> )       |
| 71. | 42-11152  | Chs. 228 and 261   |
| 72. | 42-11152  | Chs. 228, 261 and 341 ( <i>Conditionally Effective</i> ) |
| 73. | 43-222  | Chs. 235 and 387   |
| 74. | 43-1014   | Chs. 235 and 321   |
| 75. | 43-1021   | Chs. 235 and 387   |
| 76. | 43-1022   | Chs. 235 and 369 ( <i>Effective 1/1/23</i> )             |
| 77. | 43-1121   | Chs. 235 and 387   |
| 78. | 49-210  | Chs. 177, 204 and 312                                    |

EXPLANATION OF BLEND  
SECTION 4-210

Laws 2022, Chapters 59 and 282

Laws 2022, Ch. 59, section 4

Effective September 24, 2022

Laws 2022, Ch. 282, section 7

Effective September 24, 2022

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 59 and Ch. 282 text changes to section 4-210 are blended in the form shown on the following pages.

BLEND OF SECTION 4-210  
Laws 2022, Chapters 59 and 282

4-210. Grounds for revocation, suspension and refusal to renew;  
notice; complaints; hearings; defense

A. After notice and hearing, the director may suspend, revoke or refuse to renew any license, registration, lease or permit issued pursuant to this chapter for any of the following reasons:

1. There occurs on the licensed premises repeated acts of violence.

2. The licensee, registrant, lessee or permittee fails to satisfactorily maintain the capability, qualifications and reliability requirements of an applicant for a license, registration, lease or permit prescribed in section 4-202, 4-203, 4-203.06, 4-203.07 or 4-205.13.

3. The licensee, registrant, lessee, permittee or controlling person knowingly files with the department an application or other document that contains material information that is false or misleading or while under oath knowingly gives testimony in an investigation or other proceeding under this title that is false or misleading.

4. The licensee, registrant, lessee, permittee or controlling person is on the premises habitually intoxicated.

5. The licensed, registered, leased or permitted business is delinquent for more than one hundred twenty days in the ~~payment of~~ PAYING taxes, penalties or interest in an amount that exceeds \$250 to this state or to any political subdivision of this state.

6. The licensee or controlling person obtains, assigns, transfers or sells a spirituous liquor license without ~~compliance~~ COMPLYING with this title or leases or subleases a license.

7. The licensee, registrant, lessee or permittee fails to keep for two years and make available to the department on reasonable request all invoices, records, bills or other papers and documents relating to the purchase, sale and delivery of spirituous liquors and, in the case of a restaurant or hotel-motel licensee, all invoices, records, bills or other papers and documents relating to the purchase, sale and delivery of food.

8. The licensee, registrant, lessee, permittee or controlling person is convicted of a felony<sup>[.]</sup> provided that for a conviction of a corporation to serve as a reason for any action by the director, conduct that constitutes the corporate offense and was the basis for the felony conviction must have been engaged in, authorized, solicited, commanded or recklessly tolerated by the directors of the corporation or by a high managerial agent acting within the scope of employment.

9. The licensee, registrant, lessee, permittee or controlling person violates or fails to comply with this title, any rule adopted pursuant to this title or any liquor law of this state or any other state.

10. The licensee, registrant, lessee or permittee fails to take reasonable steps to protect the safety of a customer of the licensee,

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registrant, lessee or permittee or any other person entering, leaving or remaining on the licensed premises when the licensee knew or reasonably should have known of the danger to the person, or the licensee fails to take reasonable steps to intervene by notifying law enforcement officials or otherwise to prevent or break up an act of violence occurring on the licensed premises or immediately adjacent to the premises when the licensee knew or reasonably should have known of the acts of violence. THE DUTY TO PROTECT A CUSTOMER OR OTHER PERSON ON THE LICENSED PREMISES DOES NOT LIMIT THE LICENSEE FROM USING, AS NECESSARY, REASONABLE INTERVENTION, REASONABLE RESTRAINT OR REASONABLE REMOVAL OF A PERSON FROM THE PREMISES TO PREVENT THAT PERSON FROM INJURING OTHER PERSONS ON THE PREMISES OR DAMAGING OR DISRUPTING THE PREMISES.

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~~11. The licensee, registrant, lessee, permittee or controlling person lacks good moral character.~~

~~12.~~ 11. The licensee, registrant, lessee, permittee or controlling person knowingly associates with a person who has engaged in racketeering, as defined in section 13-2301, or who has been convicted of a felony, and the association is of a nature as to create a reasonable risk that the licensee, registrant, lessee or permittee will fail to conform to the requirements of this title or of any criminal statute of this state.

~~13.~~ 12. A licensee that is a liquor store as defined in section 46-297 violates the restrictions on use of automatic teller machines or point-of-sale terminals regarding electronic benefit transfer cards prescribed in section 4-242.01.

~~14.~~ 13. There occurs on the licensed premises a serious act of violence. For the purposes of this paragraph, "serious act of violence" means an act of violence in which a serious injury causes the death or critical injury of a person and the injuries would be obvious to a reasonable person.

~~15.~~ 14. The licensee fails to report a serious act of violence that occurs on the licensed premises. For the purposes of this paragraph, "serious act of violence" means an act of violence in which a serious injury causes THE death or critical injury of a person and the injuries would be obvious to a reasonable person.

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~~16.~~ 15. The licensee, registrant, lessee or permittee violates an order of the board.

B. For the purposes of:

1. Subsection A, paragraph 8 of this section, "high managerial agent" means an officer of a corporation or any other agent of the corporation in a position of comparable authority with respect to the formulation of corporate policy.

2. Subsection A, paragraphs 9 and 10 of this section, acts or omissions of an employee of a licensee that violate this title or rules adopted pursuant to this title are deemed to be acts or omissions of the licensee. Acts or omissions by an employee or licensee committed during the time the licensed premises were operated pursuant to an interim permit or without a license may be charged as if they had been committed during the period the premises were duly licensed.

C. The director may suspend, revoke or refuse to issue, transfer or renew a license, registration, lease or permit under this section based

solely on the unrelated conduct or fitness of any officer, director, managing agent or other controlling person if the controlling person retains any interest in or control of the licensee, registrant, lessee or permittee after sixty days following written notice to the licensee, registrant, lessee or permittee. If the controlling person holds stock in a corporate licensee, registrant, lessee or permittee or is a partner in a partnership licensee, registrant, lessee or permittee, the controlling person may only divest himself of the controlling person's interest by transferring the interest to the existing stockholders or partners who must demonstrate to the department that they meet all the requirements for licensure, registration, leasing or permitting. For the purposes of this subsection, the conduct or fitness of a controlling person is unrelated if it would not be attributable to the licensee, registrant, lessee or permittee.

D. If the director finds, based on clear and convincing evidence in the record, that a violation involves the use by the licensee, registrant, lessee or permittee of a drive-through or walk-up service window or other physical feature of the licensed premises that allows a customer to purchase spirituous liquor without leaving the customer's vehicle or, with respect to a walk-up service window that prevents the licensee, registrant, lessee or permittee from fully observing the customer, and that the use of that drive-through or walk-up service window or other physical feature caused the violation, the director may suspend or terminate the licensee's, registrant's, lessee's or permittee's use of the drive-through or walk-up service window or other physical feature for the sale of spirituous liquor, in addition to any other sanction.

E. The director may refuse to transfer any license, registration, lease or permit or issue a new license, registration, lease or permit at the same location if the director has filed a complaint against the license, registration, lease, permit or location that has not been resolved alleging a violation of any of the grounds stated in subsection A of this section until the time the complaint has been finally adjudicated.

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F. The director shall receive all complaints of alleged violations of this chapter and is responsible for the investigation of INVESTIGATING all allegations of a violation of, or noncompliance with, this title, any rule adopted pursuant to this title or any condition imposed on the licensee, registrant, lessee or permittee by the license, registration, lease or permit. When the director receives three complaints from any law enforcement agency resulting from three separate incidents at a licensed, leased or permitted establishment or by a registrant within a twelve-month period, the director shall transmit a written report to the board setting forth the complaints, the results of any investigation conducted by the law enforcement agency or the department relating to the complaints and a history of all prior complaints against the license, registration, lease or permit and their disposition. The board shall review the report and may direct the director to conduct further investigation of a complaint or to serve a licensee, registrant, lessee or permittee with a complaint and notice of a hearing pursuant to subsection G of this section.

G. On the director's initiation of an investigation or on the receipt of a complaint and an investigation of the complaint as deemed necessary, the director may cause a complaint and notice of a hearing to be directed

to the licensee, registrant, lessee or permittee that states the violations alleged against the licensee, registrant, lessee or permittee and directing the licensee, registrant, lessee or permittee, within fifteen days after service of the complaint and notice of a hearing, to appear by filing with the director an answer to the complaint. Failure of the licensee, registrant, lessee or permittee to answer may be deemed an admission by the licensee, registrant, lessee or permittee of commission of the act charged in the complaint. The director may then vacate the hearing and impose any sanction provided by this article. The director may waive any sanction for good cause shown, including excusable neglect. With respect to any violation of this title or any rule adopted pursuant to this title that is based on the act or omission of a licensee's, registrant's, lessee's or permittee's employee, the director shall consider evidence of mitigation presented by the licensee, registrant, lessee or permittee and established by a preponderance of the evidence that the employee acted intentionally and in violation of the express direction or policy adopted by the licensee, registrant, lessee or permittee and communicated to the employee and that the employee successfully completed training in a course approved by the director pursuant to section 4-112, subsection G, paragraph 2. The director may set the hearing before the director or an administrative law judge on any of the grounds stated in subsection A of this section. Instead of issuing a complaint, the director may provide for informal disposition of the matter by consent agreement or may issue a written warning to the licensee, registrant, lessee or permittee. If a warning is issued, the licensee, registrant, lessee or permittee may reply in writing and the director shall keep a record of the warning and the reply.

H. A hearing shall conform to the requirements of title 41, chapter 6, article 10. At the hearing an attorney or corporate officer or employee of a corporation may represent the corporation. The revoking, suspending or refusing to renew a license, registration, lease or permit for unpaid taxes, penalties or interest pursuant to subsection A, paragraph 5 of this section is a contested case with the department of revenue pursuant to section 42-1251.01.

I. The expiration, cancellation, revocation, reversion, surrender, acceptance of surrender or termination in any other manner of a license, registration, lease or permit does not prevent the initiation or completion of a disciplinary proceeding pursuant to this section against the licensee, registrant, lessee or permittee or license, registration, lease or permit. An order issued pursuant to a disciplinary proceeding against a license, registration, lease or permit is enforceable against other licenses, registrations, leases or permits or subsequent licenses, registrations, leases or permits in which the licensee, registrant, lessee, permittee or controlling person of the license, registration, lease or permit has a controlling interest.

J. The department shall provide the same notice as is provided to the licensee, registrant, lessee or permittee to a lienholder, which has provided a document under section 4-112, subsection B, paragraph 3, of all disciplinary or compliance action with respect to a license, registration, lease or permit issued pursuant to this title. The state is not liable for damages for any failure to provide any notice pursuant to this subsection.

K. In any disciplinary action pursuant to this title, a lienholder may participate in the determination of the action. The director shall consider mitigation on behalf of the lienholder if the lienholder proves all of the following by a preponderance of the evidence:

1. That the lienholder's interest is a bona fide security interest. For the purposes of this paragraph, "bona fide security interest" means the lienholder provides actual consideration to the licensee, registrant, lessee or permittee or the licensee's, registrant's, lessee's or permittee's predecessor in interest in exchange for the lienholder's interest. Bona fide security interest includes a lien taken by the seller of a license, registration, lease or permit as security for the seller's receipt of all or part of the purchase price of the license, registration, lease or permit.

2. That a statement of legal or equitable interest was filed with the department before the alleged conduct occurred that is the basis for the action against the license, registration, lease or permit.

3. That the lienholder took reasonable steps to correct the licensee's, registrant's, lessee's or permittee's prior actions, if any, or initiated an action pursuant to available contract rights against the licensee, registrant, lessee or permittee for the forfeiture of the license, registration, lease or permit after being provided with notice by the department of disciplinary action as provided in subsection J of this section.

4. That the lienholder was free of responsibility for the conduct that is the basis for the proposed revocation.

5. That the lienholder reasonably attempted to remain informed by the licensee, registrant, lessee or permittee about the business's conduct.

L. If the director decides not to revoke the license, registration, lease or permit based on the circumstances provided in subsection K of this section, the director may issue an order requiring either, or both, of the following:

1. The forfeiture of all interest of the licensee, registrant, lessee or permittee in the license, registration, lease or permit.

2. The lienholder to pay any civil monetary penalty imposed on the licensee, registrant, lessee or permittee.

M. If any on-sale licensee proposes to provide large capacity entertainment events or sporting events with an attendance capacity exceeding a limit established by the director, the director may request a security plan from the licensee that may include trained security officers, lighting and other requirements. This subsection exclusively prescribes the security requirements for a licensee and does not create any civil liability for this state, its agencies, agents or employees or a person licensed under this title or agents or employees of a licensee.

N. The director may consider as a mitigating factor or defense to a complaint against a licensee for a violation of subsection A, paragraph 10 or ~~14~~ 13 of this section that the licensee acted reasonably, responsibly and as expeditiously as possible by asking for intervention by a peace officer to prevent or to break up a riot, a fight, an altercation or tumultuous conduct.

EXPLANATION OF BLEND  
SECTION 4-244

Laws 2022, Chapters 146 and 282

Laws 2022, Ch. 146, section 1

Effective September 24, 2022

Laws 2022, Ch. 282, section 11

Effective September 24, 2022

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 146 and Ch. 282 text changes to section 4-244 are blended in the form shown on the following pages.

BLEND OF SECTION 4-244  
Laws 2022, Chapters 146 and 282

4-244. Unlawful acts; definition

It is unlawful:

1. For a person to buy for resale, sell or deal in spirituous liquors in this state without first having procured a license duly issued by the board, except that the director may issue a temporary permit of any series pursuant to section 4-205.05 to a trustee in bankruptcy to acquire and dispose of the spirituous liquor of a debtor.

2. For a person to sell or deal in alcohol for beverage purposes without first complying with this title.

3. For a distiller, vintner, brewer or wholesaler knowingly to sell, dispose of or give spirituous liquor to any person other than a licensee except in sampling wares as may be necessary in the ordinary course of business, except in donating spirituous liquor to a nonprofit organization that has obtained a special event license for the purpose of charitable fundraising activities or except in donating spirituous liquor with a cost to the distiller, brewer or wholesaler of up to \$500 in a calendar year to an organization that is exempt from federal income taxes under section 501(c) (3), (4), (6) or (7) of the internal revenue code and not licensed under this title.

4. For a distiller, vintner or brewer to require a wholesaler to offer or grant a discount to a retailer, unless the discount has also been offered and granted to the wholesaler by the distiller, vintner or brewer.

5. For a distiller, vintner or brewer to use a vehicle for trucking ~~or transportation of~~ TRANSPORTING spirituous liquors unless there is affixed to both sides of the vehicle a sign showing the name and address of the licensee and the type and number of the person's license in letters not less than three and one-half inches in height.

6. For a person to take or solicit orders for spirituous liquors unless the person is a salesman or solicitor of a licensed wholesaler, a salesman or solicitor of a distiller, brewer, vintner, importer or broker or a registered retail agent.

7. For any retail licensee to purchase spirituous liquors from any person other than a solicitor or salesman of a wholesaler licensed in this state.

8. For a retailer to acquire an interest in property owned, occupied or used by a wholesaler in the wholesaler's business, or in a license with respect to the premises of the wholesaler.

9. Except as provided in paragraphs 10 and 11 of this section, for a licensee or other person to sell, furnish, dispose of or give, or cause to be sold, furnished, disposed of or given, to a person under the legal drinking age or for a person under the legal drinking age to buy, receive, have in the person's possession or consume spirituous liquor. This

paragraph does not prohibit the employment by an off-sale retailer of persons who are at least sixteen years of age to check out, if supervised by a person on the premises who is at least eighteen years of age, package or carry merchandise, including spirituous liquor, in unbroken packages, for the convenience of the customer of the employer, if the employer sells primarily merchandise other than spirituous liquor.

10. For a licensee to employ a person under eighteen years of age to manufacture, sell or dispose of spirituous liquors. This paragraph does not prohibit the employment by an off-sale retailer of persons who are at least sixteen years of age to check out, if supervised by a person on the premises who is at least eighteen years of age, package or carry merchandise, including spirituous liquor, in unbroken packages, for the convenience of the customer of the employer, if the employer sells primarily merchandise other than spirituous liquor.

11. For an on-sale retailer to employ a person under eighteen years of age in any capacity connected with the handling of spirituous liquors. This paragraph does not prohibit the employment by an on-sale retailer of a person under eighteen years of age who cleans up the tables on the premises for reuse, removes dirty dishes, keeps a ready supply of needed items and helps clean up the premises.

12. For a licensee, when engaged in waiting on or serving customers, to consume spirituous liquor or for a licensee or on-duty employee to be on or about the licensed premises while in an intoxicated or disorderly condition.

13. For an employee of a retail licensee, during that employee's working hours or in connection with such employment, to give to or purchase for any other person, accept a gift of, purchase for the employee or consume spirituous liquor, except that:

(a) An employee of a licensee, during that employee's working hours or in connection with the employment, while the employee is not engaged in waiting on or serving customers, may give spirituous liquor to or purchase spirituous liquor for any other person.

(b) An employee of an on-sale retail licensee, during that employee's working hours or in connection with the employment, while the employee is not engaged in waiting on or serving customers, may taste samples of beer or wine of not more than four ounces per day or distilled spirits of not more than two ounces per day provided by an employee of a wholesaler or distributor who is present at the time of the sampling.

(c) An employee of an on-sale retail licensee, under the supervision of a manager as part of the employee's training and education, while not engaged in waiting on or serving customers may taste samples of distilled spirits of not more than two ounces per educational session or beer or wine of not more than four ounces per educational session, and provided that a licensee does not have more than two educational sessions in any thirty-day period.

(d) An unpaid volunteer who is a bona fide member of a club and who is not engaged in waiting on or serving spirituous liquor to customers may purchase for himself and consume spirituous liquor while participating in a scheduled event at the club. An unpaid participant in a food competition

may purchase for himself and consume spirituous liquor while participating in the food competition.

(e) An unpaid volunteer of a special event licensee under section 4-203.02 may purchase and consume spirituous liquor while not engaged in waiting on or serving spirituous liquor to customers at the special event. This subdivision does not apply to an unpaid volunteer whose responsibilities include verification of a person's legal drinking age, security or the operation of any vehicle or heavy machinery.

(f) A representative of a producer or wholesaler participating at a special event under section 4-203.02 may consume small amounts of the products of the producer or wholesaler on the premises of the special event for the purpose of quality control.

14. For a licensee or other person to serve, sell or furnish spirituous liquor to a disorderly or obviously intoxicated person, or for a licensee or employee of the licensee to allow a disorderly or obviously intoxicated person to come into or remain on or about the premises, except that a licensee or an employee of the licensee may allow an obviously intoxicated person to remain on the premises for not more than thirty minutes after the state of obvious intoxication is known or should be known to the licensee for a nonintoxicated person to transport the obviously intoxicated person from the premises. For the purposes of this section, "obviously intoxicated" means inebriated to the extent that a person's physical faculties are substantially impaired and the impairment is shown by significantly uncoordinated physical action or significant physical dysfunction that would have been obvious to a reasonable person.

15. For an on-sale or off-sale retailer or an employee of such retailer or an alcohol delivery contractor to sell, dispose of, deliver or give spirituous liquor to a person between the hours of 2:00 a.m. and 6:00 a.m., except that:

(a) A retailer with off-sale privileges may receive and process orders, accept payment or package, load or otherwise prepare spirituous liquor for delivery at any time, if the actual deliveries to customers are made between the hours of 6:00 a.m. and 2:00 a.m., at which time section 4-241, subsections A and K apply.

(b) THE GOVERNOR, IN CONSULTATION WITH THE GOVERNOR'S OFFICE OF HIGHWAY SAFETY AND THE PUBLIC SAFETY COMMUNITY IN THIS STATE, MAY ISSUE AN EXECUTIVE ORDER THAT EXTENDS THE CLOSING TIME UNTIL 3:00 A.M. FOR SPIRITUOUS LIQUOR SALES IN CONNECTION WITH A PROFESSIONAL OR COLLEGIATE NATIONAL SPORTING CHAMPIONSHIP EVENT HELD IN THIS STATE.

16. For a licensee or employee to knowingly allow any person on or about the licensed premises to give or furnish any spirituous liquor to any person under twenty-one years of age or knowingly allow any person under twenty-one years of age to have in the person's possession spirituous liquor on the licensed premises.

17. For an on-sale retailer or an employee of such retailer to allow a person to consume or possess spirituous liquors on the premises between the hours of 2:30 a.m. and 6:00 a.m., EXCEPT THAT IF THE GOVERNOR EXTENDS THE CLOSING TIME FOR A DAY FOR SPIRITUOUS LIQUOR SALES PURSUANT TO PARAGRAPH 15 OF THIS SECTION IT IS UNLAWFUL FOR AN ON-SALE RETAILER OR AN EMPLOYEE OF

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SUCH RETAILER ON THAT DAY TO ALLOW A PERSON TO CONSUME OR POSSESS SPIRITUOUS LIQUOR ON THE PREMISES BETWEEN THE HOURS OF 3:30 A.M. AND 6:00 A.M.

18. For an on-sale retailer to allow an employee or for an employee to solicit or encourage others, directly or indirectly, to buy the employee drinks or anything of value in the licensed premises during the employee's working hours. An on-sale retailer shall not serve employees or allow a patron of the establishment to give spirituous liquor to, purchase liquor for or drink liquor with any employee during the employee's working hours.

19. For an off-sale retailer or employee to sell spirituous liquor except in the original unbroken container, to allow spirituous liquor to be consumed on the premises or to knowingly allow spirituous liquor to be consumed on adjacent property under the licensee's exclusive control.

20. For a person to consume spirituous liquor in a public place, thoroughfare or gathering. The license of a licensee allowing a violation of this paragraph on the premises shall be subject to revocation. This paragraph does not apply to the sale of spirituous liquors on the premises of and by an on-sale retailer. This paragraph also does not apply to a person consuming beer or wine from a broken package in a public recreation area or on private property with permission of the owner or lessor or on the walkways surrounding such private property or to a person consuming beer or wine from a broken package in a public recreation area as part of a special event or festival that is conducted under a license secured pursuant to section 4-203.02 or 4-203.03.

21. For a person to ~~have possession of~~ POSSESS or to transport spirituous liquor that is manufactured in a distillery, winery, brewery or rectifying plant contrary to the laws of the United States and this state. Any property used in transporting such spirituous liquor shall be forfeited to the state and shall be seized and disposed of as provided in section 4-221.

22. For an on-sale retailer or employee to allow a person under the legal drinking age to remain in an area on the licensed premises during those hours in which its primary use is the sale, dispensing or consumption of alcoholic beverages after the licensee, or the licensee's employees, know or should have known that the person is under the legal drinking age. An on-sale retailer may designate an area of the licensed premises as an area in which spirituous liquor will not be sold or consumed for the purpose of allowing underage persons on the premises if the designated area is separated by a physical barrier and at no time will underage persons have access to the area in which spirituous liquor is sold or consumed. A licensee or an employee of a licensee may require a person who intends to enter a licensed premises or a portion of a licensed premises where persons under the legal drinking age are prohibited under this section to exhibit an instrument of identification that is acceptable under section 4-241 as a condition of entry or may use a biometric identity verification device to determine the person's age as a condition of entry. The director, or a municipality, may adopt rules to regulate the presence of underage persons on licensed premises provided the rules adopted by a municipality are more stringent than those adopted by the director. The rules adopted by the municipality shall be

adopted by local ordinance and shall not interfere with the licensee's ability to comply with this paragraph. This paragraph does not apply:

(a) If the person under the legal drinking age is accompanied by a spouse, parent, grandparent or legal guardian of legal drinking age or is an on-duty employee of the licensee.

(b) If the owner, lessee or occupant of the premises is a club as defined in section 4-101, paragraph 8, subdivision (a) and the person under the legal drinking age is any of the following:

(i) An active duty military service member.

(ii) A veteran.

(iii) A member of the United States army national guard or the United States air national guard.

(iv) A member of the United States military reserve forces.

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(c) To the area of the premises used primarily for the serving of food during the hours when food is served.

23. For an on-sale retailer or employee to conduct drinking contests, to sell or deliver to a person an unlimited number of spirituous liquor beverages during any set period of time for a fixed price, to deliver more than fifty ounces of beer, one liter of wine or four ounces of distilled spirits in any spirituous liquor drink to one person at one time for that person's consumption or to advertise any practice prohibited by this paragraph. The provisions of This paragraph ~~do~~ DOES not prohibit an on-sale retailer or employee from selling and delivering an opened, original container of distilled spirits if:

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(a) Service or pouring of the spirituous liquor is provided by an employee of the on-sale retailer. A licensee shall not be charged for a violation of this ~~subdivision~~ PARAGRAPH if a customer, without the knowledge of the retailer, removes or tampers with the A locking device on a bottle delivered to the customer for bottle service and the customer pours the customer's own drink from the bottle, if when the licensee becomes aware of the removal or tampering of the locking device the licensee immediately installs a functioning locking device on the bottle or removes the bottle and lock from bottle service.

(b) The employee of the on-sale retailer monitors consumption to ensure compliance with this paragraph. Locking devices may be used, but are not required.

24. For a licensee or employee to knowingly allow the unlawful possession, use, sale or offer for sale of narcotics, dangerous drugs or marijuana on the premises. For the purposes of this paragraph, "dangerous drug" has the same meaning prescribed in section 13-3401.

25. For a licensee or employee to knowingly allow prostitution or the solicitation of prostitution on the premises.

26. For a licensee or employee to knowingly allow unlawful gambling on the premises.

27. For a licensee or employee to knowingly allow trafficking or attempted trafficking in stolen property on the premises.

28. For a licensee or employee to fail or refuse to make the premises or records available for inspection and examination as provided in this title or to comply with a lawful subpoena issued under this title.

29. For any person other than a peace officer while on duty or off duty or a member of a sheriff's volunteer posse while on duty who has received firearms training that is approved by the Arizona peace officer standards and training board, a retired peace officer as defined in section 38-1113 or an honorably retired law enforcement officer who has been issued a certificate of firearms proficiency pursuant to section 13-3112, subsection T, the licensee or an employee of the licensee acting with the permission of the licensee to be in possession of a firearm while on the licensed premises of an on-sale retailer. This paragraph does not include a situation in which a person is on licensed premises for a limited time in order to seek emergency aid and such person does not buy, receive, consume or possess spirituous liquor. This paragraph does not apply to:

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(a) Hotel or motel guest room accommodations.

(b) ~~The exhibition~~ EXHIBITING or ~~display~~ of DISPLAYING a firearm in conjunction with a meeting, show, class or similar event.

(c) A person with a permit issued pursuant to section 13-3112 who carries a concealed handgun on the licensed premises of any on-sale retailer that has not posted a notice pursuant to section 4-229.

30. For a licensee or employee to knowingly allow a person in possession of a firearm other than a peace officer while on duty or off duty or a member of a sheriff's volunteer posse while on duty who has received firearms training that is approved by the Arizona peace officer standards and training board, a retired peace officer as defined in section 38-1113 or an honorably retired law enforcement officer who has been issued a certificate of firearms proficiency pursuant to section 13-3112, subsection T, the licensee or an employee of the licensee acting with the permission of the licensee to remain on the licensed premises or to serve, sell or furnish spirituous liquor to a person in possession of a firearm while on the licensed premises of an on-sale retailer. It is a defense to action under this paragraph if the licensee or employee requested assistance of a peace officer to remove such person. This paragraph does not apply to:

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(a) Hotel or motel guest room accommodations.

(b) ~~The exhibition~~ EXHIBITING or ~~display~~ of DISPLAYING a firearm in conjunction with a meeting, show, class or similar event.

(c) A person with a permit issued pursuant to section 13-3112 who carries a concealed handgun on the licensed premises of any on-sale retailer that has not posted a notice pursuant to section 4-229.

31. For any person in possession of a firearm while on the licensed premises of an on-sale retailer to consume spirituous liquor. This paragraph does not prohibit the consumption of small amounts of spirituous liquor by an undercover peace officer on assignment to investigate the licensed establishment.

32. For a licensee or employee to knowingly allow spirituous liquor to be removed from the licensed premises, except in the original unbroken package. This paragraph does not apply to any of the following:

(a) A person who removes a bottle of wine that has been partially consumed in conjunction with a purchased meal from licensed premises if a

cork is inserted flush with the top of the bottle or the bottle is otherwise securely closed.

(b) A person who is in licensed premises that have noncontiguous portions that are separated by a public or private walkway or driveway and who takes spirituous liquor from one portion of the licensed premises across the public or private walkway or driveway directly to the other portion of the licensed premises.

(c) A licensee of a bar, beer and wine bar, liquor store, beer and wine store, microbrewery or restaurant that has a permit pursuant to section 4-205.02, subsection H that dispenses beer only in a clean container composed of a material approved by a national sanitation organization with a maximum capacity that does not exceed one gallon and not for consumption on the premises if:

(i) The licensee or the licensee's employee fills the container at the tap at the time of sale.

(ii) The container is sealed and displays a government warning label.

(d) A bar or liquor store licensee that prepares a mixed cocktail or a restaurant licensee that leases the privilege to sell mixed cocktails for consumption off the licensed premises pursuant to section 4-203.06 or holds a permit pursuant to section 4-203.07 and section 4-205.02, subsection K and that prepares a mixed cocktail and transfers it to a clean container composed of a material approved by a national sanitation organization with a maximum capacity that does not exceed thirty-two ounces and not for consumption on the premises if all of the following apply:

(i) The licensee or licensee's employee fills the container with the mixed cocktail on the licensed premises of the bar, liquor store or restaurant.

(ii) The container is tamperproof sealed by the licensee or the licensee's employee and displays a government warning label.

(iii) The container clearly displays the bar's, liquor store's or restaurant's logo or name.

(iv) For a restaurant licensee licensed pursuant to section 4-205.02, the sale of mixed cocktails for consumption off the licensed premises is accompanied by the sale of menu food items for consumption on or off the licensed premises.

33. For a person who is obviously intoxicated to buy or attempt to buy spirituous liquor from a licensee or employee of a licensee or to consume spirituous liquor on licensed premises.

34. For a person WHO IS under twenty-one years of age to drive or be in physical control of a motor vehicle while there is any spirituous liquor in the person's body.

35. For a person WHO IS under twenty-one years of age to operate or be in physical control of a motorized watercraft that is underway while there is any spirituous liquor in the person's body. For the purposes of this paragraph, "underway" has the same meaning prescribed in section 5-301.

36. For a licensee, manager, employee or controlling person to purposely induce a voter, by means of alcohol, to vote or abstain from voting for or against a particular candidate or issue on an election day.

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37. For a licensee to fail to report an occurrence of an act of violence to either the department or a law enforcement agency.

38. For a licensee to use a vending machine for the purpose of dispensing spirituous liquor.

39. For a licensee to offer for sale a wine carrying a label including a reference to Arizona or any Arizona city, town or geographic location unless at least seventy-five percent by volume of the grapes used in making the wine were grown in Arizona.

40. For a retailer to knowingly allow a customer to bring spirituous liquor onto the licensed premises, except that an on-sale retailer may allow a wine and food club to bring wine onto the premises for consumption by the club's members and guests of the club's members in conjunction with meals purchased at a meeting of the club that is conducted on the premises and that at least seven members attend. An on-sale retailer that allows wine and food clubs to bring wine onto its premises under this paragraph shall comply with all applicable provisions of this title and any rules adopted pursuant to this title to the same extent as if the on-sale retailer had sold the wine to the members of the club and their guests. For the purposes of this paragraph, "wine and food club" means an association that has more than twenty bona fide members paying at least \$6 per year in dues and that has been in existence for at least one year.

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41. For a person WHO IS under twenty-one years of age to have in the person's body any spirituous liquor. In a prosecution for a violation of this paragraph:

(a) Pursuant to section 4-249, it is a defense that the spirituous liquor was consumed in connection with the bona fide practice of a religious belief or as an integral part of a religious exercise and in a manner not dangerous to public health or safety.

(b) Pursuant to section 4-226, it is a defense that the spirituous liquor was consumed for a bona fide medicinal purpose and in a manner not dangerous to public health or safety.

42. For an employee of a licensee to accept any gratuity, compensation, remuneration or consideration of any kind to either:

(a) Allow a person who is under twenty-one years of age to enter any portion of the premises where that person is prohibited from entering pursuant to paragraph 22 of this section.

(b) Sell, furnish, dispose of or give spirituous liquor to a person who is under twenty-one years of age.

43. For a person to purchase, offer for sale or use any device, machine or process that mixes spirituous liquor with pure oxygen or another gas to produce a vaporized product for the purpose of consumption by inhalation or to allow patrons to use any item for the consumption of vaporized spirituous liquor.

44. For a retail licensee or an employee of a retail licensee to sell spirituous liquor to a person if the retail licensee or employee knows the person intends to resell the spirituous liquor.

45. Except as authorized by paragraph 32, subdivision (c) of this section, for a person to reuse a bottle or other container authorized for use by the laws of the United States or any agency of the United States for

the packaging of distilled spirits or for a person to increase the original contents or a portion of the original contents remaining in a liquor bottle or other authorized container by adding any substance.

46. For a direct shipment licensee, a farm winery licensee or an employee of those licensees to sell, dispose of, deliver or give spirituous liquor to an individual purchaser between the hours of 2:00 a.m. and 6:00 a.m., except that a direct shipment licensee or a farm winery licensee may receive and process orders, accept payment, package, load or otherwise prepare wine for delivery at any time without complying with section 4-241, subsections A and K, if the actual deliveries to individual purchasers are made between the hours of 6:00 a.m. and 2:00 a.m. and in accordance with section 4-203.04 for direct shipment licensees and section 4-205.04 for farm winery licensees.

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47. FOR A SUPPLIER TO COERCE OR ATTEMPT TO COERCE A WHOLESALER TO ACCEPT DELIVERY OF BEER OR ANY OTHER COMMODITY THAT HAS NOT BEEN ORDERED BY THE WHOLESALER OR FOR WHICH THE ORDER WAS CANCELED. A SUPPLIER MAY IMPOSE REASONABLE INVENTORY REQUIREMENTS ON A WHOLESALER IF THE REQUIREMENTS ARE MADE IN GOOD FAITH AND ARE GENERALLY APPLIED TO OTHER SIMILARLY SITUATED WHOLESALERS THAT HAVE AN AGREEMENT WITH THE SUPPLIER.

EXPLANATION OF BLEND  
SECTION 6-903

Laws 2022, Chapters 45, 59 and 172

Laws 2022, Ch. 45, section 4

Effective September 24, 2022

Laws 2022, Ch. 59, section 20

Effective September 24, 2022

Laws 2022, Ch. 172, section 3

Effective September 24, 2022

Explanation

Since these three enactments are compatible, the Laws 2022, Ch. 45, Ch. 59 and Ch.172 text changes to section 6-903 are blended in the form shown on the following pages.

BLEND OF SECTION 6-903  
Laws 2022, Chapters 45, 59 and 172

6-903. Licensing of mortgage brokers required; qualifications; application; bond; fees; renewal

A. A person shall not act as a mortgage broker if the person is not licensed under this article. A person who brokers only commercial mortgage loans shall obtain either a mortgage broker license or a commercial mortgage broker license. A person who brokers residential mortgage loans shall obtain a mortgage broker license.

Ch. 45 — B. The deputy director shall not grant a mortgage broker's license or a commercial mortgage broker's license to a person, other than a natural person, ~~who~~ THAT is not registered to do business in this state on the date of granting the license.

C. An applicant for an original mortgage broker's license shall:

1. Have not less than three years' experience as a mortgage broker or loan originator or equivalent lending experience in a related business during the five years immediately preceding the time of application.

2. Have satisfactorily completed a course of study approved by the deputy director during the three years immediately preceding the time of application.

Ch. 45 — 3. Have passed a mortgage broker's test, ~~pursuant to section 6-908.~~

D. An applicant for an original commercial mortgage broker's license shall:

1. Have not less than three years' experience in the commercial mortgage broker business or equivalent lending experience in a related business during the five years immediately preceding the time of application.

2. Have made in the past or intend to make or negotiate or offer to make or negotiate commercial mortgage loans.

3. Provide the deputy director with the following:

(a) A balance sheet prepared within the immediately preceding six months and certified by the licensee. The deputy director may require a more recent balance sheet.

(b) If the applicant has begun operations, a statement of operations and retained earnings and a statement of changes in financial position.

(c) Notes to the financial statement if applicable.

E. Notwithstanding subsection D, paragraph 3 of this section, commercial mortgage broker licensees and commercial mortgage broker license applicants whose own resources are derived exclusively from correspondent contracts with institutional investors shall provide the deputy director with a current financial statement or that of its parent company prepared according to generally accepted accounting principles, including:

1. A balance sheet prepared within the immediately preceding six months and certified by the licensee. The deputy director may require a more recent balance sheet.

2. If the applicant has begun operations, a statement of operations and retained earnings and a statement of changes in financial position.

3. Notes to the financial statement if applicable.

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59 and  
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— F. A person shall ~~make an application~~ APPLY for a license or for a renewal of a license in writing on the forms, in the manner and accompanied by the information prescribed by the deputy director. The deputy director ~~may require additional information on the experience, background, honesty, truthfulness, integrity~~ and competency of the applicant and any responsible individual designated by the applicant. If the applicant is a person other than a natural person, the deputy director may require information as to ~~the honesty, truthfulness, integrity~~ and competency of any officer, director, shareholder or other interested party of the association, corporation or group.

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G. The nonrefundable application fee and annual renewal fee are as prescribed in section 6-126. The nonrefundable application fee shall accompany each application for an original license only. The deputy director shall deposit, pursuant to sections 35-146 and 35-147, the monies in the state general fund.

H. If a licensee is a person other than a natural person, the license issued to it entitles all officers, directors, members, partners, trustees and employees of the licensed corporation, partnership, association or trust to engage in the mortgage business if one officer, director, member, partner,

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— ~~employee or trustee of the person OR AN EMPLOYEE OF AN AFFILIATED ENTITY OR THE PARENT COMPANY OF THE LICENSEE~~ is designated in the license as the individual responsible for the person under this article. If a licensee is a natural person, the license entitles all employees of the licensee to engage in the mortgage business. If the natural person is not a resident of this state, an employee of the licensee shall be designated in the license

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59 and  
172

— ~~as the individual responsible for the licensee under the provisions of this article. For the purposes of this subsection, an employee does not include an independent contractor. \* THE~~ responsible individual shall be a resident

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— ~~of this state UNLESS THE DIRECTOR GRANTS AN EXEMPTION PURSUANT TO SECTION 6-902.01, shall be in active management of the activities of the licensee governed by this article and shall meet the qualifications set forth in subsection C or D of this section for a licensee.~~

I. A licensee shall notify the deputy director that its responsible individual will cease to be in active management of the activities of the licensee within ten days after learning that fact. The licensee has ninety days after the notification is received by the deputy director within which to replace the responsible individual with a qualified replacement and to so notify the deputy director. If the license is not placed under active management of a qualified responsible individual and if notice is not given to the deputy director within the ninety-day period, the license of the licensee expires.

J. Every person licensed as a mortgage broker or a commercial mortgage broker shall deposit with the deputy director, before doing business as a mortgage broker or a commercial mortgage broker, a bond

executed by the licensee as principal and a surety company authorized to do business in this state as surety. The bond shall be conditioned on the faithful compliance of the licensee, including the licensee's directors, officers, members, partners, trustees and employees, with this article. The bond is payable to any person injured by the wrongful act, default, fraud or misrepresentation of the licensee or the licensee's employees and to this state for the benefit of the person injured. Only one bond is required for any person, firm, association or corporation irrespective of the number of officers, directors, members, partners or trustees who are employed by or

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59 and  
172

— are members of such firm, association or corporation. ~~No~~ A suit may NOT be commenced on the bond after the expiration of one year following the commission of the act on which the suit is based, except that claims for fraud or mistake are limited to the limitation period provided in section 12-543, paragraph 3. If an injured person commences an action for a judgment to collect from the bond, the injured person shall notify the deputy director of the action in writing at the time of the commencement of the action and shall provide copies of all documents relating to the action to the deputy director on request.

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172

[ K. The bond required by this section ~~shall be~~ IS \$10,000 for licensees whose investors are limited solely to institutional investors, ~~and~~ \$15,000 for licensees whose investors include any noninstitutional investors.

L. For the purposes of subsection K of this section:

1. "Institutional investor" means a state or national bank, a state or federal savings and loan association, a state or federal savings bank, a state or federal credit union, a federal government agency or instrumentality, a quasi-federal government agency, a financial enterprise, a licensed real estate broker or salesman, a profit sharing or pension

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— trust, ~~or~~ an insurance company.

2. "Investor" means any person who directly or indirectly provides to a mortgage broker funds that are, or are intended to be, used in

Chs. 45,  
59 and  
172

— the making of

Chs. 59  
and 172

— a loan, ~~and~~ any person who purchases a

Ch. 45

— loan, ~~or~~ any interest therein, IN A LOAN from a mortgage broker or in a transaction that has been directly or indirectly arranged or negotiated by a mortgage broker.

M. Notwithstanding section 35-155, in lieu of the bond described in this section, an applicant for a license or a licensee may deposit with the deputy director a deposit in the form of cash or alternatives to cash in the same amount as the bond required under subsection J of this section. The deputy director may accept any of the following as an alternative to cash:

1. Certificates of deposits or investment certificates that are payable or assigned to the state treasurer, issued by banks or savings banks doing business in this state and fully insured by the federal deposit insurance corporation or any successor institution.

2. Certificates of deposit, investment certificates or share accounts that are payable or assigned to the state treasurer, issued by a savings and loan association doing business in this state and fully insured by the federal deposit insurance corporation or any successor institution.

3. Certificates of deposit, investment certificates or share accounts that are payable or assigned to the state treasurer, issued by a credit union doing business in this state and fully insured by the national credit union administration or any successor institution.

N. The deputy director shall deposit the cash or alternatives to cash received under this section with the state treasurer. The state treasurer shall hold the cash or alternatives to cash in the name of this state to guarantee the faithful performance of all legal obligations of the person required to post bond pursuant to this section. The person is entitled to receive any accrued interest earned from the alternatives to cash. The state treasurer may impose a fee to reimburse the state treasurer for administrative expenses. The fee shall not exceed \$10 for each cash or alternatives to cash deposit and shall be paid by the applicant or licensee. The state treasurer may prescribe rules relating to the terms and conditions of each type of security provided by this section.

O. In addition to such other terms and conditions as the deputy director prescribes by rule or order, the principal amount of the deposit shall be released only on written authorization of the deputy director or on the order of a court of competent jurisdiction. The principal amount of the deposit shall not be released before the expiration of three years from the first to occur of any of the following:

1. The date of substitution of a bond for a cash alternative.
2. The surrender of the license.
3. The revocation of the license.
4. The expiration of the license.

P. A licensee or an employee of the licensee shall not advertise for or solicit mortgage business in any manner without using the LICENSE name, OR OTHER ASSUMED NAME OR TRADE NAME THAT IS SUBMITTED TO THE DEPARTMENT PURSUANT TO SECTION 6-117, and THE license number, ~~as issued on the mortgage broker's principal place of business license, except that a licensee may employ or refer to the commonly used name and any trademarks or service marks of any affiliate.~~ If a license is issued in the name of a natural person, ~~nothing in the advertising or solicitation may NOT imply the license is in the name of another person or entity.~~ For the purposes of this subsection, ~~"advertise"~~ does not include business cards, radio and television advertising directed at national or regional markets and promotional items except if those items contain rates or terms on which a mortgage loan may be obtained.

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59 and  
172

Q. A licensee shall not employ any person unless the licensee:

1. Conducts a reasonable investigation of the background, honesty, truthfulness, integrity and competency of the employee before hiring.
2. Keeps a record of the investigation for not less than two years after termination.

R. A license is not transferable or assignable and control of a licensee may not be acquired through a stock purchase or other device without the prior written consent of the deputy director. Written consent shall not be given if the deputy director finds that any of the grounds for denial, revocation or suspension of a license as set forth in section 6-905 are applicable to the acquiring person. For the purposes of this subsection,

"control" means the power to vote more than twenty percent of outstanding voting shares of a licensed corporation, partnership, association or trust.

S. The licensee is liable for any damage caused by any of the licensee's employees while acting as an employee of the licensee.

T. A licensee shall comply with the requirements of section 6-114 relating to balloon payments.

U. The examination and course of study requirements of this section shall be waived by the deputy director for any person applying for a license who, within the six months immediately prior to the submission of BEFORE SUBMITTING the application, has been a licensee or a responsible person pursuant to this chapter.

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and 59

V. If the applicant for renewal of a mortgage broker license is a natural person, the applicant shall have satisfactorily completed twelve continuing education units by a continuing education provider approved by the deputy director before submitting the renewal application. If the applicant is other than a natural person, the designated responsible individual shall have satisfactorily completed twelve continuing education units by a continuing education provider approved by the deputy director before submitting the renewal application. An applicant for renewal of a commercial mortgage broker license is not subject to the continuing education requirements prescribed by this article.

W. A licensee who employs a loan originator shall comply with section 6-991.03.

EXPLANATION OF BLEND  
SECTION 6-943

Laws 2022, Chapters 45 and 59

Laws 2022, Ch. 45, section 5

Effective September 24, 2022

Laws 2022, Ch. 59, section 23

Effective September 24, 2022

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 45 and Ch. 59 text changes to section 6-943 are blended in the form shown on the following pages.

BLEND OF SECTION 6-943  
Laws 2022, Chapters 45 and 59

6-943. Licensing of mortgage bankers required; qualifications; application; bond; fees; renewal

A. A person shall not act as a mortgage banker if the person is not licensed under this article.

B. The deputy director shall not grant a mortgage banker's license to a person, other than a natural person, who is not registered to do business in this state on the date of application for a license. The deputy director shall not issue a mortgage banker's license or a renewal of a license to an applicant unless the applicant meets all of the requirements prescribed in subsection C of this section. The deputy director shall determine whether the applicant meets the requirements based on the application and evidence presented at a hearing, if any, or any other evidence that the deputy director may have regarding qualifications of the applicant.

C. In order to qualify for a mortgage banker license or a renewal of a license, an applicant shall:

1. Have not fewer than three years' experience in the business of making mortgage banking loans or equivalent lending experience in a related business. If the applicant is a person other than a natural person, the responsible individual shall meet this requirement.

2. Have engaged or intend to engage in the business of making mortgage loans or mortgage banking loans.

3. Either:

(a) Be authorized to do business with any of the following:

(i) The federal housing administration.

(ii) The United States department of veterans affairs.

(iii) The federal national mortgage association.

(iv) The federal home loan mortgage corporation.

(b) Notwithstanding paragraph 5 of this subsection, at all times have and maintain a net worth of not less than \$100,000.

4. Provide the deputy director with a current audited financial statement, or that of its parent company, THAT IS prepared by an independent certified public accountant in accordance with generally accepted accounting principles ~~including~~ AND THAT INCLUDES:

(a) The certified public accountant's opinion as to the fairness of the presentation in conformity with generally accepted accounting principles.

(b) A balance sheet prepared within the previous six months and certified by the licensee. The deputy director may require a more recent balance sheet.

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and 59

Chs. 45 and 59 — (c) A statement of operations and retained earnings and a statement of changes in financial position ~~provided~~ IF the applicant has commenced operations.

Ch. 59 — (d) Notes to the financial statement[,] if applicable.

5. At all times have and maintain a net worth of not less than \$100,000.

Chs. 45 and 59 — D. A person shall ~~make an application~~ APPLY for a license or for a renewal of a license in writing on the forms, in the manner and accompanied by the information prescribed by the deputy director[,] including the requirements prescribed in subsection C of this section. The deputy director may require additional information on the experience,

Ch. 59 — ~~background, honesty, truthfulness, integrity and competency of the applicant and any responsible individual designated by the applicant. If the applicant is a person other than a natural person, the deputy director may require information as to the honesty, truthfulness, integrity and competency of any officer, director, shareholder, member, partner, trustee, employee or other interested party of the association, corporation or group.~~

Chs. 45 and 59 — E. The nonrefundable application fee and annual renewal fee ~~shall be~~ ARE as prescribed in section 6-126. The nonrefundable application fee shall accompany each application for an original license only.

F. If a licensee is a person other than a natural person, the license issued to it entitles all officers, directors, members, partners, trustees and employees of the licensed corporation, partnership, association or trust to engage in the mortgage banking business if one officer, director, member, partner, employee or trustee of the person is designated in the license as the individual responsible for the person under this article. If a licensee is a natural person, the license entitles all employees of the licensee to engage in the mortgage banking business. If the natural person is not a resident of this state, an employee of the licensee shall be designated in the license as the individual responsible for the licensee under this article. For the purposes of this article, an employee does not include an independent contractor. For the purposes of this article, ~~a~~ THE responsible individual shall be a resident of this state, shall be in active management of the activities of the licensee governed by this article and shall have not less than three years' experience in the business of making mortgage banking loans or equivalent experience in a related business.

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G. A licensee shall notify the deputy director that its responsible individual will cease to be in active management of the licensee within ten days after learning that fact. Not more than ninety days after the deputy director receives the notice, the licensee shall place itself under the active management of a qualified responsible person and notify the deputy director. If the licensee is not placed under active management of a qualified responsible individual and if notice is not received by the deputy director within the ninety-day period, the license of the licensee expires.

H. Every person licensed as a mortgage banker shall deposit with the deputy director, before doing business as a mortgage banker, a bond executed by the licensee as principal and a surety company authorized to do business in this state as surety. The bond shall be conditioned on the faithful compliance of the licensee, including ~~his~~ THE LICENSEE'S directors, officers, members, partners, trustees and employees, with this article.

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Only one bond is required for a person, firm, association or corporation irrespective of the number of officers, directors, members, partners or trustees who are employed by or are members of the firm, association or corporation. The bond is payable to any person injured by the wrongful act, default, fraud or misrepresentation of the licensee and to this state for the benefit of any injured person. The coverage shall be maintained in the minimum amount prescribed in this subsection, computed on a base consisting of the total assets of the licensee plus the unpaid balance of loans it has contracted to service for others as of the end of the licensee's fiscal year.

<u>Base</u>	<u>Minimum Bond</u>
Not over \$1,000,000	\$25,000 for the first \$500,000 plus \$5,000 for each \$100,000 or fraction thereof over \$500,000
\$1,000,001 to \$10,000,000	\$50,000 plus \$5,000 for each \$1,800,000 or fraction thereof over \$1,000,000
\$10,000,001 to \$100,000,000	\$75,000 plus \$5,000 for each \$18,000,000 or fraction thereof over \$10,000,000
\$100,000,001 and over	\$100,000

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and 59

— No A suit may NOT be commenced on the bond after the expiration of one year following the commission of the act on which the suit is based, except that claims for fraud or mistake are limited to the limitation period provided in section 12-543, paragraph 3. If any injured person commences an action for a judgment to collect on the bond, the injured person shall notify the deputy director of the action in writing at the time of the commencement of the action and shall provide copies of all documents relating to the action to the deputy director on request.

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and 59

— I. Notwithstanding subsection H of this section, the bond required ~~shall be~~ IS \$25,000 for licensees whose investors are limited solely to institutional investors.

J. For the purposes of subsection I of this section:

1. "Institutional investor" means a state or national bank, a state or federal savings and loan association, a state or federal savings bank, a state or federal credit union, a federal government agency or instrumentality, a quasi-federal government agency, a financial enterprise, a licensed real estate broker or salesman, a profit sharing or pension trust, or an insurance company.

2. "Investor" means any person who directly or indirectly provides to a mortgage banker funds that are, or are intended to be, used in the making of a loan, and any person who purchases a loan, or any interest therein, from a mortgage banker or in a transaction that has been directly or indirectly arranged or negotiated by a mortgage banker.

K. Notwithstanding section 35-155, in lieu of the bond described in this section, an applicant for a license or a licensee may deposit with the deputy director a deposit in the form of cash or alternatives to cash in the amount prescribed in subsection H or I of this section, as applicable. The deputy director may accept any of the following as an alternative to cash:

1. Certificates of deposit or investment certificates that are payable or assigned to the state treasurer, issued by banks or savings banks

doing business in this state and fully insured by the federal deposit insurance corporation or any successor institution.

2. Certificates of deposit, investment certificates or share accounts that are payable or assigned to the state treasurer, issued by a savings and loan association doing business in this state and fully insured by the federal deposit insurance corporation or any successor institution.

3. Certificates of deposit, investment certificates or share accounts that are payable or assigned to the state treasurer, issued by a credit union doing business in this state and fully insured by the national credit union administration or any successor institution.

L. The deputy director shall deposit the cash or alternatives to cash received under this section with the state treasurer. The state treasurer shall hold the cash or alternatives to cash in the name of this state to guarantee the faithful performance of all legal obligations of the person required to post bond pursuant to this section. The person is entitled to receive any accrued interest earned from the alternatives to cash. The state treasurer may impose a fee to reimburse the state treasurer for administrative expenses. The fee shall not exceed \$10 for each cash or alternatives to cash deposit and shall be paid by the applicant or licensee. The state treasurer may prescribe rules relating to the terms and conditions of each type of security provided by this section.

M. In addition to such other terms and conditions as the deputy director prescribes by rule or order, the principal amount of the deposit shall be released only on written authorization of the deputy director or on the order of a court of competent jurisdiction. The principal amount of the deposit shall not be released before the expiration of three years from the first to occur of any of the following:

1. The date of substitution of a bond for a cash alternative.
2. The surrender of the license.
3. The revocation of the license.
4. The expiration of the license.

N. A licensee or an employee of the licensee shall not advertise for or solicit mortgage banking business in any manner without using the LICENSE name, OR OTHER ASSUMED NAME OR TRADE NAME THAT IS SUBMITTED TO THE DEPARTMENT PURSUANT TO SECTION 6-117, and THE license number. ~~as issued on the mortgage banker's principal place of business license, except that a licensee may also employ or refer to the commonly used name and any trademarks or service marks of any affiliate.~~ If a license is issued in the name of a natural person, ~~nothing in the advertising or solicitation may NOT imply that the license is in the name of another person or entity.~~ For the purposes of this subsection, advertise does not include business cards, radio and television advertising directed at national or regional markets and promotional items except if those items contain rates or terms on which a mortgage loan or mortgage banking loan may be obtained.

O. A licensee shall not employ any person unless the licensee:

1. Conducts a reasonable investigation of the background, honesty, truthfulness, integrity and competency of the employee before hiring.
2. Keeps a record of the investigation for not less than two years after termination.

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and 59

P. The licensee is liable for any damage caused by any of his THE LICENSEE'S employees while engaged in the business of making mortgage loans or mortgage banking loans.

Q. A licensee shall comply with the requirements of section 6-114 relating to balloon payments.

R. Notwithstanding subsection C, paragraph 4 of this section, licensees and applicants whose own resources are derived exclusively from correspondent contracts between mortgage bankers and banks, savings banks, trust companies, savings and loan associations, credit unions, profit sharing or pension trusts, consumer lenders or insurance companies shall provide the deputy director with a current financial statement[,] or that of its parent company, THAT IS prepared in accordance with generally accepted accounting principles ~~including~~ AND THAT INCLUDES:

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and 59

1. A balance sheet prepared within the previous six months and certified by the licensee. The deputy director may require a more recent balance sheet.

2. A statement of operations and retained earnings and a statement of changes in financial position ~~provided~~ IF the applicant has commenced operations.

3. Notes to the financial statement if applicable.

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and 59

S. In addition to the grounds specified in section 6-945, subsection A, failure of a licensee to operate the business of making mortgage loans or mortgage banking loans for a continuous period of twelve months or more shall constitute grounds for revocation of such A license. The deputy director, on good cause shown, may extend the time for operating such A business for a single fixed period, which shall not exceed twelve months.

T. If the applicant for renewal of a mortgage banker license is a natural person, the applicant shall have satisfactorily completed twelve continuing education units by a continuing education provider approved by the deputy director before submitting the renewal application. If the applicant is other than a natural person, the designated responsible individual shall have satisfactorily completed twelve continuing education units by a continuing education provider approved by the deputy director before submitting the renewal application.

U. A licensee who employs a loan originator shall comply with section 6-991.03.

EXPLANATION OF BLEND  
SECTION 8-221

Laws 2022, Chapters 5 and 6

Laws 2022, Ch. 5, section 2

Effective September 24, 2022

Laws 2022, Ch. 6, section 1

Effective September 24, 2022

Explanation

Since these two enactments are identical, the Laws 2022, Ch. 5 and Ch. 6 text changes to section 8-221 are blended in the form shown on the following page.

BLEND OF SECTION 8-221  
Laws 2022, Chapters 5 and 6

8-221. Counsel right of juvenile, parent or guardian;  
appointment; reimbursement; guardian ad litem

Chs. 5  
and 6

A. The court shall appoint an attorney for a child in all delinquency PROCEEDINGS THAT COMMENCE WITH A PETITION OR THAT MAY INVOLVE DETENTION, dependency PROCEEDINGS or termination of parental rights proceedings that are conducted pursuant to this title. The court shall appoint the attorney before the first hearing. The attorney shall represent the child at all stages of the proceedings and, in a dependency proceeding, through permanency DISMISSAL.

B. If a ~~juvenile~~, parent or guardian is found to be indigent and entitled to counsel, the juvenile court shall appoint an attorney to represent the person or persons unless the person knowingly, intelligently and voluntarily waives counsel.

C. Before any court appearance that may result in institutionalization or mental health hospitalization of a juvenile, the court shall appoint counsel for the juvenile if counsel has not been previously appointed or retained by or for the juvenile.

D. The county board of supervisors may fix a reasonable sum to be paid by the county for the services of an appointed attorney.

E. If the court finds that the parent or guardian of a juvenile has sufficient financial resources to reimburse, at least in part, the costs of the services of an attorney appointed pursuant to this section, the court shall order the parent or guardian to pay to the appointed attorney or the county, through the clerk of the court, an amount that the parent or guardian is able to pay without incurring substantial hardship to the family. Failure to obey an order under this subsection is not grounds for contempt or grounds for withdrawal by the appointed attorney. An order under this section may be enforced in the manner of a civil judgment.

F. In a county where there is a public defender, the public defender may act as attorney in either:

1. A delinquency or incorrigibility proceeding when requested by the juvenile court.

2. Any other juvenile proceeding that is conducted pursuant to this title if the board of supervisors authorizes the appointment of the public defender.

G. In all juvenile court proceedings in which the dependency petition includes an allegation that the juvenile is abused or neglected, the court may appoint a guardian ad litem to protect the juvenile's best interests. This guardian ad litem shall be an attorney. The guardian ad litem is not the child's attorney.

H. Any guardian ad litem or attorney appointed for a juvenile shall meet with the juvenile before the preliminary protective hearing, if possible, or within fourteen days after the preliminary protective hearing. The guardian ad litem or attorney appointed for the juvenile also shall meet with the juvenile before all substantive hearings. On a showing of extraordinary circumstances, the judge may modify this requirement for any substantive hearing.

EXPLANATION OF BLEND  
SECTION 8-872

Laws 2022, Chapters 5 and 30

Laws 2022, Ch. 5, section 7

Effective September 24, 2022

Laws 2022, Ch. 30, section 4

Effective September 24, 2022

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 5 and Ch. 30 text changes to section 8-872 are blended in the form shown on the following pages.

BLEND OF SECTION 8-872  
Laws 2022, Chapters 5 and 30

8-872. Permanent guardianship; procedure

A. Any party to a dependency proceeding or a pending dependency proceeding may file a motion for permanent guardianship. The motion shall be verified by the person who files the motion and shall include the following:

1. The name, sex, residence and date and place of birth of the child.  
2. The facts and circumstances supporting the grounds for permanent guardianship.

3. The name and address of the prospective guardian and a statement that the prospective guardian agrees to accept the duties and responsibilities of guardianship.

4. The basis for the court's jurisdiction.

5. The relationship of the child to the prospective guardian.

6. Whether the child is subject to the Indian child welfare act of 1978 (P.L. 95-608; 92 Stat. 3069; 25 United States Code sections 1901 through 1963) and if so:

(a) The tribal affiliations of the child's parents.

(b) The specific actions the person who files the motion has taken to notify the parents' tribes and the results of those contacts, including the names, addresses, titles and telephone numbers of the persons contacted. The person shall attach to the motion as exhibits any correspondence with the tribes.

(c) The specific efforts that were made to comply with the placement preferences under the Indian child welfare act of 1978 or the placement preferences of the appropriate Indian tribes.

7. The name, address, marital status and date of birth of the birth parents, if known.

B. The person who files the motion shall serve notice of the hearing and a copy of the motion on all parties as prescribed in rule 5(c) of the Arizona rules of civil procedure, including any person who has filed a petition to adopt or who has physical custody pursuant to a court order in a foster-adoptive placement. In addition to the requirements of rule 5(c) of the Arizona rules of civil procedure, the notice shall be sent by CERTIFIED OR registered mail, return receipt requested, to any parent, Indian custodian and tribe of an Indian child as defined by IN the federal Indian child welfare act of 1978 (25 United States Code section 1903).

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and 30

C. The person who files the motion shall provide a copy of the notice of hearing to the following persons if the person has not been served pursuant to subsection B of this section:

1. The child's current physical custodian.

2. Any foster parent with whom the child has resided within six months before the date of the hearing.

3. The prospective guardian if the guardian is not the current physical custodian.

4. Any other person the court orders to be provided notice.

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D. THE COURT SHALL HOLD THE GUARDIANSHIP ADJUDICATION HEARING WITHIN NINETY DAYS AFTER THE INITIAL GUARDIANSHIP HEARING.

~~D.~~ E. In a proceeding for permanent guardianship, on the request of a parent, the court shall appoint counsel for any parent found to be indigent if the parent is not already represented by counsel. The court may also appoint one for the child if a guardian ad litem has not already been appointed.

~~E.~~ F. Before a final hearing, the department, the agency or a person designated as an officer of the court shall conduct an investigation addressing the factors set forth in section 8-871, whether the prospective permanent guardian or guardians are fit and proper persons to become permanent guardians and whether the best interests of the child would be served by granting the permanent guardianship. The findings of this investigation shall be set forth in a written report provided to the court and all parties before the hearing. The court may require additional investigation if it finds that the welfare of the child will be served or if additional information is necessary to make an appropriate decision regarding the permanent guardianship. The court may charge a reasonable fee for this investigation pursuant to section 8-133, if performed by an officer of the court. The court may waive the requirements of this subsection for good cause.

~~F.~~ G. Before the court may appoint a guardian, the court shall require the prospective guardian to furnish either a valid fingerprint clearance card or a full set of fingerprints to enable the court to determine the applicant's suitability as guardian. If the prospective guardian does not submit a valid fingerprint clearance card, the prospective guardian shall submit a full set of fingerprints to the court 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.

~~G.~~ H. The person who files the motion has the burden of proof by clear and convincing evidence. In any proceeding involving a child who is subject to the Indian child welfare act of 1978, the person who files the motion has the burden of proof by beyond a reasonable doubt.

~~H.~~ I. A court order vesting permanent guardianship with an individual divests the birth or adoptive parent of legal custody of or guardianship for the child but does not terminate the parent's rights. A court order for permanent guardianship does not affect the child's inheritance rights from and through the child's birth or adoptive parents.

~~I.~~ J. On finding that grounds exist for a permanent guardianship, the court may incorporate into the final order provisions for visitation

with the natural parents, siblings or other relatives of the child if this order would be in the child's best interests and any other provision that is necessary to rehabilitate the child or to provide for the child's continuing safety and well-being. The court may order a parent to contribute to the support of the child to the extent it finds the parent is able.

⌘. K. On the entry of the order establishing a permanent guardianship, the dependency action shall be dismissed. If the child was in the legal custody of the department during the dependency, the court may order the department to conduct the investigation and prepare the report for the first report and review hearing. If the child was not in the legal custody of the department, the court may order the child's attorney or guardian ad litem to file a report for the report and review hearing. The court shall retain jurisdiction to enforce its final order of permanent guardianship. The court may order a report and shall set a review to be held within one year following the entry of the final order and may set such other and further proceedings as may be in the best interests of the child. Before a report and review hearing, the court may cause an investigation to be conducted of the facts and circumstances surrounding the welfare and best interests of the child and a written report to be filed with the court. The court may charge a reasonable fee for this investigation pursuant to section 8-133, if performed by an officer of the court.

Ch. 30 — ⌘. L. The department or agency shall not be responsible for the requirements pursuant to subsections ~~E, I~~ and F, J AND K of this section for a motion concerning a child not in the care, custody and control of the department or agency.

⌘. M. The court shall provide the guardian with written notice of the sibling information exchange program established pursuant to section 8-543.

EXPLANATION OF BLEND  
SECTION 11-594

Laws 2022, Chapters 82 and 257

Laws 2022, Ch. 82, section 2

Effective September 24, 2022

Laws 2022, Ch. 257, section 1

Effective September 24, 2022

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 82 and Ch. 257 text changes to section 11-594 are blended in the form shown on the following pages.

BLEND OF SECTION 11-594  
Laws 2022, Chapters 82 and 257

11-594. Powers and duties of county medical examiner

- Ch. 82 { A. The county medical examiner or alternate medical examiner shall direct a death investigation and[,] on a determination that the circumstances of the death provide jurisdiction pursuant to section 11-593, subsection B[,] shall:
1. Take charge of the dead body.
  2. Determine if an autopsy is required.
  3. Certify to the cause and manner of death following completion of the death investigation, reduce the findings to writing and promptly make a full report on forms prescribed for that purpose.
  4. Have subpoena authority for all documents, records and papers deemed useful in the death investigation.
  5. Execute a death certificate provided by the state registrar of vital statistics indicating the cause and the manner of death for those bodies for which a death investigation has been conducted and jurisdiction is assumed.
- Ch. 257 — 6. Give approval for cremation OR ALKALINE HYDROLYSIS of a dead body after a death investigation and record the approval on the death certificate.
7. Notify the county attorney or other law enforcement authority when death is found to be from nonnatural causes.
  8. Carry out the duties specified under section 28-668.
  9. Carry out the duties specified under title 36, chapter 7, article 3.
  10. Provide a blood sample from a deceased person for the purpose of communicable disease testing pursuant to sections 13-1210 and 36-670 if the blood is available and the collection or release will not interfere with a medical examination, autopsy or certification of death.
  11. Observe all policies adopted by the board of supervisors regarding conflicts of interest and disclosure of noncounty employment.
- B. The county medical examiner or alternate medical examiner may:
1. Assign to a medical death investigator or other qualified personnel all aspects of a death investigation except ~~the performance of~~ PERFORMING autopsies.
  2. Authorize forensic pathologists to perform examinations and autopsies. The medical examiner or alternate medical examiner may authorize medical students or residents and fellows in pathology training to perform autopsies under the supervision of a licensed physician who is board certified in forensic pathology, pursuant to procedures adopted by the county medical examiner or alternate medical examiner. Authorization and the amount to be paid by the county for pathology services are subject to approval of the board of supervisors.
- Ch. 82 { 3. AUTHORIZE PATHOLOGIST ASSISTANTS TO ASSIST WITH PERFORMING AUTOPSIES UNDER THE DIRECT SUPERVISION OF A LICENSED PHYSICIAN WHO IS BOARD CERTIFIED IN FORENSIC PATHOLOGY, PURSUANT TO PROCEDURES ADOPTED BY THE COUNTY MEDICAL EXAMINER OR ALTERNATE MEDICAL EXAMINER. A PATHOLOGIST ASSISTANT MAY NOT CERTIFY A CAUSE OF DEATH OR INDEPENDENTLY PERFORM AN AUTOPSY.
- Ch. 82 { ~~3.~~ 4. Delegate any power, duty or function[,] whether ministerial or discretionary[,] vested by this chapter in the medical examiner or



EXPLANATION OF BLEND  
SECTION 13-705

Laws 2022, Chapters 197 and 245

Laws 2022, Ch. 197, section 1

Effective September 24, 2022

Laws 2022, Ch. 245, section 1

Effective September 24, 2022

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 197 and Ch. 245 text changes to section 13-705 are blended in the form shown on the following pages.

The Laws 2022, Ch. 245 version of section 13-705, subsection I (now K) added "subsections G and H". The Ch. 197 version added "subsections G, H, M and N". Since this would not produce a substantive change, the blend version reflects the Ch. 197 version.

BLEND OF SECTION 13-705  
Laws 2022, Chapters 197 and 245

13-705. Dangerous crimes against children; sentences; definitions

A. A person who is at least eighteen years of age and who is convicted of a dangerous crime against children in the first degree involving commercial sexual exploitation of a minor or child sex trafficking and the person has previously been convicted of a dangerous crime against children in the first degree shall be sentenced to imprisonment in the custody of the state department of corrections for natural life. A person who is sentenced to natural life is not eligible for commutation, parole, work furlough, work release or release from confinement on any basis for the remainder of the person's natural life.

B. A person who is at least eighteen years of age and who is convicted of a dangerous crime against children in the first degree involving sexual assault of a minor who is twelve years of age or younger or sexual conduct with a minor who is twelve years of age or younger shall be sentenced to life imprisonment and is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the person has served thirty-five years or the sentence is commuted. This subsection does not apply to masturbatory contact.

C. Except as otherwise provided in this section, a person who is at least eighteen years of age or who has been tried as an adult and who is convicted of a dangerous crime against children in the first degree involving attempted first degree murder of a minor who is under twelve years of age, ~~second degree murder of a minor who is under twelve years of age,~~ sexual assault of a minor who is under twelve years of age, sexual conduct with a minor who is under twelve years of age or manufacturing methamphetamine under circumstances that cause physical injury to a minor who is under twelve years of age may be sentenced to life imprisonment and is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the person has served thirty-five years or the sentence is commuted. If a life sentence is not imposed pursuant to this subsection, the person shall be sentenced to a term of imprisonment as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
13 years	20 years	27 years

D. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A PERSON WHO IS AT LEAST EIGHTEEN YEARS OF AGE OR WHO HAS BEEN TRIED AS AN ADULT AND WHO IS CONVICTED OF A DANGEROUS CRIME AGAINST CHILDREN IN THE FIRST DEGREE INVOLVING SECOND DEGREE MURDER OF A MINOR WHO IS UNDER FIFTEEN YEARS OF AGE MAY BE SENTENCED TO LIFE IMPRISONMENT AND IS NOT ELIGIBLE FOR SUSPENSION OF SENTENCE, PROBATION, PARDON OR RELEASE FROM CONFINEMENT ON ANY BASIS EXCEPT AS SPECIFICALLY AUTHORIZED BY SECTION 31-233, SUBSECTION A OR B UNTIL THE

Ch. 245 —

Ch. 245 {

Ch. 245 { PERSON HAS SERVED THIRTY-FIVE YEARS OR THE SENTENCE IS COMMUTED. IF A LIFE SENTENCE IS NOT IMPOSED PURSUANT TO THIS SUBSECTION, THE PERSON SHALL BE SENTENCED TO A TERM OF IMPRISONMENT AS FOLLOWS:

<u>MINIMUM</u>	<u>PRESUMPTIVE</u>	<u>MAXIMUM</u>
25 YEARS	30 YEARS	35 YEARS

~~D.~~ E. Except as otherwise provided in this section, a person who is at least eighteen years of age or who has been tried as an adult and who is convicted of a dangerous crime against children in the first degree involving attempted first degree murder of a minor who is twelve, thirteen

Ch. 245 { or fourteen years of age, ~~second degree murder of a minor who is twelve, thirteen or fourteen years of age,~~ sexual assault of a minor who is twelve, thirteen or fourteen years of age, taking a child for the purpose of prostitution, child sex trafficking, commercial sexual exploitation of a minor, sexual conduct with a minor who is twelve, thirteen or fourteen years

Ch. 197 — of age, ~~continuous sexual abuse of a child~~ or manufacturing methamphetamine under circumstances that cause physical injury to a minor who is twelve, thirteen or fourteen years of age or involving or using minors in drug offenses shall be sentenced to a term of imprisonment as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
13 years	20 years	27 years

A person who has been previously convicted of one predicate felony shall be sentenced to a term of imprisonment as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
23 years	30 years	37 years

~~E.~~ F. Except as otherwise provided in this section, a person who is at least eighteen years of age or who has been tried as an adult and who is convicted of a dangerous crime against children in the first degree involving aggravated assault, unlawful mutilation, molestation of a child, sexual exploitation of a minor, aggravated luring a minor for sexual exploitation, child abuse or kidnapping shall be sentenced to a term of imprisonment as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
10 years	17 years	24 years

A person who has been previously convicted of one predicate felony shall be sentenced to a term of imprisonment as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
21 years	28 years	35 years

~~F.~~ G. Except as otherwise provided in this section, if a person is at least eighteen years of age or has been tried as an adult and is convicted of a dangerous crime against children involving luring a minor for sexual exploitation, sexual extortion or unlawful age misrepresentation and is sentenced to a term of imprisonment, the term of imprisonment is as follows and the person is not eligible for release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until

Ch. 197 { the sentence imposed by the court has been served OR IS COMMUTED, EXCEPT THAT IF THE PERSON IS CONVICTED OF UNLAWFUL AGE MISREPRESENTATION the person is eligible for release pursuant to section 41-1604.07 ~~or the sentence is commuted:~~

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
5 years	10 years	15 years

A person who has been previously convicted of one predicate felony shall be sentenced to a term of imprisonment as follows and the person is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection

Ch. 197 { A or B until the sentence imposed by the court has been served OR IS COMMUTED, EXCEPT THAT IF THE PERSON IS CONVICTED OF UNLAWFUL AGE MISREPRESENTATION the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
8 years	15 years	22 years

~~G.~~ H. Except as otherwise provided in this section, if a person is at least eighteen years of age or has been tried as an adult and is convicted of a dangerous crime against children involving sexual abuse or bestiality under section 13-1411, subsection A, paragraph 2 and is sentenced to a term of imprisonment, the term of imprisonment is as follows and the person is not eligible for release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
2.5 years	5 years	7.5 years

A person who has been previously convicted of one predicate felony shall be sentenced to a term of imprisonment as follows and the person is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
8 years	15 years	22 years

I. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A PERSON WHO IS AT LEAST EIGHTEEN YEARS OF AGE OR WHO HAS BEEN TRIED AS AN ADULT AND WHO IS CONVICTED OF A DANGEROUS CRIME AGAINST CHILDREN IN THE FIRST DEGREE INVOLVING CONTINUOUS SEXUAL ABUSE OF A CHILD SHALL BE SENTENCED TO A TERM OF IMPRISONMENT AS FOLLOWS:

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<u>MINIMUM</u>	<u>PRESUMPTIVE</u>	<u>MAXIMUM</u>
39 YEARS	60 YEARS	81 YEARS

A PERSON WHO HAS BEEN PREVIOUSLY CONVICTED OF ONE PREDICATE FELONY SHALL BE SENTENCED TO A TERM OF IMPRISONMENT AS FOLLOWS:

<u>MINIMUM</u>	<u>PRESUMPTIVE</u>	<u>MAXIMUM</u>
69 YEARS	90 YEARS	111 YEARS

Chs. 197 and 245 { ~~H.~~ J. The presumptive sentences prescribed in subsections C, D, and E

Ch. 245 — AND F

Ch. 197 — AND I

Ch. 245 — of this section or subsections ~~F~~ and G AND H of this section if the person has previously been convicted of a predicate felony may be increased or decreased pursuant to section 13-701, subsections C, D and E.

Chs. 197 and 245 — ~~†~~ K. Except as provided in ~~subsection~~ SUBSECTIONS G, H, M AND N of this section, a person who is sentenced for a dangerous crime against children in the first degree pursuant to this section is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served or commuted.

Chs. 197 and 245 — ~~‡~~ L. A person who is convicted of any dangerous crime against children in the first degree pursuant to subsection C, D, ~~or~~ E

Ch. 245 — OR F

Ch. 197 — OR I

of this section and who has been previously convicted of two or more predicate felonies shall be sentenced to life imprisonment and is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the person has served not fewer than thirty-five years or the sentence is commuted.

Chs. 197 and 245 — ~~†~~ M. Notwithstanding chapter 10 of this title, a person who is at least eighteen years of age or who has been tried as an adult and who is convicted of a dangerous crime against children in the second degree pursuant to subsection B, C, ~~or~~ E

Ch. 245 — OR F

Ch. 197 — OR I

of this section is guilty of a class 3 felony and if the person is sentenced to a term of imprisonment, the term of imprisonment is as follows and the person is not eligible for release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the person has served the sentence imposed by the court, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
5 years	10 years	15 years

~~†~~ N. A person who is convicted of any dangerous crime against children in the second degree and who has been previously convicted of one or more predicate felonies is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted.

~~†~~ O. Section 13-704, subsection J and section 13-707, subsection B apply to the determination of prior convictions.

Ch. 245 — ~~†~~ P. The sentence imposed on a person by the court for a dangerous crime against children under subsection ~~†~~ H of this section involving sexual abuse may be served concurrently with other sentences if the offense involved only one victim. The sentence imposed on a person for any other dangerous crime against children in the first or second degree shall be

consecutive to any other sentence imposed on the person at any time, including sexual abuse of the same victim.

~~Q.~~ Q. In this section, for purposes of punishment an unborn child shall be treated like a minor who is under twelve years of age.

~~R.~~ R. A dangerous crime against children is in the first degree if it is a completed offense and is in the second degree if it is a preparatory offense, except attempted first degree murder is a dangerous crime against children in the first degree.

~~S.~~ S. It is not a defense to a dangerous crime against children that the minor is a person posing as a minor or is otherwise fictitious if the defendant knew or had reason to know the purported minor was under fifteen years of age.

~~T.~~ T. For the purposes of this section:

1. "Dangerous crime against children" means any of the following that is committed against a minor who is under fifteen years of age:

(a) Second degree murder.

(b) Aggravated assault resulting in serious physical injury or involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument.

(c) Sexual assault.

(d) Molestation of a child.

(e) Sexual conduct with a minor.

(f) Commercial sexual exploitation of a minor.

(g) Sexual exploitation of a minor.

(h) Child abuse as prescribed in section 13-3623, subsection A, paragraph 1.

(i) Kidnapping.

(j) Sexual abuse.

(k) Taking a child for the purpose of prostitution as prescribed in section 13-3206.

(l) Child sex trafficking as prescribed in section 13-3212.

(m) Involving or using minors in drug offenses.

(n) Continuous sexual abuse of a child.

(o) Attempted first degree murder.

(p) Sex trafficking.

(q) Manufacturing methamphetamine under circumstances that cause physical injury to a minor.

(r) Bestiality as prescribed in section 13-1411, subsection A, paragraph 2.

(s) Luring a minor for sexual exploitation.

(t) Aggravated luring a minor for sexual exploitation.

(u) Unlawful age misrepresentation.

(v) Unlawful mutilation.

(w) Sexual extortion as prescribed in section 13-1428.

2. "Predicate felony" means any felony involving child abuse pursuant to section 13-3623, subsection A, paragraph 1, a sexual offense, conduct involving the intentional or knowing infliction of serious physical injury or the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument, or a dangerous crime against children in the first or second degree.

EXPLANATION OF BLEND  
SECTION 13-1204

Laws 2022, Chapters 8 and 190

Laws 2022, Ch. 8, section 1

Effective September 24, 2022

Laws 2022, Ch. 190, section 1

Effective September 24, 2022

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 8 and Ch. 190 text changes to section 13-1204 are blended in the form shown on the following pages.

BLEND OF SECTION 13-1204  
Laws 2022, Chapters 8 and 190

13-1204. Aggravated assault; classification; definitions

A. A person commits aggravated assault if the person commits assault as prescribed by section 13-1203 under any of the following circumstances:

1. If the person causes serious physical injury to another.
2. If the person uses a deadly weapon or dangerous instrument.
3. If the person commits the assault by any means of force that causes temporary but substantial disfigurement, temporary but substantial loss or impairment of any body organ or part or a fracture of any body part.
4. If the person commits the assault while the victim is bound or otherwise physically restrained or while the victim's capacity to resist is substantially impaired.
5. If the person commits the assault after entering the private home of another with the intent to commit the assault.
6. If the person is eighteen years of age or older and commits the assault on a minor under fifteen years of age.
7. If the person commits assault as prescribed by section 13-1203, subsection A, paragraph 1 or 3 and the person is in violation of an order of protection issued against the person pursuant to section 13-3602 or 13-3624.

8. If the person commits the assault knowing or having reason to know that the victim is any of the following:

- (a) A peace officer or a person summoned and directed by the officer.
- (b) A constable or a person summoned and directed by the constable while engaged in the execution of any official duties or if the assault results from the execution of the constable's official duties.

(c) A firefighter, fire investigator, fire inspector, emergency medical technician or paramedic engaged in the execution of any official duties or a person summoned and directed by such individual while engaged in the execution of any official duties or if the assault results from the execution of the official duties of the firefighter, fire investigator, fire inspector, emergency medical technician or paramedic.

(d) A teacher or other person employed by any school and the teacher or other employee is on the grounds of a school or grounds adjacent to the school or is in any part of a building or vehicle used for school purposes, any teacher or school nurse visiting a private home in the course of the teacher's or nurse's professional duties or any teacher engaged in any authorized and organized classroom activity held on other than school grounds.

- Ch. 190 — (e) A HEALTH CARE WORKER WHILE ENGAGED IN THE HEALTH CARE WORKER'S WORK DUTIES OR A health care practitioner who is certified or licensed pursuant to title 32, chapter 13, [14,] 15, 17 or 25, or a person summoned and directed by the licensed health care practitioner while engaged in the
- Ch. 8 —

person's professional duties. This subdivision does not apply if the person who commits the assault DOES NOT HAVE THE ABILITY TO FORM THE CULPABLE MENTAL STATE BECAUSE OF A MENTAL DISABILITY OR BECAUSE THE PERSON is seriously mentally ill, as defined in section 36-550, ~~or is afflicted with Alzheimer's disease or related dementia.~~

(f) A prosecutor while engaged in the execution of any official duties or if the assault results from the execution of the prosecutor's official duties.

(g) A code enforcement officer as defined in section 39-123 while engaged in the execution of any official duties or if the assault results from the execution of the code enforcement officer's official duties.

(h) A state or municipal park ranger while engaged in the execution of any official duties or if the assault results from the execution of the park ranger's official duties.

(i) A public defender while engaged in the execution of any official duties or if the assault results from the execution of the public defender's official duties.

(j) A judicial officer while engaged in the execution of any official duties or if the assault results from the execution of the judicial officer's official duties.

9. If the person knowingly takes or attempts to exercise control over any of the following:

(a) A peace officer's or other officer's firearm and the person knows or has reason to know that the victim is a peace officer or other officer employed by one of the agencies listed in paragraph 10, subdivision (a), item (i), (ii), (iii), (iv) or (v) of this subsection.

(b) Any weapon other than a firearm that is being used by a peace officer or other officer or that the officer is attempting to use, and the person knows or has reason to know that the victim is a peace officer or other officer employed by one of the agencies listed in paragraph 10, subdivision (a), item (i), (ii), (iii), (iv) or (v) of this subsection.

(c) Any implement that is being used by a peace officer or other officer or that the officer is attempting to use, and the person knows or has reason to know that the victim is a peace officer or other officer employed by one of the agencies listed in paragraph 10, subdivision (a), item (i), (ii), (iii), (iv) or (v) of this subsection. For the purposes of this subdivision, "implement" means an object that is designed for or that is capable of restraining or injuring an individual. Implement does not include handcuffs.

10. If the person meets both of the following conditions:

(a) Is imprisoned or otherwise subject to the custody of any of the following:

(i) The state department of corrections.

(ii) The department of juvenile corrections.

(iii) A law enforcement agency.

(iv) A county or city jail or an adult or juvenile detention facility of a city or county.

(v) Any other entity that is contracting with the state department of corrections, the department of juvenile corrections, a law enforcement agency, another state, any private correctional facility, a county, a city

or the federal bureau of prisons or other federal agency that has responsibility for sentenced or unsentenced prisoners.

(b) Commits an assault knowing or having reason to know that the victim is acting in an official capacity as an employee of any of the entities listed in subdivision (a) of this paragraph.

11. If the person uses a simulated deadly weapon.

B. A person commits aggravated assault if the person commits assault by either intentionally, knowingly or recklessly causing any physical injury to another person, intentionally placing another person in reasonable apprehension of imminent physical injury or knowingly touching another person with the intent to injure the person, and both of the following occur:

1. The person intentionally or knowingly impedes the normal breathing or circulation of blood of another person by applying pressure to the throat or neck or by obstructing the nose and mouth either manually or through the use of an instrument.

2. Any of the circumstances exists that are set forth in section 13-3601, subsection A, paragraph 1, 2, 3, 4, 5 or 6.

C. A person who is convicted of intentionally or knowingly committing aggravated assault on a peace officer pursuant to subsection A, paragraph 1 or 2 of this section shall be sentenced to imprisonment for not less than the presumptive sentence authorized under chapter 7 of this title and is not eligible for suspension of sentence, commutation or release on any basis until the sentence imposed is served.

D. It is not a defense to a prosecution for assaulting a peace officer or a mitigating circumstance that the peace officer was not on duty or engaged in the execution of any official duties.

E. Except pursuant to subsections F and G of this section, aggravated assault pursuant to subsection A, paragraph 1 or 2, paragraph 9, subdivision (a) or paragraph 11 of this section is a class 3 felony except if the aggravated assault is a violation of subsection A, paragraph 1 or 2 of this section and the victim is under fifteen years of age it is a class 2 felony punishable pursuant to section 13-705. Aggravated assault pursuant to subsection A, paragraph 3 or subsection B of this section is a class 4 felony. Aggravated assault pursuant to subsection A, paragraph 9, subdivision (b) or paragraph 10 of this section is a class 5 felony. Aggravated assault pursuant to subsection A, paragraph 4, 5, 6, 7 or 8 or paragraph 9, subdivision (c) of this section is a class 6 felony.

F. Aggravated assault pursuant to subsection A, paragraph 1 or 2 of this section committed on a peace officer is a class 2 felony. Aggravated assault pursuant to subsection A, paragraph 3 of this section committed on a peace officer is a class 3 felony. Aggravated assault pursuant to subsection A, paragraph 8, subdivision (a) of this section committed on a peace officer is a class 5 felony unless the assault results in any physical injury to the peace officer, in which case it is a class 4 felony.

G. Aggravated assault pursuant to:

1. Subsection A, paragraph 1 or 2 of this section is a class 2 felony if committed on a prosecutor.

2. Subsection A, paragraph 3 of this section is a class 3 felony if committed on a prosecutor.

3. Subsection A, paragraph 8, subdivision (f) of this section is a class 5 felony if the assault results in physical injury to a prosecutor.

H. For the purposes of this section:

1. "HEALTH CARE WORKER" MEANS:

(a) A PERSON WHO IS EMPLOYED BY OR CONTRACTED TO WORK AT A HEALTH CARE INSTITUTION THAT IS LICENSED PURSUANT TO TITLE 36.

(b) A PERSON WHO IS EMPLOYED OR CONTRACTED TO PROVIDE HEALTH CARE OR RELATED SERVICES IN A FIELDWORK SETTING, INCLUDING:

(i) HOME HEALTH CARE, HOME-BASED HOSPICE AND HOME-BASED SOCIAL WORK, UNLESS THE WORKER IS EMPLOYED OR CONTRACTED BY AN INDIVIDUAL WHO PRIVATELY EMPLOYS, IN THE INDIVIDUAL'S RESIDENCE, THE WORKER TO PERFORM COVERED SERVICES FOR THE INDIVIDUAL OR A FAMILY MEMBER OF THE INDIVIDUAL.

(ii) ANY EMERGENCY SERVICES AND TRANSPORT, INCLUDING THE SERVICES PROVIDED BY FIREFIGHTERS AND EMERGENCY RESPONDERS.

~~1.~~ 2. "Judicial officer" means a justice of the supreme court, judge, justice of the peace or magistrate or a commissioner or hearing officer of a state, county or municipal court.

3. "MENTAL DISABILITY" MEANS A DISABLING NEUROLOGICAL CONDITION, OR BRAIN INJURY, OR INVOLUNTARY IMPAIRMENT AS A RESULT OF A MEDICATION THAT IS ADMINISTERED BY A HEALTH CARE PROVIDER OR A MEDICAL PROCEDURE THAT IS PERFORMED AT A HEALTH CARE TREATMENT SITE.

~~2.~~ 4. "Prosecutor" means a county attorney, a municipal prosecutor or the attorney general and includes an assistant or deputy county attorney, municipal prosecutor or attorney general.

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EXPLANATION OF BLEND  
SECTION 13-3560

Laws 2022, Chapters 197 and 245

Laws 2022, Ch. 197, section 8

Effective September 24, 2022

Laws 2022, Ch. 245, section 3

Effective September 24, 2022

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 197 and Ch. 245 text changes to section 13-3560 are blended in the form shown on the following page.

BLEND OF SECTION 13-3560  
Laws 2022, Chapters 197 and 245

13-3560. Aggravated luring a minor for sexual exploitation;  
classification; definitions

A. A person commits aggravated luring a minor for sexual exploitation if the person does both of the following:

1. Knowing the character and content of the depiction, uses an electronic communication device to transmit at least one visual depiction of material that is harmful to minors for the purpose of initiating or engaging in communication with a recipient who the person knows or has reason to know is a minor.

2. By means of the communication, offers or solicits sexual conduct with the minor. The offer or solicitation may occur before, contemporaneously with, after or as an integrated part of the transmission of the visual depiction.

B. It is not a defense to a prosecution for a violation of this section that the other person is not a minor or that the other person is a peace officer posing as a minor.

C. Aggravated luring a minor for sexual exploitation is a class 2 felony, and if the minor is under fifteen years of age it is punishable pursuant to section 13-705, subsection ~~E~~ F. A PERSON WHO IS CONVICTED OF A VIOLATION OF THIS SECTION IS NOT ELIGIBLE FOR SUSPENSION OF SENTENCE, PROBATION, PARDON OR RELEASE FROM CONFINEMENT ON ANY BASIS EXCEPT AS SPECIFICALLY AUTHORIZED BY SECTION 31-233, SUBSECTION A OR B UNTIL THE SENTENCE IMPOSED BY THE COURT HAS BEEN SERVED OR COMMUTED.

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D. The defense prescribed in section 13-1407, subsection E applies to a prosecution pursuant to this section.

E. For the purposes of this section:

1. "Electronic communication device" means any electronic device that is capable of transmitting visual depictions and includes any of the following:

(a) A computer, computer system or network as defined in section 13-2301.

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(b) A cellular TELEPHONE or wireless telephone as defined in section 13-4801.

2. "Harmful to minors" has the same meaning prescribed in section 13-3501.

EXPLANATION OF BLEND  
SECTION 15-102

Laws 2022, Chapters 200 and 205

Laws 2022, Ch. 200, section 2

Effective September 24, 2022

Laws 2022, Ch. 205, section 1

Effective September 24, 2022

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 200 and Ch. 205 text changes to section 15-102 are blended in the form shown on the following pages.

BLEND OF SECTION 15-102  
Laws 2022, Chapters 200 and 205

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and 205

15-102. Parental involvement in the school; definition

A. ~~The~~ EACH SCHOOL DISTRICT governing board, in consultation with parents, teachers and administrators, shall develop and adopt a policy to promote the involvement of parents and guardians of children enrolled in the schools within the school district, including:

1. A plan for parent participation in the schools that is designed to improve parent and teacher cooperation in such areas as homework, attendance and discipline. The plan shall provide for the administration of a parent-teacher satisfaction survey.

2. Procedures by which parents may learn about the course of study for their children and review learning materials, including the source of any supplemental educational materials.

3. BEGINNING JANUARY 1, 2023, PROCEDURES BY WHICH PARENTS HAVE ACCESS TO THE SCHOOL'S LIBRARY COLLECTION OF AVAILABLE BOOKS AND MATERIALS AND PARENTS MAY RECEIVE A LIST OF BOOKS AND MATERIALS BORROWED FROM THE LIBRARY BY THEIR CHILDREN. THE POLICY MUST PROVIDE THAT THE FOLLOWING ARE EXEMPT FROM THE PROCEDURES PRESCRIBED PURSUANT TO THIS PARAGRAPH:

(a) SCHOOLS WITHOUT A FULL-TIME LIBRARY MEDIA SPECIALIST OR AN EQUIVALENT POSITION.

(b) SCHOOL DISTRICT LIBRARIES THAT HAVE AGREEMENTS WITH COUNTY FREE LIBRARY DISTRICTS, MUNICIPAL LIBRARIES OR OTHER ENTITIES PURSUANT TO SECTION 15-362, SUBSECTION D.

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~~3.~~ 4. Procedures by which parents who object to any learning material or activity on the basis that the material or activity is harmful may withdraw their children from the activity or from the class or program in which the material is used. Objection to a learning material or activity on the basis that the material or activity is harmful includes objection to the material or activity because it questions beliefs or practices in sex, morality or religion.

~~4.~~ 5. If a school district offers any sex education curricula pursuant to section 15-711 or 15-716 or pursuant to any rules adopted by the state board of education, procedures to prohibit the school district from providing sex education instruction to a pupil unless the pupil's parent provides written permission for the child to participate in the sex education curricula.

~~5.~~ 6. Procedures by which parents will be notified in advance of and given the opportunity to opt their children in to any instruction, learning materials or presentations regarding sexuality, in courses other than formal sex education curricula.

~~6.~~ 7. Procedures by which parents may learn about the nature and purpose of clubs and activities that are part of the school curriculum, extracurricular clubs and activities that have been approved by the school.

~~7.~~ 8. Procedures by which parents may learn about parental rights and responsibilities under the laws of this state, including the following:

(a) The right to opt in to a sex education curriculum if one is provided by the school district.

(b) Open enrollment rights pursuant to section 15-816.01.

(c) The right to opt out of assignments pursuant to this section.

(d) The right to opt out of immunizations pursuant to section 15-873.

(e) The promotion requirements prescribed in section 15-701.

(f) The minimum course of study and competency requirements for graduation from high school prescribed in section 15-701.01.

(g) The right to opt out of instruction on acquired immune deficiency syndrome pursuant to section 15-716.

(h) The right to review test results pursuant to section 15-743.

(i) The right to participate in gifted programs pursuant to section 15-779.01.

(j) The right to access instructional materials pursuant to section 15-730.

(k) The right to receive a school report card pursuant to section 15-746.

(l) The attendance requirements prescribed in sections 15-802, 15-803 and 15-821.

Ch. 205 { (m) The right to public review of courses of study, ~~and~~ textbooks AND LIBRARY BOOKS AND MATERIALS pursuant to sections 15-721 and 15-722.

(n) The right to be excused from school attendance for religious purposes pursuant to section 15-806.

(o) Policies related to parental involvement pursuant to this section.

(p) The right to seek membership on school councils pursuant to section 15-351.

(q) Information about the student accountability information system as prescribed in section 15-1041.

(r) The right to access the failing schools tutoring fund pursuant to section 15-241.

Ch. 200 { (s) THE RIGHT TO ACCESS ALL WRITTEN AND ELECTRONIC RECORDS OF A SCHOOL DISTRICT OR SCHOOL DISTRICT EMPLOYEE CONCERNING THE PARENT'S CHILD PURSUANT TO SECTION 15-143.

B. The policy adopted by the governing board pursuant to this section may also include the following components:

1. A plan by which parents will be made aware of the district's parental involvement policy and this section, including:

(a) Rights under the family educational rights and privacy act of 1974 (20 United States Code section 1232g) relating to access to children's official records.

(b) The parent's right to inspect the school district policies and curriculum.

2. Efforts to encourage the development of parenting skills.

3. Communicating to parents techniques that are designed to assist the child's learning experience in the home.

4. Efforts to encourage access to community and support services for children and families.

5. Promoting communication between the school and parents concerning school programs and the academic progress of the parents' children.

6. Identifying opportunities for parents to participate in and support classroom instruction at the school.

7. Efforts to support, with appropriate training, parents as shared decision-makers and to encourage membership on school councils.

8. Recognizing the diversity of parents and developing guidelines that promote widespread parental participation and involvement in the school at various levels.

9. Developing preparation programs and specialized courses for certificated employees and administrators that promote parental involvement.

10. Developing strategies and programmatic structures at schools to encourage and enable parents to participate actively in their children's education.

C. The governing board may adopt a policy to provide to parents the information required by this section in an electronic form.

D. A parent shall submit a written request for information pursuant to this section during regular business hours to either the school principal at the school site or the superintendent of the school district at the office of the school district. Within ten days after receiving the request for information, the school principal or the superintendent of the school district shall either deliver the requested information to the parent or submit to the parent a written explanation of the reasons for denying the requested information. If the request for information is denied or the parent does not receive the requested information within fifteen days after submitting the request for information, the parent may ~~submit a written request for the information to~~ IN WRITING FROM the school district governing board, which shall formally consider the request at the next scheduled public meeting of the governing board if the request can be properly noticed on the agenda. If the request cannot be properly noticed on the agenda, the governing board shall formally consider the request at the next subsequent public meeting of the governing board.

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and 205

E. For the purposes of this section, "parent" means the natural or adoptive parent or legal guardian of a minor child.

EXPLANATION OF BLEND  
SECTION 15-341

Laws 2022, Chapters 8 and 237

Laws 2022, Ch. 8, section 2

Effective September 24, 2022

Laws 2022, Ch. 237, section 2

Effective September 24, 2022

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 8 and Ch. 237 text changes to section 15-341 are blended in the form shown on the following pages.

BLEND OF SECTION 15-341  
Laws 2022, Chapters 8 and 237

15-341. General powers and duties; immunity; delegation

A. The governing board shall:

Ch. 237 — 1. Prescribe and enforce policies and procedures to govern the schools that are not inconsistent with ~~law~~ THE LAWS or rules prescribed by the state board of education.

Chs. 8 and 237 — 2. Exclude from schools all books, publications, papers or audiovisual materials of a sectarian, partisan or denominational character. This paragraph does not prohibit the elective course ~~permitted~~ ALLOWED by section 15-717.01.

3. Manage and control the school property within its district, except that a district may enter into a partnership with an entity, including a charter school, another school district or a military base, to operate a school or offer educational services in a district building, including at a vacant or partially used building, or in any building on the entity's property pursuant to a written agreement between the parties.

4. Acquire school furniture, apparatus, equipment, library books and supplies for the schools to use.

5. Prescribe the curricula and criteria for the promotion and graduation of pupils as provided in sections 15-701 and 15-701.01.

6. Furnish, repair and insure, at full insurable value, the school property of the district.

7. Construct school buildings on approval by a vote of the district electors.

8. In the name of the district, convey property belonging to the district and sold by the board.

9. Purchase school sites when authorized by a vote of the district at an election conducted as nearly as practicable in the same manner as the election provided in section 15-481 and held on a date prescribed in section 15-491, subsection E, but such authorization shall not necessarily specify the site to be purchased and such authorization shall not be necessary to exchange unimproved property as provided in section 15-342, paragraph 23.

10. Construct, improve and furnish buildings used for school purposes when such buildings or premises are leased from the national park service.

11. Purchase school sites or construct, improve and furnish school buildings from the proceeds of the sale of school property only on approval by a vote of the district electors.

12. Hold pupils to strict account for disorderly conduct on school property.

13. Discipline students for disorderly conduct on the way to and from school.

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14. Except as provided in section 15-1224, deposit all monies received by the district as gifts, grants and devises with the county treasurer who shall credit the deposits as designated in the uniform system of financial records. If not inconsistent with the terms of the gifts, grants and devises given, any balance remaining after expenditures for the intended purpose of the monies have been made shall be used for reduction of TO REDUCE school district taxes for the budget year, except that in the case of accommodation schools the county treasurer shall carry the balance forward for use by the county school superintendent for accommodation schools for the budget year.

15. Provide that, if a parent or legal guardian chooses not to accept a decision of the teacher as provided in paragraph 42 of this subsection, the parent or legal guardian may request in writing that the governing board review the teacher's decision. This paragraph does not release school districts from any liability relating to a child's promotion or retention.

16. Provide for adequate supervision over pupils in instructional and noninstructional activities by certificated or noncertificated personnel.

17. Use school monies received from the state and county school apportionment exclusively to pay salaries of teachers and other employees and contingent expenses of the district.

18. Annually report to the county school superintendent on or before October 1 in the manner and form and on the blanks prescribed by the superintendent of public instruction or county school superintendent. The board shall also report directly to the county school superintendent or the superintendent of public instruction whenever required.

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19. Deposit all monies received by school districts other than student activities monies or monies from auxiliary operations as provided in sections 15-1125 and 15-1126 with the county treasurer to the credit of the school district except as provided in paragraph 20 of this subsection and sections 15-1223 and 15-1224, and the board shall ~~expend~~ SPEND the monies as provided by law for other school funds.

20. Establish bank accounts in which the board during a month may deposit miscellaneous monies received directly by the district. The board shall remit monies deposited in the bank accounts at least monthly to the county treasurer for deposit as provided in paragraph 19 of this subsection and in accordance with the uniform system of financial records.

21. Prescribe and enforce policies and procedures for disciplinary action against a teacher who engages in conduct that is a violation of the policies of the governing board but that is not cause for dismissal of the teacher or for revocation of the certificate of the teacher. Disciplinary action may include suspension without pay for a period of time not to exceed ten school days. Disciplinary action shall not include suspension with pay or suspension without pay for a period of time longer than ten school days. The procedures shall include notice, hearing and appeal provisions for violations that are cause for disciplinary action. The governing board may designate a person or persons to act on behalf of the board on these matters.

22. Prescribe and enforce policies and procedures for disciplinary action against an administrator who engages in conduct that is a violation

of the policies of the governing board regarding duties of administrators but that is not cause for dismissal of the administrator or for revocation of the certificate of the administrator. Disciplinary action may include suspension without pay for a period of time not to exceed ten school days. Disciplinary action shall not include suspension with pay or suspension without pay for a period of time longer than ten school days. The procedures shall include notice, hearing and appeal provisions for violations that are cause for disciplinary action. The governing board may designate a person or persons to act on behalf of the board on these matters. For violations that are cause for dismissal, the provisions of notice, hearing and appeal

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— in chapter 5, article 3 of this title shall apply. The filing of a timely request for a hearing suspends the imposition of a suspension without pay or a dismissal pending completion of the hearing.

23. Notwithstanding sections 13-3108 and 13-3120, prescribe and enforce policies and procedures that prohibit a person from carrying or possessing a weapon on school grounds unless the person is a peace officer or has obtained specific authorization from the school administrator.

24. Prescribe and enforce policies and procedures relating to the health and safety of all pupils participating in district-sponsored practice sessions or games or other interscholastic athletic activities, including:

(a) The provision of water.

(b) Guidelines, information and forms, developed in consultation with a statewide private entity that supervises interscholastic activities, to inform and educate coaches, pupils and parents of the dangers of concussions and head injuries and the risks of continued participation in athletic activity after a concussion. The policies and procedures shall require that, before a pupil participates in an athletic activity, the pupil and

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— the pupil's parent must sign an information form at least once each school year that states that the parent is aware of the nature and risk of concussion. The policies and procedures shall require that a pupil who is suspected of sustaining a concussion in a practice session, game or other interscholastic athletic activity be immediately removed from the athletic activity and that the pupil's parent or guardian be notified. A coach from the pupil's team or an official or a licensed health care provider may remove a pupil from play. A team parent may also remove the parent's own child from play. A pupil may return to play on the same day if a health care provider rules out a suspected concussion at the time the pupil is removed from play. On a subsequent day, the pupil may return to play if the pupil has been evaluated by and received written clearance to resume participation in athletic activity from a health care provider who has been

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— trained in the ~~evaluation~~ EVALUATING and ~~management~~ of MANAGING concussions and head injuries. A health care provider who is a volunteer and who provides clearance to participate in athletic activity on the day of the suspected injury or on a subsequent day is immune from civil liability with respect to all decisions made and actions taken that are based on good faith implementation of the requirements of this subdivision, except in cases of gross negligence or wanton or wilful neglect. A school district, school district employee, team coach, official or team volunteer or a parent or guardian of a team member is not subject to civil liability for any act, omission or policy undertaken in good faith to comply with the requirements

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of this subdivision or for a decision made or an action taken by a health care provider. A group or organization that uses property or facilities owned or operated by a school district for athletic activities shall comply with the requirements of this subdivision. A school district and its employees and volunteers are not subject to civil liability for any other person or organization's failure or alleged failure to comply with the requirements of this subdivision. This subdivision does not apply to teams that are based in another state and that participate in an athletic activity in this state. For the purposes of this subdivision, athletic activity does not include dance, rhythmic gymnastics, competitions or exhibitions of academic skills or knowledge or other similar forms of physical noncontact activities, civic activities or academic activities, whether engaged in for the purposes of competition or recreation. For the purposes of this subdivision, "health care provider" means a physician who is licensed pursuant to title 32, chapter 13, 14 or 17, an athletic trainer who is licensed pursuant to title 32, chapter 41, a nurse practitioner who is licensed pursuant to title 32, chapter 15, and a physician assistant who is licensed pursuant to title 32, chapter 25.

(c) Guidelines, information and forms that are developed in consultation with a statewide private entity that supervises interscholastic activities to inform and educate coaches, pupils and parents of the dangers of heat-related illnesses, sudden cardiac death and prescription opioid use. Before a pupil participates in any district-sponsored practice session or game or other interscholastic athletic activity, the pupil and the pupil's parent must be provided with information at least once each school year on the risks of heat-related illnesses, sudden cardiac death and prescription opioid addiction.

25. Establish an assessment, data gathering and reporting system as prescribed in chapter 7, article 3 of this title.

26. Provide special education programs and related services pursuant to section 15-764, subsection A to all children with disabilities as defined in section 15-761.

27. Administer competency tests prescribed by the state board of education for the graduation of pupils from high school.

28. Ensure that insurance coverage is secured for all construction projects for purposes of general liability, property damage and workers' compensation and secure performance and payment bonds for all construction projects.

29. Keep in the personnel file of all current and former employees who provide instruction to pupils at a school information about the employee's educational and teaching background and experience in a particular academic content subject area. A school district shall inform parents and guardians of the availability of the information and shall make the information available for inspection on request of parents and guardians of pupils enrolled at a school. This paragraph does not require any school to release personally identifiable information in relation to any teacher or employee, including the teacher's or employee's address, salary, social security number or telephone number.

30. Report to local law enforcement agencies any suspected crime against a person or property that is a serious offense as defined in section

13-706 or that involves a deadly weapon or dangerous instrument or serious physical injury and any conduct that poses a threat of death or serious physical injury to employees, students or anyone on the property of the school. This paragraph does not limit or preclude the reporting by a school district or an employee of a school district of suspected crimes other than those required to be reported by this paragraph. For the purposes of this paragraph, "dangerous instrument", "deadly weapon" and "serious physical injury" have the same meanings prescribed in section 13-105.

31. In conjunction with local law enforcement agencies and emergency response agencies, develop an emergency response plan for each school in the school district in accordance with minimum standards developed jointly by the department of education and the division of emergency management within the department of emergency and military affairs.

32. Provide written notice to the parents or guardians of all students enrolled in the school district at least ten days before a public meeting to discuss closing a school within the school district. The notice shall include the reasons for the proposed closure and the time and place of the meeting. The governing board shall fix a time for a public meeting on the proposed closure not less than ten days before voting in a public meeting to close the school. The school district governing board shall give notice of the time and place of the meeting. At the time and place designated in the notice, the school district governing board shall hear reasons for or against closing the school. The school district governing board is exempt from this paragraph if the governing board determines that the school shall be closed because it poses a danger to the health or safety of the pupils or employees of the school. A governing board may consult with the division of school facilities within the department of administration for technical assistance and for information on the impact of closing a school. The information provided from the division of school facilities within the department of administration shall not require the governing board to take or not take any action.

33. Incorporate instruction on Native American history into appropriate existing curricula.

34. Prescribe and enforce policies and procedures:

(a) Allowing pupils who have been diagnosed with anaphylaxis by a health care provider licensed pursuant to title 32, chapter 13, 14, 17 or 25 or by a registered nurse practitioner licensed and certified pursuant to title 32, chapter 15 to carry and self-administer emergency medications, including epinephrine auto-injectors, while at school and at school-sponsored activities. The pupil's name on the prescription label on the medication container or on the medication device and annual written documentation from the pupil's parent or guardian to the school that authorizes possession and self-administration is sufficient proof that the pupil is entitled to the ~~possession~~ POSSESS and ~~self-administration of~~ SELF-ADMINISTER the medication. The policies shall require a pupil who uses an epinephrine auto-injector while at school and at school-sponsored activities to notify the nurse or the designated school staff person of the use of the medication as soon as practicable. A school district and its employees are immune from civil liability with respect to all decisions made and actions taken that are based on good faith implementation of the

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requirements of this subdivision, except in cases of wanton or wilful neglect.

(b) For the emergency administration of epinephrine auto-injectors by a trained employee of a school district pursuant to section 15-157.

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35. Allow the possession and self-administration of prescription medication for breathing disorders in handheld inhaler devices by pupils who have been prescribed that medication by a health care professional licensed pursuant to title 32. The pupil's name on the prescription label on the medication container or on the handheld inhaler device and annual written documentation from the pupil's parent or guardian to the school that authorizes possession and self-administration ~~shall be~~ IS sufficient proof that the pupil is entitled to the possession POSSESS and self-administration ~~of~~ SELF-ADMINISTER the medication. A school district and its employees are immune from civil liability with respect to all decisions made and actions taken that are based on a good faith implementation of the requirements of this paragraph.

36. Prescribe and enforce policies and procedures to prohibit pupils from harassing, intimidating and bullying other pupils on school grounds, on school property, on school buses, at school bus stops, at school-sponsored events and activities and through the use of electronic technology or electronic communication on school computers, networks, forums and mailing lists that include the following components:

(a) A procedure for pupils, parents and school district employees to confidentially report to school officials incidents of harassment, intimidation or bullying. The school shall make available written forms designed to provide a full and detailed description of the incident and any other relevant information about the incident.

(b) A requirement that school district employees report in writing suspected incidents of harassment, intimidation or bullying to the appropriate school official and a description of appropriate disciplinary procedures for employees who fail to report suspected incidents that are known to the employee.

(c) A requirement that, at the beginning of each school year, school officials provide all pupils with a written copy of the rights, protections and support services available to a pupil who is an alleged victim of an incident reported pursuant to this paragraph.

(d) If an incident is reported pursuant to this paragraph, a requirement that school officials provide a pupil who is an alleged victim of the incident with a written copy of the rights, protections and support services available to that pupil.

(e) A formal process for documenting reported incidents of harassment, intimidation or bullying and providing for the confidentiality, maintenance and disposition of this documentation. School districts shall maintain documentation of all incidents reported pursuant to this paragraph for at least six years. The school shall not use that documentation to impose disciplinary action unless the appropriate school official has investigated and determined that the reported incidents of harassment, intimidation or bullying occurred. If a school provides documentation of reported incidents to persons other than school officials or law enforcement, all individually identifiable information shall be redacted.

(f) A formal process for the appropriate school officials to investigate suspected incidents of harassment, intimidation or bullying, including procedures for notifying the alleged victim and the alleged victim's parent or guardian when a school official or employee becomes aware of the suspected incident of harassment, intimidation or bullying.

(g) Disciplinary procedures for pupils who have admitted or been found to have committed incidents of harassment, intimidation or bullying.

(h) A procedure that sets forth consequences for submitting false reports of incidents of harassment, intimidation or bullying.

(i) Procedures designed to protect the health and safety of pupils who are physically harmed as the result of incidents of harassment, intimidation and bullying, including, if appropriate, procedures to contact emergency medical services or law enforcement agencies, or both.

(j) Definitions of harassment, intimidation and bullying.

37. Prescribe and enforce policies and procedures regarding changing or adopting attendance boundaries that include the following components:

(a) A procedure for holding public meetings to discuss attendance boundary changes or adoptions that allows public comments.

(b) A procedure to notify the parents or guardians of the students affected, including assurance that, if that school remains open as part of the boundary change and capacity is available, students assigned to a new attendance area may stay enrolled in their current school.

(c) A procedure to notify the residents of the households affected by the attendance boundary changes.

(d) A process for placing public meeting notices and proposed maps on the school district's website for public review, if the school district maintains a website.

(e) A formal process for presenting the attendance boundaries of the affected area in public meetings that allows public comments.

(f) A formal process for notifying the residents and parents or guardians of the affected area as to the decision of the governing board on the school district's website, if the school district maintains a website.

(g) A formal process for updating attendance boundaries on the school district's website within ninety days after an adopted boundary change. The school district shall send a direct link to the school district's attendance boundaries website to the department of real estate.

38. If the state board of education determines that the school district has committed an overexpenditure as defined in section 15-107, provide a copy of the fiscal management report submitted pursuant to section 15-107, subsection H on its website and make copies available to the public on request. The school district shall comply with a request within five business days after receipt.

39. Ensure that the contract for the superintendent is structured in a manner in which up to twenty percent of the total annual salary included for the superintendent in the contract is classified as performance pay. This paragraph does not require school districts to increase total compensation for superintendents. Unless the school district governing board votes to implement an alternative procedure at a public meeting called for this purpose, the performance pay portion of the superintendent's total annual compensation shall be determined as follows:

(a) Twenty-five percent of the performance pay shall be determined based on the percentage of academic gain determined by the department of education of pupils who are enrolled in the school district compared to the academic gain achieved by the highest ranking of the fifty largest school districts in this state. For the purposes of this subdivision, the department of education shall determine academic gain by the academic growth achieved by each pupil who has been enrolled at the same school in a school district for at least five consecutive months measured against that pupil's academic results in the 2008-2009 school year. For the purposes of this subdivision, of the fifty largest school districts in this state, the school district with pupils who demonstrate the highest statewide percentage of overall academic gain measured against academic results for the 2008-2009 school year shall be assigned a score of 100 and the school district with pupils who demonstrate the lowest statewide percentage of overall academic gain measured against academic results for the 2008-2009 school year shall be assigned a score of 0.

(b) Twenty-five percent of the performance pay shall be determined by the percentage of parents of pupils who are enrolled at the school district who assign a letter grade of "A" to the school on a survey of parental satisfaction with the school district. The parental satisfaction survey shall be administered and scored by an independent entity that is selected by the governing board and that demonstrates sufficient expertise and experience to accurately measure the results of the survey. The parental satisfaction survey shall use standard random sampling procedures and provide anonymity and confidentiality to each parent who participates in the survey. The letter grade scale used on the parental satisfaction survey shall direct parents to assign one of the following letter grades:

- (i) A letter grade of "A" if the school district is excellent.
- (ii) A letter grade of "B" if the school district is above average.
- (iii) A letter grade of "C" if the school district is average.
- (iv) A letter grade of "D" if the school district is below average.
- (v) A letter grade of "F" if the school district is a failure.

(c) Twenty-five percent of the performance pay shall be determined by the percentage of teachers who are employed at the school district and who assign a letter grade of "A" to the school on a survey of teacher satisfaction with the school. The teacher satisfaction survey shall be administered and scored by an independent entity that is selected by the governing board and that demonstrates sufficient expertise and experience to accurately measure the results of the survey. The teacher satisfaction survey shall use standard random sampling procedures and provide anonymity and confidentiality to each teacher who participates in the survey. The letter grade scale used on the teacher satisfaction survey shall direct teachers to assign one of the following letter grades:

- (i) A letter grade of "A" if the school district is excellent.
- (ii) A letter grade of "B" if the school district is above average.
- (iii) A letter grade of "C" if the school district is average.
- (iv) A letter grade of "D" if the school district is below average.
- (v) A letter grade of "F" if the school district is a failure.

(d) Twenty-five percent of the performance pay shall be determined by other criteria selected by the governing board.

40. Maintain and store permanent public records of the school district as required by law. Notwithstanding section 39-101, the standards adopted by the Arizona state library, archives and public records for the maintenance and storage of school district public records shall allow school districts to elect to satisfy the requirements of this paragraph by maintaining and storing these records either on paper or in an electronic format, or a combination of a paper and electronic format.

41. Adopt in a public meeting and implement policies for principal evaluations. Before adopting principal evaluation policies, the school district governing board shall provide opportunities for public discussion on the proposed policies. The governing board shall adopt policies that:

(a) Are designed to improve principal performance and improve student achievement.

(b) Include the use of quantitative data on the academic progress for all students, which shall account for between twenty percent and thirty-three percent of the evaluation outcomes.

(c) Include four performance classifications, designated as highly effective, effective, developing and ineffective.

(d) Describe both of the following:

(i) The methods used to evaluate the performance of principals, including the data used to measure student performance and job effectiveness.

(ii) The formula used to determine evaluation outcomes.

42. Prescribe and enforce policies and procedures that define the duties of principals and teachers. These policies and procedures shall authorize teachers to take and maintain daily classroom attendance, make the decision to promote or retain a pupil in a grade in common school or to pass or fail a pupil in a course in high school, subject to review by the governing board in the manner provided in section 15-342, paragraph 11.

43. Prescribe and enforce policies and procedures for the emergency administration by an employee of a school district pursuant to section 36-2267 of naloxone hydrochloride or any other opioid antagonist approved by the United States food and drug administration.

44. In addition to the notification requirements prescribed in paragraph 36 of this subsection, prescribe and enforce reasonable and appropriate policies to notify a pupil's parent or guardian if any person engages in harassing, threatening or intimidating conduct against that pupil. A school district and its officials and employees are immune from civil liability with respect to all decisions made and actions taken that are based on good faith implementation of the requirements of this paragraph, except in cases of gross negligence or wanton or wilful neglect. A person engages in threatening or intimidating if the person threatens or intimidates by word or conduct to cause physical injury to another person or serious damage to the property of another on school grounds. A person engages in harassment if, with intent to harass or with knowledge that the person is harassing another person, the person anonymously or otherwise contacts, communicates or causes a communication with another person by verbal, electronic, mechanical, telephonic or written means in a manner that harasses on school grounds or substantially disrupts the school environment.

45. Each fiscal year, provide to each school district employee a total compensation statement that is broken down by category of benefit or payment and that includes, for that employee, at least all of the following:

- (a) Base salary and any additional pay.
- (b) Medical benefits and the value of any employer-paid portions of insurance plan premiums.
- (c) Retirement benefit plans, including social security.
- (d) Legally required benefits.
- (e) Any paid leave.
- (f) Any other payment made to or on behalf of the employee.
- (g) Any other benefit provided to the employee.

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46. DEVELOP AND ADOPT IN A PUBLIC MEETING POLICIES TO ALLOW FOR VISITS, TOURS AND OBSERVATIONS OF ALL CLASSROOMS BY PARENTS OF ENROLLED PUPILS AND PARENTS WHO WISH TO ENROLL THEIR CHILDREN IN THE SCHOOL DISTRICT UNLESS A VISIT, TOUR OR OBSERVATION THREATENS THE HEALTH AND SAFETY OF PUPILS AND STAFF. THESE POLICIES AND PROCEDURES MUST BE EASILY ACCESSIBLE FROM THE HOME PAGE ON EACH SCHOOL'S WEBSITE.

B. Notwithstanding subsection A, paragraphs 7, 9 and 11 of this section, the county school superintendent may construct, improve and furnish school buildings or purchase or sell school sites in the conduct of an accommodation school.

C. If any school district acquires real or personal property, whether by purchase, exchange, condemnation, gift or otherwise, the governing board shall pay to the county treasurer any taxes on the property that were unpaid as of the date of acquisition, including penalties and interest. The lien for unpaid delinquent taxes, penalties and interest on property acquired by a school district:

1. Is not abated, extinguished, discharged or merged in the title to the property.

2. Is enforceable in the same manner as other delinquent tax liens.

D. The governing board may not locate a school on property that is less than one-fourth mile from agricultural land regulated pursuant to section 3-365, except that the owner of the agricultural land may agree to comply with the buffer zone requirements of section 3-365. If the owner agrees in writing to comply with the buffer zone requirements and records the agreement in the office of the county recorder as a restrictive covenant running with the title to the land, the school district may locate a school within the affected buffer zone. The agreement may include any stipulations regarding the school, including conditions for future expansion of the school and changes in the operational status of the school that will result in a breach of the agreement.

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E. A school district, its governing board members, its school council members and its employees are immune from civil liability for the consequences of ~~adoption~~ ADOPTING and ~~implementation~~ of IMPLEMENTING policies and procedures pursuant to subsection A of this section and section 15-342. This waiver does not apply if the school district, its governing board members, its school council members or its employees are guilty of gross negligence or intentional misconduct.

F. A governing board may delegate in writing to a superintendent, principal or head teacher the authority to prescribe procedures that are consistent with the governing board's policies.

G. Notwithstanding any other provision of this title, a school district governing board shall not take any action that would result in a reduction of pupil square footage unless the governing board notifies the school facilities oversight board established by section 41-5701.02 of the proposed action and receives written approval from the school facilities oversight board to take the action. A reduction includes an increase in administrative space that results in a reduction of pupil square footage or sale of school sites or buildings, or both. A reduction includes a reconfiguration of grades that results in a reduction of pupil square footage of any grade level. This subsection does not apply to temporary reconfiguration of grades to accommodate new school construction if the temporary reconfiguration does not exceed one year. The sale of equipment that results in a reduction that falls below the equipment requirements prescribed in section 41-5711, subsection B is subject to commensurate withholding of school district additional assistance monies pursuant to the direction of the school facilities oversight board. Except as provided in section 15-342, paragraph 10, proceeds from the sale of school sites, buildings or other equipment shall be deposited in the school plant fund as provided in section 15-1102.

H. Subsections C through G of this section apply to a county board of supervisors and a county school superintendent when operating and administering an accommodation school.

I. A school district governing board may delegate authority in writing to the superintendent of the school district to submit plans for new school facilities to the school facilities oversight board for the purpose of certifying that the plans meet the minimum school facility adequacy guidelines prescribed in section 41-5711.

J. For the purposes of subsection A, paragraph 37 of this section, attendance boundaries may not be used to require students to attend certain schools based on the student's place of residence.

EXPLANATION OF BLEND  
SECTION 15-501.01

Laws 2022, Chapters 120 and 337

Laws 2022, Ch. 120, section 2

Effective September 24, 2022

Laws 2022, Ch. 337, section 1

Effective September 24, 2022

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 120 and Ch. 337 text changes to section 15-501.01 are blended in the form shown on the following pages.

BLEND OF SECTION 15-501.01  
Laws 2022, Chapters 120 and 337

15-501.01. Requirements for teachers; teaching certificates;  
rules; reciprocity; placement; posting

A. Notwithstanding any other law, all teachers who are certificated pursuant to this section must have a baccalaureate degree and a valid fingerprint clearance card.

B. The state board of education shall adopt rules for the issuance of the following types of certificates for teachers ~~to reflect the source of the training the teacher obtains:~~

1. Standard teaching certificate.
2. Alternative teaching certificate for persons who obtain training pursuant to subsection C, paragraph 1 of this section.
3. Subject-matter expert standard teaching certificate for persons who obtain training pursuant to subsection C, paragraph 8 of this section.
4. Classroom-based standard teaching certificate for ~~persons~~ INDIVIDUALS who obtain training from a school district or charter school.
5. Career and technical education teaching certificate.

C. The state board of education shall adopt rules to carry out the purposes of this section. The rules:

1. Shall provide for a variety of alternative teacher and administrator preparation programs that allow for variations in program sequence and design to apply for program approval. The state board shall adopt rules pursuant to this paragraph designed to allow for a variety of formats and shall not require a prescribed answer or design from the program provider in order to obtain approval from the state board. Any rules adopted by the state board pursuant to this paragraph shall be substantially different from the rules adopted for the approval of traditional preparation programs and may not unnecessarily restrict a variety of alternative preparation programs from operating and providing instruction in this state. The state board shall evaluate each program provider based on the program's ability to prepare teachers and administrators and to recruit teachers and administrators with a variety of experiences and talents. The state board shall allow universities under the jurisdiction of the Arizona board of regents, community colleges in this state, private postsecondary institutions licensed by this state, school districts, charter schools, professional organizations, nonprofit organizations and private entities to apply for program approval and shall create application procedures and certification criteria that are substantially less restrictive than those for traditional preparation programs. At the completion of an alternative preparation program, graduates shall:

- (a) Hold a bachelor's degree from an accredited postsecondary education institution.

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(b) If applicable, demonstrate professional knowledge and subject knowledge proficiency pursuant to section 15-533.

(c) Obtain a valid fingerprint clearance card pursuant to section 15-534.

(d) If applicable, complete training in structured English immersion as prescribed by the state board pursuant to section 15-756.09.

(e) If applicable, complete training in research-based systematic phonics instruction as prescribed in paragraph 2 of this subsection.

(f) Demonstrate the required proficiency in the Constitutions of the United States and Arizona as prescribed in section 15-532.

2. Shall require that, within three years after a certificate for elementary education or early childhood education is issued, the certificate holder complete, from a public or private provider, at least forty-five classroom hours or three college-level credit hours, or the equivalent, in both research-based:

(a) Science of reading instruction, including systematic phonics instruction.

(b) Reading instruction, including training on assessments, instructional practices and interventions to improve student reading proficiency. Beginning July 1, 2021, instruction provided pursuant to this subdivision must meet the requirements for dyslexia training prescribed in section 15-219.

3. Beginning August 1, 2025, shall establish a literacy endorsement as a requirement for all certificated teachers who provide literacy instruction in kindergarten programs or in any of grades one through grade five as determined by the board. The rules shall require that a certificated teacher who receives a certificate after August 1, 2025 and who provides literacy instruction in kindergarten programs or in any of grades one through grade five must obtain a literacy endorsement within three years after the teacher's certificate is issued. The rules shall require that a certificated teacher who received a certificate before August 1, 2025 and who provides literacy instruction in kindergarten programs or in any of grades one through grade five must obtain a literacy endorsement on or before August 1, 2028. The literacy endorsement shall require the teacher to complete evidence-based science of reading training or coursework as determined by the board and to pass a literacy instruction assessment to show that the teacher is capable of doing all of the following:

(a) Effectively teaching foundational reading skills, ~~phonemic~~ PHONOLOGICAL awareness, phonics, fluency, vocabulary and comprehension.

(b) Implementing reading instruction using high-quality instructional materials.

(c) Providing effective instruction and interventions for students with reading deficiencies, including students with characteristics of dyslexia.

4. Beginning August 1, 2022, shall require all approved educator preparation programs in elementary education and early childhood education to require the courses that are necessary to obtain a literacy endorsement pursuant to paragraph 3 of this subsection.

5. Shall establish a process to allow a local education agency, at the request of a teacher, to verify to the department of education that the

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teacher possesses the instructional knowledge and skills prescribed in paragraph 3 of this subsection, demonstrated through classroom observations and student achievement data across subgroups using evidence-based measures. A certificated teacher who has had a local education agency verify the teacher's knowledge and skills in the science of reading pursuant to this paragraph is not required to complete the coursework, training or assessment requirements prescribed in paragraph 3 of this subsection to obtain the literacy endorsement.

6. Shall not require a teacher to obtain a master's degree or to take any additional graduate courses as a condition of certification or recertification.

7. Shall allow but shall not require the superintendent of a school district to obtain certification from the state board of education.

Ch. 337 — 8. Shall provide for the issuance of a subject-matter expert standard teaching certificate to persons who have expertise in a content area or A subject matter. Persons who are certified pursuant to this paragraph shall complete training, if applicable, in structured English immersion as prescribed by the state board pursuant to section 15-756.09. Persons who are certified pursuant to this paragraph are exempt from the subject knowledge proficiency requirements prescribed in section 15-533 and from the proficiency requirements prescribed in section 15-532 on the Constitutions of the United States and Arizona. Persons who are subject to subdivision (a) of this paragraph are also exempt from the professional knowledge proficiency requirements pursuant to section 15-533. A person who obtains a subject-matter expert standard teaching certificate pursuant to this paragraph may provide instruction in the person's field of expertise in grades six through twelve at any public school in this state. Issuance of the subject-matter expert standard teaching certificate may not be conditioned on the person's employment with a local education agency. A person who meets the requirements of this paragraph shall be issued a subject-matter expert standard teaching certificate without having to demonstrate professional knowledge proficiency pursuant to section 15-533, except that the person shall have at least two years to demonstrate professional knowledge proficiency pursuant to section 15-533. School districts shall evaluate and provide support pursuant to section 15-537 to teachers who are certified pursuant to this paragraph. If a person fails to meet the professional knowledge requirements of this section within two years, the department of education or state board of education may temporarily suspend the subject-matter expert standard teaching certificate. A certificate that is temporarily suspended pursuant to this paragraph is not considered a disciplinary action, and a person shall be allowed to correct the deficiency within the remaining time of the subject-matter expert standard teaching certification. This paragraph does not require a person who has obtained another type of teaching certificate from the state board to obtain a subject-matter expert standard teaching certificate pursuant to this paragraph in order to provide instruction in grades six through twelve. PERSONS WHO ARE CERTIFICATED PURSUANT TO THIS PARAGRAPH SHALL REVIEW AND ATTEST TO REVIEWING THE BEST PRACTICES FOR SOCIAL MEDIA AND CELLULAR TELEPHONE USE BETWEEN STUDENTS AND SCHOOL PERSONNEL ADOPTED BY THE STATE BOARD OF EDUCATION PURSUANT TO SECTION 15-203,

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SUBSECTION A, PARAGRAPH 44 BEFORE RECEIVING A CERTIFICATE AND, WITHIN TWO YEARS AFTER RECEIVING A CERTIFICATE, COMPLETE TRAINING IN PROFESSIONALISM AND ETHICS FROM A PUBLIC OR PRIVATE PROVIDER APPROVED BY THE STATE BOARD OF EDUCATION, WHICH MAY INCLUDE A NO-COST OPTION TO THE PERSON PROVIDED BY THE STATE BOARD. A person is eligible for a subject-matter expert standard teaching certificate pursuant to this paragraph if the person has a baccalaureate degree and meets any of the following requirements:

(a) Has taught courses relevant to a content area or subject matter for the last two consecutive years and for a total of at least three years at one or more regionally or nationally accredited public or private postsecondary institutions. A person demonstrates compliance with this requirement by providing the state board with written proof of employment for specific durations from one or more qualifying postsecondary institutions.

(b) Has either a baccalaureate degree, a master's degree or a doctoral degree in a specific subject area that is relevant to a content area or subject matter taught in public schools.

(c) Demonstrates expertise through relevant work experience of at least five years in a field that is relevant to a content area or subject matter taught in public schools. A person demonstrates compliance with this requirement by providing the state board with written proof of employment.

9. Notwithstanding section 15-533, shall exempt persons applying for a secondary education certificate from the subject knowledge portion of the proficiency examination if the state board determines that the person has work experience in science, technology, engineering or mathematics and can demonstrate adequate knowledge of a particular subject through a postsecondary education degree or twenty-four credit hours of relevant coursework.

10. Shall allow for a certificate issued to a person pursuant to subsection B, paragraph 1, 3, 4 or 5 of this section or section 15-203 or 15-782.01, as applicable, to be both issued and renewed for at least twelve years and may not require more than fifteen hours of continuing education credits each year in order to renew that certificate pursuant to this paragraph.

11. Shall allow for a certificate issued to a person pursuant to subsection B of this section or section 15-132, 15-203 or 15-782.01, as applicable, and any endorsement or approved area related to that certificate, to be renewed at least two years but not more than ten years after that certificate expires without any other requirements adopted by the state board of education or the department of education if the person ~~is in good standing, has at least ten years of verified full-time experience in this state in the area in which the person is seeking renewed certification~~ and possesses a valid fingerprint clearance card issued pursuant to section 15-534. A certificate renewed pursuant to this paragraph shall be identical to the expired certificate.

D. The rules for certification reciprocity shall include a requirement that the applicant possess a comparable valid certification from another state and be in good standing with that other state. An applicant who possesses a valid certification from another state and a fingerprint clearance card pursuant to section 15-534 and who is in good standing with

that other state shall be issued a comparable standard certificate or a comparable certificate issued pursuant to section 15-132, 15-203 or 15-782.01, as applicable, without any other requirements from the state board of education or the department of education. A person who is issued a certificate pursuant to this subsection is not required to meet any requirement prescribed in section 15-533.

E. Placement decisions of teaching intern certificate holders issued pursuant to subsection C, paragraph 1 of this section and section 15-552 shall be based on agreements between the teacher preparation provider, the provider's partner organizations and the local education agency. The practices of the department of education and the rules and policies of the state board of education may not restrict placement of teaching intern certification holders based on local education agency instructional models and may only consider the academic quality of the school, the effectiveness of the teaching intern certification holder's on-site mentor and the opportunity for a wide variety of schools and school models to access teaching intern certification holders.

F. Notwithstanding subsection A of this section, the following persons are not required to have a baccalaureate degree:

1. A teacher who is otherwise exempt by law from obtaining a baccalaureate degree and who provides instruction in STEM or career and technical education pursuant to section 15-782.01.

2. A person who obtains any of the following:

(a) A Native American language certificate.

(b) A student teaching intern certificate.

(c) A junior reserve officer training corps certificate.

(d) An athletic coaching certificate.

(e) An emergency substitute certificate.

G. ON OR BEFORE NOVEMBER 15 OF EACH YEAR, THE DEPARTMENT OF EDUCATION SHALL REPORT AND POST ON ITS WEBSITE ALL OF THE FOLLOWING:

1. THE TOTAL NUMBER OF TEACHING CERTIFICATES ISSUED IN THE PREVIOUS CALENDAR YEAR DISAGGREGATED BY THE TYPE OF TEACHING CERTIFICATE AND DEMOGRAPHICS.

2. THE TOTAL NUMBER OF CURRENTLY ISSUED TEACHING CERTIFICATES IN THIS STATE DISAGGREGATED BY THE TYPE OF TEACHING CERTIFICATE AND DEMOGRAPHICS.

3. ANY OTHER HISTORICAL DATA OR TRENDS REGARDING CERTIFICATED INDIVIDUALS IN THIS STATE.

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EXPLANATION OF BLEND  
SECTION 15-701.01

Laws 2022, Chapters 60 and 303

Laws 2022, Ch. 60, section 1

Effective September 24, 2022

Laws 2022, Ch. 303, section 1

Effective September 24, 2022

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 60 and Ch. 303 text changes to section 15-701.01 are blended in the form shown on the following pages.

BLEND OF SECTION 15-701.01  
Laws 2022, Chapters 60 and 303

15-701.01. High schools; graduation; requirements; community college or university courses; transfer from other schools; academic credit; report

A. The state board of education shall:

1. Prescribe a minimum course of study that incorporates the academic standards adopted by the state board for the graduation of pupils from high school.

2. Prescribe competency requirements for the graduation of pupils from high school incorporating the academic standards in at least the areas of reading, writing, mathematics, science and social studies. The academic standards prescribed by the state board in social studies shall include personal finance, ~~and~~ American civics education AND A COMPARATIVE DISCUSSION OF POLITICAL IDEOLOGIES, SUCH AS COMMUNISM AND TOTALITARIANISM, THAT CONFLICT WITH THE PRINCIPLES OF FREEDOM AND DEMOCRACY THAT ARE ESSENTIAL TO THE FOUNDING PRINCIPLES OF THE UNITED STATES. The state board may consider establishing a required separate personal finance course for the purpose of the graduation of pupils from high school. The state board shall require at least one-half of a course credit in economics, which shall include financial literacy and personal financial management.

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3. THROUGH THE GRADUATING CLASS OF 2025, INCLUDE IN the competency requirements for social studies ~~shall include~~ PRESCRIBED IN PARAGRAPH 2 OF THIS SUBSECTION a requirement that, in order to graduate from high school or obtain a high school equivalency diploma, a pupil must correctly answer at least sixty of the one hundred questions listed on a test that is identical to the civics portion of the naturalization test used by the United States citizenship and immigration services. BEGINNING WITH THE GRADUATING CLASS OF 2026, THE STATE BOARD SHALL INCLUDE IN THE COMPETENCY REQUIREMENTS FOR SOCIAL STUDIES PRESCRIBED IN PARAGRAPH 2 OF THIS SUBSECTION A REQUIREMENT THAT, IN ORDER TO GRADUATE FROM HIGH SCHOOL OR OBTAIN A HIGH SCHOOL EQUIVALENCY DIPLOMA, A PUPIL MUST CORRECTLY ANSWER AT LEAST SEVENTY OF THE ONE HUNDRED QUESTIONS LISTED ON A TEST THAT IS IDENTICAL TO THE CIVICS PORTION OF THE NATURALIZATION TEST USED BY THE UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES. A district school or charter school shall document on the pupil's transcript ONLY A PASS OR FAIL DESIGNATION that the pupil has passed ~~a~~ OR FAILED THE test ~~that is identical to the civics portion of the naturalization test used by the United States citizenship and immigration services as required by this section~~ PARAGRAPH. A PUPIL IN GRADE SEVEN OR EIGHT MAY TAKE THE TEST DESCRIBED IN THIS PARAGRAPH, AND IF THE PUPIL CORRECTLY ANSWERS AT LEAST SEVENTY OF THE ONE HUNDRED QUESTIONS ON THE TEST:

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(a) THE DISTRICT SCHOOL OR CHARTER SCHOOL SHALL DOCUMENT ON THE PUPIL'S TRANSCRIPT ONLY A PASS OR FAIL DESIGNATION THAT THE PUPIL HAS PASSED OR FAILED THE TEST REQUIRED BY THIS PARAGRAPH.

(b) THE PUPIL IS NOT REQUIRED TO TAKE THE TEST REQUIRED BY THIS PARAGRAPH AGAIN IN HIGH SCHOOL.

~~3.~~ 4. Develop and adopt competency tests pursuant to section 15-741. English language learners who are subject to article 3.1 of this chapter are subject to the assessments prescribed in section 15-741.

B. The governing board of a school district shall:

1. Prescribe curricula that include the academic standards in the required subject areas pursuant to subsection A, paragraph 1 of this section.

2. Prescribe criteria for the graduation of pupils from the high schools in the school district. These criteria shall include accomplishment of the academic standards in at least reading, writing, mathematics, science and social studies, as determined by district assessment. Other criteria may include additional measures of academic achievement and attendance. Pursuant to the prescribed graduation requirements adopted by the state board of education, the governing board may approve a rigorous computer science course that would fulfill a mathematics course required for graduation from high school. The governing board may approve a rigorous computer science course only if the rigorous computer science course includes significant mathematics content and the governing board determines the high school where the rigorous computer science course is offered has sufficient capacity, infrastructure and qualified staff, including competent teachers of computer science. The school district governing board or charter school governing body may determine the method and manner in which to administer a test that is identical to the civics portion of the naturalization test used by the United States citizenship and immigration services. A pupil who does not obtain a passing score on the test that is identical to the civics portion of the naturalization test may retake the test until the pupil obtains a passing score.

C. The governing board may prescribe the course of study and competency requirements for the graduation of pupils from high school that are in addition to or higher than the course of study and competency requirements that the state board prescribes.

D. The governing board may prescribe competency requirements for the passage of pupils in courses that are required for graduation from high school.

E. A teacher shall determine whether to pass or fail a pupil in a course in high school on the basis of the competency requirements, if any have been prescribed. The governing board, if it reviews the decision of a teacher to pass or fail a pupil in a course in high school as provided in section 15-342, paragraph 11, shall base its decision on the competency requirements, if any have been prescribed.

F. Graduation requirements established by the governing board may be met by a pupil who passes courses in the required or elective subjects at a community college or university, if the course is at a higher level than the course taught in the high school attended by the pupil or, if the course is not taught in the high school, the level of the course is equal to or higher than the level of a high school course. The governing board shall

determine whether the subject matter of the community college or university course is appropriate to the specific requirement the pupil intends it to fulfill and whether the level of the community college or university course is less than, equal to or higher than a high school course, and the governing board shall award at least one-half of a Carnegie unit and up to and including one Carnegie unit for each three semester hours of credit that the pupil earns in an appropriate community college or university course. If a pupil is not satisfied with the decision of the governing board regarding the amount of credit granted or the subjects for which credit is granted, the pupil may request that the state board of education review the decision of the governing board, and the state board shall make the final determination of the amount of credit to be given the pupil and for which subjects. The governing board shall not limit the number of credits that is required for high school graduation and that may be met by taking community college or university courses. For the purposes of this subsection:

1. "Community college" means an educational institution that is operated by a community college district as defined in section 15-1401 or a postsecondary educational institution under the jurisdiction of an Indian tribe recognized by the United States department of the interior.

2. "University" means a university under the jurisdiction of the Arizona board of regents.

G. A pupil who transfers from a private school shall be provided with a list that indicates those credits that have been accepted and denied by the school district. A pupil may request to take an examination in each particular course in which credit has been denied. The school district shall accept the credit for each particular course in which the pupil takes an examination and receives a passing score on a test designed and evaluated by a teacher in the school district who teaches the subject matter on which the examination is based. In addition to the above requirements, the governing board of a school district may prescribe requirements for the acceptance of the credits of pupils who transfer from a private school.

H. If a pupil who was previously enrolled in a charter school or school district enrolls in a school district in this state, the school district shall accept credits earned by the pupil in courses or instructional programs at the charter school or school district. The governing board of a school district may adopt a policy concerning the application of transfer credits for the purpose of determining whether a credit earned by a pupil who was previously enrolled in a school district or charter school will be assigned as an elective or core credit. A school district or charter school may note the learning outcomes that a student mastered as prescribed in the rules adopted pursuant to section 15-203, subsection A, paragraph 38 to provide a record of the demonstrated competencies and award partial credit.

I. A pupil who transfers credit from a charter school, a school district or Arizona online instruction shall be provided with a list that indicates which credits have been accepted as elective credits and which credits have been accepted as core credits by the school district or charter school. Within ten school days after receiving the list, the pupil may request to take an examination in each particular course in which core credit has been denied. The school district or charter school shall accept

the credit as a core credit for each particular course in which the pupil takes an examination and receives a passing score on a test that is aligned to the competency requirements adopted pursuant to this section and that is designed and evaluated by a teacher in the school district or charter school who teaches the subject matter on which the examination is based. If a pupil is enrolled in a school district or charter school and that pupil also participates in Arizona online instruction between May 1 and July 31, the school district or charter school shall not require proof of payment as a condition of the school district or charter school accepting credits earned from the online course provider.

J. The state board of education shall adopt rules to allow high school pupils who can demonstrate competency in a particular academic course or subject to obtain academic credit for the course or subject without enrolling in the course or subject.

K. Pupils who earn a Grand Canyon diploma pursuant to article 6 of this chapter are exempt from the graduation requirements prescribed in this section. Pupils who earn a Grand Canyon diploma are entitled to all the rights and privileges of persons who graduate with a high school diploma issued pursuant to this section, including access to postsecondary scholarships and other forms of student financial aid and access to all forms of postsecondary education. Notwithstanding any other law, a pupil who is eligible for a Grand Canyon diploma may elect to remain in high school through grade twelve and shall not be prevented from enrolling at a high school after the pupil becomes eligible for a Grand Canyon diploma. A pupil who is eligible for a Grand Canyon diploma and who elects not to pursue one of the options prescribed in section 15-792.03 may only be readmitted to that high school or another high school in this state pursuant to policies adopted by the school district of readmission.

L. EACH SCHOOL DISTRICT AND CHARTER SCHOOL SHALL REPORT TO THE DEPARTMENT OF EDUCATION ALL OF THE FOLLOWING AGGREGATE DATA, ORGANIZED BY GRADE LEVEL, RELATING TO THE TEST THAT IS IDENTICAL TO THE CIVICS PORTION OF THE NATURALIZATION TEST USED BY THE UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES REQUIRED BY SUBSECTION A, PARAGRAPH 3 OF THIS SECTION:

1. THE MEDIAN SCORE.
2. THE PERCENTAGE OF PUPILS WHO PASSED BY CORRECTLY ANSWERING THE MINIMUM NUMBER OF QUESTIONS REQUIRED TO PASS THE TEST PURSUANT TO SUBSECTION A, PARAGRAPH 3 OF THIS SECTION.
3. THE PERCENTAGE OF PUPILS WHO FAILED BY CORRECTLY ANSWERING FEWER THAN THE MINIMUM NUMBER OF QUESTIONS REQUIRED TO PASS THE TEST PURSUANT TO SUBSECTION A, PARAGRAPH 3 OF THIS SECTION.
4. ANY OTHER DATA REQUIRED BY THE DEPARTMENT RELATING TO THE TEST.

M. A SCHOOL DISTRICT OR CHARTER SCHOOL MAY NOT INCLUDE THE PERSONALLY IDENTIFIABLE INFORMATION OF ANY PUPIL IN THE DATA REPORTED TO THE DEPARTMENT OF EDUCATION UNDER SUBSECTION L OF THIS SECTION. THE DEPARTMENT OF EDUCATION SHALL MAKE THE DATA PUBLICLY AVAILABLE, ORGANIZED AT A MINIMUM BY SCHOOL DISTRICT OR CHARTER SCHOOL AND GRADE LEVEL, ON THE WEBSITE THAT INCLUDES THE SCHOOL REPORT CARDS REQUIRED BY SECTION 15-746.

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EXPLANATION OF BLEND  
SECTION 15-945

Laws 2022, Chapters 290 and 317

Laws 2022, Ch. 290, section 5

Effective September 24, 2022

Laws 2022, Ch. 317, section 9

Effective September 24, 2022

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 290 and Ch. 317 text changes to section 15-945 are blended in the form shown on the following pages.

BLEND OF SECTION 15-945  
 Laws 2022, Chapters 290 and 317

15-945. Transportation support level

A. The support level for to and from school for each school district for the current year shall be computed as follows:

1. Determine the approved daily route mileage of the school district for the fiscal year prior to the current year.

2. Multiply the figure obtained in paragraph 1 of this subsection by one hundred eighty, or for a school district that elects to provide two hundred days of instruction pursuant to section 15-902.04, multiply the figure obtained in paragraph 1 of this subsection by two hundred.

3. Determine the number of eligible students transported in the fiscal year prior to the current year.

4. Divide the amount determined in paragraph 1 of this subsection by the amount determined in paragraph 3 of this subsection to determine the approved daily route mileage per eligible student transported.

5. Determine the classification in column 1 of this paragraph for the quotient determined in paragraph 4 of this subsection. Multiply the product obtained in paragraph 2 of this subsection by the corresponding state support level for each route mile as provided in column 2 of this paragraph.

<u>Column 1</u>	<u>Column 2</u>
Approved Daily Route Mileage per Eligible <u>Student Transported</u>	State Support Level per Route Mile for <u>Fiscal Year <del>2021-2022</del> 2022-2023</u>
0.5 or less	<del>2.77</del> 2.83
More than 0.5 through 1.0	<del>2.27</del> 2.32
More than 1.0	<del>2.77</del> 2.83

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6. Add the amount spent during the prior fiscal year for bus tokens and bus passes for students who qualify as eligible students as defined in section 15-901.

B. The support level for academic education, career and technical education, vocational education and athletic trips for each school district for the current year is computed as follows:

1. Determine the classification in column 1 of paragraph 2 of this subsection for the quotient determined in subsection A, paragraph 4 of this section.

2. Multiply the product obtained in subsection A, paragraph 5 of this section by the corresponding state support level for academic education, career and technical education, vocational education and athletic trips as provided in column 2, 3 or 4 of this paragraph, whichever is appropriate for the type of district.

<u>Column 1</u>	<u>Column 2</u>	<u>Column 3</u>	<u>Column 4</u>
Approved Daily Route Mileage per Eligible <u>Student Transported</u>	District Type <u>02 or 03</u>	District Type <u>04</u>	District Type <u>05</u>
0.5 or less	0.15	0.10	0.25
More than 0.5 through 1.0	0.15	0.10	0.25
More than 1.0	0.18	0.12	0.30

For the purposes of this paragraph, "district type 02" means a unified school district or an accommodation school that offers instruction in grades nine through twelve, "district type 03" means a common school district not within a high school district, "district type 04" means a common school district within a high school district or an accommodation school that does not offer instruction in grades nine through twelve and "district type 05" means a high school district.

C. The support level for extended school year services for pupils with disabilities is computed as follows:

1. Determine the sum of the following:

(a) The total number of miles driven by all buses of a school district while transporting eligible pupils with disabilities on scheduled routes from their residence to the school of attendance and from the school of attendance to their residence on routes for extended school year services in accordance with section 15-881.

(b) The total number of miles driven on routes approved by the superintendent of public instruction for which a private party, a political subdivision or a common or a contract carrier is reimbursed for bringing an eligible pupil with a disability from the place of the pupil's residence to a school transportation pickup point or to the school facility of attendance and from the school transportation scheduled return point or from the school facility to the pupil's residence for extended school year services in accordance with section 15-881.

2. Multiply the sum determined in paragraph 1 of this subsection by the state support level for the district determined as provided in subsection A, paragraph 5 of this section.

D. The transportation support level for each school district for the current year is the sum of the support level for to and from school as determined in subsection A of this section, the support level for academic education, career and technical education, vocational education and athletic trips as determined in subsection B of this section and the support level for extended school year services for pupils with disabilities as determined in subsection C of this section.

E. The state support level for each approved route mile, as provided in subsection A, paragraph 5 of this section, shall be adjusted by the growth rate prescribed by law, subject to appropriation.

F. School districts must provide the odometer reading for each bus as of the end of the current year and the total bus mileage during the current year.

G. A SCHOOL DISTRICT MAY INCLUDE ROUTE MILEAGE AND THE NUMBER OF RIDERS TO CALCULATE FUNDING PURSUANT TO THIS SECTION FOR TRANSPORTING ELIGIBLE STUDENTS USING MOTOR VEHICLES DESCRIBED IN SECTION 15-925.

Ch. 290

EXPLANATION OF BLEND  
SECTION 15-951

Laws 2022, Chapters 168 and 285

Laws 2022, Ch. 168, section 1

Effective September 24, 2022

Laws 2022, Ch. 285, section 6

Effective September 24, 2022

Explanation

Since these two enactments are identical, the Laws 2022, Ch. 168 and Ch. 285 text changes to section 15-951 are blended in the form shown on the following pages.

Section 15-951 was amended an additional time by Laws 2022, Ch. 168, sec. 2 with a delayed effective date, which will require separate publication in addition to this blend.

BLEND OF SECTION 15-951  
Laws 2022, Chapters 168 and 285

15-951. District additional assistance, district support level and student count for a common school district not within a high school district

A. Notwithstanding section 15-947, the revenue control limit for a common school district not within a high school district is the sum of the following:

1. The base revenue control limit computed as prescribed in section 15-944 but excluding pupils admitted to another school district as provided in section 15-824, subsection A, paragraph 2.

2. The tuition payable for high school pupils who attend school in another school district as provided in section 15-824, subsection A, paragraph 2, including any transportation charge, except as provided in subsection F of this section.

3. The transportation revenue control limit for all pupils who reside in the district except those high school pupils transported by another district.

B. Notwithstanding subsection A of this section, for the purposes of sections 15-481, 15-482 and 15-1102, the revenue control limit for a common school district not within a high school district is the sum of the following:

1. The base revenue control limit for pupils computed as prescribed in section 15-944 but excluding pupils admitted to another school district as provided in section 15-824, subsection A, paragraph 2.

2. The transportation revenue control limit for all pupils who reside in the district except those high school pupils transported by another district.

C. Notwithstanding section 15-961, district additional assistance for a common school district not within a high school district is district additional assistance as prescribed in section 15-961 but excluding pupils who are admitted to another school district as provided in section 15-824, subsection A, paragraph 2, except that if the school district transports high school pupils, the district additional assistance amount prescribed in section 15-961 shall be increased by an amount equal to fifty percent of the district additional assistance per pupil amount prescribed for the school district pursuant to section 15-961 multiplied by the number of high school pupils transported.

D. Notwithstanding section 15-947, the district support level for a common school district not within a high school district is the sum of the following:

1. The base support level computed as prescribed in section 15-943 but excluding pupils who are admitted to another school district as provided in section 15-824, subsection A, paragraph 2.

2. The tuition payable for high school pupils who are admitted to another school district as provided in section 15-824, subsection A, paragraph 2, including any transportation charge, except as provided in subsection F of this section.

3. The transportation support level for all pupils who reside in the school district except those high school pupils transported by another school district.

E. For the purpose of determining eligibility to increase the revenue control limit and district support level, the student count for a common school district not within a high school district is the student count for pupils in kindergarten programs and grades one through twelve, including pupils enrolled in another school district as provided in section 15-824, subsection A, paragraph 2.

F. The tuition amount in subsections A and D of this section shall not include amounts per student count for bond issues as prescribed by section 15-824, subsection G, paragraph 1, subdivision (c) in excess of the following:

1. \$150 if the pupil's school district of residence pays tuition for seven hundred fifty or fewer pupils to other school districts.

2. \$200 if the pupil's school district of residence pays tuition for one thousand or fewer, but more than seven hundred fifty pupils to other school districts.

3. The actual cost per student count if the pupil's school district of residence pays tuition for more than one thousand pupils to other school districts.

G. A common school district that is not within the boundaries of a high school district and that was authorized by the qualified electors to establish a unified school district with boundaries coterminous with the boundaries of the common school district may continue calculating its budget and equalization assistance pursuant to this section for ~~fifteen years after the election or until a high school is built, whichever occurs first.~~

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and 285

H. A newly formed unified school district that meets the requirements of subsection G of this section and that phases in instruction for pupils in grades nine through twelve may continue calculating its budget and equalization assistance pursuant to this section for a maximum of five years after the first year of the operation of the new high school in the newly formed unified school district.

I. Notwithstanding any other law, a school district may retroactively adjust its budget for fiscal year 2020-2021 OR 2021-2022 pursuant to subsection G or H of this section but may not retroactively adjust its budget for any other fiscal year pursuant to subsection G or H of this section.

Chs. 168  
and 285

EXPLANATION OF BLEND  
SECTION 15-972

Laws 2022, Chapters 300 and 341

Laws 2022, Ch. 300, section 1

Effective September 24, 2022

Laws 2022, Ch. 341, section 1

Conditionally Effective

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 300 and Ch. 341 text changes to section 15-972 are blended in the form shown on the following pages.

The publisher will print this blend version pending the occurrence of the condition stated in Laws 2022, Ch. 341. If the condition is met, Laws 2022, Ch. 341 becomes effective and the publisher will delete the Ch. 300 version of section 15-972 on publication of the appropriate pocket part.

BLEND OF SECTION 15-972  
Laws 2022, Chapters 300 and 341

15-972. State limitation on homeowner property taxes;  
additional state aid to school districts;  
definitions

A. Notwithstanding section 15-971, there shall be additional state aid for education computed for school districts as provided in subsection B of this section.

B. The clerk of the board of supervisors shall compute such additional state aid for education as follows:

1. For a high school district or for a common school district within a high school district that does not offer instruction in high school subjects as provided in section 15-447:

(a) Determine the qualifying tax rate pursuant to section 41-1276 for the school district.

(b) Determine the following percentage of the qualifying tax rate determined in subdivision (a) of this paragraph:

(i) 47.19 percent through December 31, 2021.

(ii) Fifty percent beginning from and after December 31, 2021.

(c) Select the lesser of the amount determined in subdivision (b) of this paragraph or fifty percent of the primary property tax rate that would be levied in lieu of this section for the district.

(d) Multiply the rate selected in subdivision (c) of this paragraph as a rate per \$100 assessed valuation by the assessed valuation used for primary property taxes of the residential property in the school district.

2. For a unified school district, for a common school district not within a high school district or for a common school district that offers instruction in high school subjects as provided in section 15-447:

(a) Determine the qualifying tax rate pursuant to section 41-1276 for the school district.

(b) Determine the following percentage of the qualifying tax rate determined in subdivision (a) of this paragraph:

(i) 47.19 percent through December 31, 2021.

(ii) Fifty percent beginning from and after December 31, 2021.

(c) Select the lesser of the amount determined in subdivision (b) of this paragraph or fifty percent of the primary property tax rate that would be levied in lieu of this section for the district.

(d) Multiply the rate selected in subdivision (c) of this paragraph as a rate per \$100 assessed valuation by the assessed valuation used for primary property taxes of the residential property in the district.

C. The clerk of the board of supervisors shall report to the department of revenue not later than the Friday following the third Monday in August of each year the amount by school district of additional state aid for education and the data used for computing the amount as provided in

subsection B of this section. The department of revenue shall verify all of the amounts and report to the county board of supervisors not later than August 30 of each year the property tax rate or rates that shall be used for property tax reduction as provided in subsection E of this section.

D. The board of supervisors shall reduce the property tax rate or rates that would be levied in lieu of this section by the school district or districts on the assessed valuation used for primary property taxes of the residential property in the school district or districts by the rate or rates selected in subsection B, paragraph 1, subdivision (c) and paragraph 2, subdivision (c) of this section. The excess of the reduction in property taxes for a parcel of property resulting from the reduction in the property tax rate pursuant to this subsection over the amounts listed in this subsection shall be deducted from the amount of additional state aid for education. The reduction in property taxes on a parcel of property resulting from the reduction in the property tax rate pursuant to this subsection shall not exceed \$600, except as provided in subsection I of this section.

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E. Before levying taxes for school purposes, the board of supervisors shall determine whether the total primary property taxes to be levied for all taxing jurisdictions on each parcel of residential property, in lieu of this subsection, violate article IX, section 18, Constitution of Arizona. For those properties that qualify for property tax exemptions pursuant to article IX, ~~sections~~ SECTION 2, ~~2.1 and 2.2~~, Constitution of Arizona, eligibility for the credit is determined on the basis of the limited property value that corresponds to the taxable assessed value after reduction for the applicable exemption. If the board of supervisors determines that such a situation exists, the board shall apply a credit against the primary property taxes due from each such parcel in the amount in excess of article IX, section 18, Constitution of Arizona. Such excess amounts shall also be additional state aid for education for the school district or districts in which the parcel of property is located.

F. The clerk of the board of supervisors shall report to the department of revenue not later than September 5 of each year the amount by school district of additional state aid for education and the data used for computing the amount as provided in subsection B of this section. The department of revenue shall verify all of the amounts and report to the board of supervisors not later than September 10 of each year the property tax rate that shall be used for property tax reduction as provided in subsection E of this section.

G. The clerk of the board of supervisors shall report to the department of revenue not later than September 30 of each year in writing the following:

1. The data processing specifications used in the calculations provided for in subsections B and E of this section.
2. At a minimum, copies of two actual tax bills for residential property for each distinct tax area.

H. The department of revenue shall report to the state board of education not later than October 12 of each year the amount by school district of additional state aid for education as provided in this

section. The additional state aid for education provided in this section shall be apportioned as provided in section 15-973.

I. If a parcel of property is owned by a cooperative apartment corporation or is owned by the tenants of a cooperative apartment corporation as tenants in common, the reduction in the property taxes prescribed in subsection D of this section shall not exceed the amounts listed in subsection D of this section for each owner-occupied housing unit on the property. The assessed value used for determining the reduction in taxes for the property is equal to the total assessed value of the property times the ratio of the number of owner-occupied housing units to the total number of housing units on the property. For the purposes of this subsection, "cooperative apartment corporation" means a corporation:

1. Having only one class of outstanding stock.

2. Of which all of the stockholders are entitled, solely by reason of their ownership of stock in the corporation, to occupy for dwelling purposes apartments in a building owned or leased by the corporation and that are not entitled, either conditionally or unconditionally, except on a complete or partial liquidation of the corporation, to receive any distribution not out of earnings and profits of the corporation.

3. Of which eighty percent or more of the gross income is derived from tenant-stockholders. For the purposes of this paragraph, "gross income" means gross income as defined by the United States internal revenue code, as defined in section 43-105.

J. The total amount of state monies that may be spent in any fiscal year for state aid for education in this section shall not exceed the amount appropriated or authorized by section 35-173 for that purpose. This section does not impose a duty on an officer, agent or employee of this state to discharge a responsibility or create any right in a person or group if the discharge or right would require an expenditure of state monies in excess of the expenditure authorized by legislative appropriation for that specific purpose.

K. Notwithstanding subsection E of this section, the maximum amount of additional state aid for education that will be funded by this state pursuant to subsection E of this section shall be \$1,000,000 per county. For any county with a school district or districts that collectively would otherwise receive more than \$1,000,000 in additional state aid for education pursuant to subsection E of this section, the property tax oversight commission established by section 42-17002 shall determine the proportion of the violation of article IX, section 18, Constitution of Arizona, that is attributable to each taxing jurisdiction within the affected school district or districts. Based on those proportions, the property tax oversight commission shall determine an amount that each taxing jurisdiction within the affected school district or districts shall transfer to the affected school district or districts during the fiscal year in order to compensate the affected school district or districts for its pro rata share of the reduction in additional state aid for education funding required by this subsection. In determining the proportion of the violation of article IX, section 18, Constitution of Arizona, that is attributable to each taxing jurisdiction within the affected school district or districts, the property tax oversight commission shall assume a proportion of zero for any taxing

jurisdiction that has a tax rate for the fiscal year that is equal to or less than the tax rate of peer jurisdictions, as determined by the property tax oversight commission.

L. For the purposes of this section:

1. "Owner" includes any purchaser under a contract of sale or under a deed of trust.

Ch. 300 { 2. "Residential property" includes owner-occupied real property and improvements to the property and owner-occupied mobile homes that are ~~used~~ as the owner's primary residence and classified as class three property pursuant to section 42-12003.

EXPLANATION OF BLEND  
SECTION 16-165

Laws 2022, Chapters 99, 270 and 370

Laws 2022, Ch. 99, section 8	Effective January 1, 2023
Laws 2022, Ch. 270, section 1	Effective September 24, 2022
Laws 2022, Ch. 370, section 2	Effective September 24, 2022

Explanation

Since these three enactments are compatible, the Laws 2022, Ch. 99, Ch. 270 and Ch. 370 text changes to section 16-165 are blended effective from and after December 31, 2022 in the form shown on the following pages.

The Laws 2022, Ch. 99 version of section 16-165 amended subsection A by adding paragraph 10. The Ch. 370 version amended section 16-165, as amended by Ch. 99, sec. 8, by striking subsection A, paragraph 10. Since this would not produce a substantive change, the blend version reflects the Ch. 370 version.

BLEND OF SECTION 16-165  
Laws 2022, Chapters 99, 270 and 370

16-165. Causes for cancellation; report

A. The county recorder shall cancel a registration:

1. At the request of the person registered.

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2. When the county recorder ~~knows of the death of~~ IS INFORMED AND CONFIRMS THAT the person registered IS DEAD.

3. If the person has been adjudicated an incapacitated person as defined in section 14-5101.

4. When the person registered has been convicted of a felony, and the judgment of conviction has not been reversed or set aside. The county recorder shall cancel the registration on receipt of notice of a felony conviction from the court or from the secretary of state or when reported by the elector on a signed juror questionnaire that is completed pursuant to section 21-314.

5. On production of a certified copy of a judgment directing a cancellation to be made.

6. Promptly after the election if the person registered has applied for a ballot pursuant to section 16-126.

7. When a person has been on the inactive voter list and has not voted during the time periods prescribed in section 16-166, subsection C.

8. When the county recorder receives written information from the person registered that the person has a change of residence within the county and the person does not complete and return a new registration form within twenty-nine days after the county recorder mails notification of the need to complete and return a new registration form with current information.

9. When the county recorder receives written information from the person registered that the person has a change of address outside the county, INCLUDING WHEN THE COUNTY RECORDER EITHER:

(a) RECEIVES A FORM FROM THE PERSON PURSUANT TO SUBSECTION E OF THIS SECTION ON WHICH THE PERSON HAS CONFIRMED THAT THE PERSON IS NOT A RESIDENT OF THIS STATE.

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(b) RECEIVES A SUMMARY REPORT FROM THE JURY COMMISSIONER OR JURY MANAGER PURSUANT TO SECTION 21-314 INDICATING THAT THE PERSON HAS STATED THAT THE PERSON IS NOT A RESIDENT OF THE COUNTY. BEFORE THE COUNTY RECORDER CANCELS A REGISTRATION PURSUANT TO THIS SUBDIVISION, THE COUNTY RECORDER SHALL SEND THE PERSON NOTICE BY FORWARDABLE MAIL AND A POSTAGE PREPAID PREAMDRESSED RETURN FORM REQUESTING THE PERSON CONFIRM BY SIGNING UNDER PENALTY OF PERJURY THAT THE PERSON IS A RESIDENT OF THE COUNTY AND IS NOT KNOWINGLY REGISTERED TO VOTE IN ANOTHER COUNTY OR ANOTHER STATE. THE NOTICE SHALL INFORM THE PERSON THAT FAILURE TO RETURN THE FORM WITHIN THIRTY-FIVE DAYS WILL RESULT IN THE PERSON'S REGISTRATION BEING CANCELED. IF THE PERSON FAILS TO RETURN THE NOTICE WITHIN THIRTY-FIVE DAYS THE COUNTY RECORDER SHALL CANCEL THE PERSON'S REGISTRATION.

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~~10. When the county recorder receives and confirms information that the person registered is not a United States citizen.~~

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10. WHEN THE COUNTY RECORDER OBTAINS INFORMATION PURSUANT TO THIS SECTION AND CONFIRMS THAT THE PERSON REGISTERED IS NOT A UNITED STATES CITIZEN, INCLUDING WHEN THE COUNTY RECORDER RECEIVES A SUMMARY REPORT FROM THE JURY COMMISSIONER OR JURY MANAGER PURSUANT TO SECTION 21-314 INDICATING THAT A PERSON WHO IS REGISTERED TO VOTE HAS STATED THAT THE PERSON IS NOT A UNITED STATES CITIZEN. BEFORE THE COUNTY RECORDER CANCELS A REGISTRATION PURSUANT TO THIS PARAGRAPH, THE COUNTY RECORDER SHALL SEND THE PERSON NOTICE BY FORWARDABLE MAIL THAT THE PERSON'S REGISTRATION WILL BE CANCELED IN THIRTY-FIVE DAYS UNLESS THE PERSON PROVIDES SATISFACTORY EVIDENCE OF UNITED STATES CITIZENSHIP PURSUANT TO SECTION 16-166. THE NOTICE SHALL INCLUDE A LIST OF DOCUMENTS THE PERSON MAY PROVIDE AND A POSTAGE PREPAID PREAMBITED RETURN ENVELOPE. IF THE PERSON REGISTERED DOES NOT PROVIDE SATISFACTORY EVIDENCE WITHIN THIRTY-FIVE DAYS, THE COUNTY RECORDER SHALL CANCEL THE REGISTRATION AND NOTIFY THE COUNTY ATTORNEY AND ATTORNEY GENERAL FOR POSSIBLE INVESTIGATION.

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11. WHEN THE COUNTY RECORDER RECEIVES CONFIRMATION FROM ANOTHER COUNTY RECORDER THAT THE PERSON REGISTERED HAS REGISTERED TO VOTE IN THAT OTHER COUNTY.

B. IF THE COUNTY RECORDER RECEIVES CREDIBLE INFORMATION THAT A PERSON HAS REGISTERED TO VOTE IN A DIFFERENT COUNTY, THE COUNTY RECORDER SHALL CONFIRM THE PERSON'S VOTER REGISTRATION WITH THAT OTHER COUNTY AND, ON CONFIRMATION, SHALL CANCEL THE PERSON'S REGISTRATION PURSUANT TO SUBSECTION A, PARAGRAPH 11 OF THIS SECTION.

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~~B.~~ C. If the county recorder cancels a registration pursuant to subsection A, paragraph 8 of this section, the county recorder shall send the person notice that the registration has been ~~cancelled~~ CANCELED and a registration form with the information described in section 16-131, subsection C attached to the form.

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~~C.~~ D. When proceedings in the superior court or the United States district court result in a person being declared incapable of taking care of himself and managing his property, and for whom a guardian of the person and estate is appointed, result in such person being committed as an insane person or result in a person being convicted of a felony, the clerk of the superior court in the county in which those proceedings occurred shall file with the secretary of state an official notice of that fact. The secretary of state shall notify the appropriate county recorder and the recorder shall cancel the name of the person on the register. Such A notice shall name the person covered, shall give the person's date and place of birth if available, the person's social security number, if available, the person's usual place of residence, the person's address and the date of the notice, and shall be filed with the recorder of the county where the person last resided.

~~D.~~ E. Each month the department of health services shall transmit to the secretary of state without charge a record of the death of every resident of the state reported to the department within the preceding month. This record shall include only the name of the decedent, the decedent's date of birth, the decedent's date of death, the decedent's social security number, if available, the decedent's usual legal residence at the time of

death and, if available, the decedent's father's name or mother's maiden name. The secretary of state shall use the record for the sole purpose of canceling the names of deceased persons from the statewide voter registration database. In addition, the department of health services shall annually provide to the secretary of state from the statewide electronic death registration system without charge a record of all deaths of residents of this state that are reported to the department of health services. The records transmitted by the department of health services shall include only the name of the decedent, the decedent's date of birth, the decedent's social security number, if available, the decedent's usual legal residence at the time of death and, if available, the decedent's father's name or mother's maiden name. The secretary of state shall compare the records of deaths with the statewide voter registration database. Public access to the records is prohibited. Use of information from the records for purposes other than those required by this section is prohibited. The name of each deceased person shall promptly be canceled from the statewide voter registration database and the secretary of state shall notify the appropriate county recorder and the recorder shall cancel the name of the person from the register.

Ch. 370 — F. EACH MONTH THE DEPARTMENT OF TRANSPORTATION SHALL FURNISH TO THE SECRETARY OF STATE WITHOUT CHARGE A LIST OF PERSONS WHO THE DEPARTMENT HAS BEEN NOTIFIED HAVE BEEN ISSUED A DRIVER LICENSE OR THE EQUIVALENT OF AN ARIZONA NONOPERATING IDENTIFICATION LICENSE IN ANOTHER STATE. WITHIN TEN DAYS AFTER RECEIVING THE LIST OF PERSONS FROM THE DEPARTMENT OF TRANSPORTATION, THE SECRETARY OF STATE SHALL PROVIDE TO THE APPROPRIATE COUNTY RECORDER A LIST OF REGISTERED VOTERS IN THAT COUNTY WHO HAVE BEEN ISSUED A DRIVER LICENSE OR THE EQUIVALENT OF AN ARIZONA NONOPERATING IDENTIFICATION LICENSE IN ANOTHER STATE. THE COUNTY RECORDER SHALL PROMPTLY SEND NOTICE BY FORWARDABLE MAIL TO EACH PERSON WHO HAS OBTAINED A DRIVER LICENSE OR THE EQUIVALENT OF AN ARIZONA NONOPERATING IDENTIFICATION LICENSE IN ANOTHER STATE AND A POSTAGE PREPAID PREAMDRESSED RETURN FORM REQUESTING THE PERSON CONFIRM BY SIGNING UNDER PENALTY OF PERJURY THAT THE PERSON IS A RESIDENT OF THIS STATE AND IS NOT KNOWINGLY REGISTERED TO VOTE IN ANOTHER STATE OR CONFIRM THAT THE PERSON IS NOT A RESIDENT OF THIS STATE. THE NOTICE SHALL INFORM THE PERSON THAT FAILURE TO RETURN THE FORM WITHIN NINETY DAYS WILL RESULT IN THE PERSON'S REGISTRATION BEING PLACED IN INACTIVE STATUS. IF THE PERSON RETURNS THE FORM WITHIN NINETY DAYS CONFIRMING THAT THE PERSON IS A RESIDENT OF THIS STATE, THE COUNTY RECORDER SHALL MAINTAIN THE REGISTRATION IN ACTIVE STATUS. IF THE PERSON FAILS TO RETURN THE FORM WITHIN NINETY DAYS, THE COUNTY RECORDER SHALL PLACE THE PERSON'S REGISTRATION IN INACTIVE STATUS.

G. EACH MONTH THE SECRETARY OF STATE SHALL COMPARE THE STATEWIDE VOTER REGISTRATION DATABASE TO THE DRIVER LICENSE DATABASE MAINTAINED BY THE DEPARTMENT OF TRANSPORTATION. THE SECRETARY OF STATE SHALL NOTIFY THE APPROPRIATE COUNTY RECORDER IF A PERSON WHO IS REGISTERED TO VOTE IN THAT COUNTY HAS CHANGED THE PERSON'S RESIDENCE ADDRESS OR IS NOT A UNITED STATES CITIZEN.

H. TO THE EXTENT PRACTICABLE, EACH MONTH THE COUNTY RECORDER SHALL COMPARE THE COUNTY'S VOTER REGISTRATION DATABASE TO THE SOCIAL SECURITY ADMINISTRATION DATABASE.

I. TO THE EXTENT PRACTICABLE, EACH MONTH THE COUNTY RECORDER SHALL COMPARE PERSONS WHO ARE REGISTERED TO VOTE IN THAT COUNTY AND WHO THE COUNTY RECORDER HAS REASON TO BELIEVE ARE NOT UNITED STATES CITIZENS AND PERSONS WHO ARE REGISTERED TO VOTE WITHOUT SATISFACTORY EVIDENCE OF CITIZENSHIP AS PRESCRIBED BY SECTION 16-166 WITH THE SYSTEMATIC ALIEN VERIFICATION FOR ENTITLEMENTS PROGRAM MAINTAINED BY THE UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES TO VERIFY THE CITIZENSHIP STATUS OF THE PERSONS REGISTERED.

J. FOR PERSONS WHO ARE REGISTERED TO VOTE WITHOUT SATISFACTORY EVIDENCE OF CITIZENSHIP AS PRESCRIBED IN SECTION 16-166, THE COUNTY RECORDER SHALL COMPARE THE ELECTRONIC VERIFICATION OF VITAL EVENTS SYSTEM MAINTAINED BY A NATIONAL ASSOCIATION FOR PUBLIC HEALTH STATISTICS AND INFORMATION SYSTEMS, IF ACCESSIBLE, WITH THE INFORMATION ON THE PERSON'S VOTER REGISTRATION FILE.

K. TO THE EXTENT PRACTICABLE, THE COUNTY RECORDER SHALL REVIEW RELEVANT CITY, TOWN, COUNTY, STATE AND FEDERAL DATABASES TO WHICH THE COUNTY RECORDER HAS ACCESS TO CONFIRM INFORMATION OBTAINED THAT REQUIRES CANCELLATION OF REGISTRATIONS PURSUANT TO THIS SECTION.

L. AFTER CANCELING A REGISTRATION PURSUANT TO THIS SECTION, THE COUNTY RECORDER SHALL SEND A NOTICE BY FORWARDABLE MAIL INFORMING THE PERSON THAT THE PERSON'S REGISTRATION HAS BEEN CANCELED, THE REASON FOR CANCELLATION, THE QUALIFICATIONS OF ELECTORS PURSUANT TO SECTION 16-101 AND INSTRUCTIONS ON REGISTERING TO VOTE IF THE PERSON IS QUALIFIED.

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M. THE SECRETARY OF STATE SHALL REPORT THE FOLLOWING INFORMATION TO THE LEGISLATURE AT THE END OF EACH QUARTER:

1. THE NUMBER OF DEATHS REPORTED TO THE SECRETARY OF STATE BY THE DEPARTMENT OF HEALTH SERVICES, THE NUMBER OF VOTER REGISTRATION CANCELLATION NOTICES ISSUED BY THE SECRETARY OF STATE TO THE COUNTY RECORDERS AS A RESULT OF THOSE REPORTS AND THE NUMBER OF REGISTRATIONS CANCELED AS A RESULT OF THOSE NOTICES.

2. THE NUMBER OF PERSONS REPORTED TO THE SECRETARY OF STATE WHO HAVE BEEN ISSUED A DRIVER LICENSE OR THE EQUIVALENT OF AN ARIZONA NONOPERATING IDENTIFICATION LICENSE IN ANOTHER STATE, THE NUMBER OF NOTICES SENT PURSUANT TO SUBSECTION E OF THIS SECTION AND THE NUMBER OF VOTER REGISTRATIONS THAT HAVE BEEN PLACED IN INACTIVE STATUS AND THE NUMBER OF VOTER REGISTRATIONS THAT HAVE BEEN CANCELED AS A RESULT OF THOSE NOTICES.

3. THE NUMBER OF PERSONS WHO HAVE STATED ON A JURY QUESTIONNAIRE THAT THE PERSON IS NOT A UNITED STATES CITIZEN, THE NUMBER OF NOTICES SENT PURSUANT TO SUBSECTION A, PARAGRAPH 10 OF THIS SECTION AND THE NUMBER OF REGISTRATIONS THAT HAVE BEEN CANCELED AS A RESULT OF THOSE NOTICES.

4. THE NUMBER OF PERSONS WHO HAVE STATED ON A JURY QUESTIONNAIRE THAT THE PERSON IS NOT A RESIDENT OF THE COUNTY, THE NUMBER OF NOTICES SENT PURSUANT TO SUBSECTION A, PARAGRAPH 9, SUBDIVISION (b) OF THIS SECTION AND THE NUMBER OF REGISTRATIONS THAT HAVE BEEN CANCELED AS A RESULT OF THOSE NOTICES.

5. THE NUMBER OF REGISTRATIONS ON THE INACTIVE VOTER LIST THAT HAVE BEEN CANCELED PURSUANT TO SUBSECTION A, PARAGRAPH 7 OF THIS SECTION.

EXPLANATION OF BLEND  
SECTION 16-411

Laws 2022, Chapters 271 and 277

Laws 2022, Ch. 271, section 1

Effective September 24, 2022

Laws 2022, Ch. 277, section 9

Effective September 24, 2022

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 271 and Ch. 277 text changes to section 16-411 are blended in the form shown on the following pages.

BLEND OF SECTION 16-411  
Laws 2022, Chapters 271 and 277

16-411. Designation of election precincts and polling places;  
voting centers; electioneering; wait times

A. The board of supervisors of each county, on or before October 1 of each year preceding the year of a general election, by an order, shall establish a convenient number of election precincts in the county and define the boundaries of the precincts.— AS FOLLOWS:

1. The election precinct boundaries shall be established so as to be included within election districts prescribed by law for elected officers of the state and its political subdivisions, including community college district precincts, except those elected officers provided for in titles 30 and 48.

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2. IF AFTER OCTOBER 1 OF THE YEAR PRECEDING THE YEAR OF A GENERAL ELECTION THE BOARD OF SUPERVISORS MUST FURTHER ADJUST PRECINCT BOUNDARIES DUE TO THE REDISTRICTING OF ELECTION DISTRICTS AS PRESCRIBED BY LAW AND TO COMPLY WITH THIS SUBSECTION, THE BOARD OF SUPERVISORS SHALL ADJUST THESE PRECINCT BOUNDARIES AS SOON AS IS PRACTICABLE.

B. At least twenty days before a general or primary election, and at least ten days before a special election, the board shall designate one polling place within each precinct where the election shall be held, except that:

1. On a specific finding of the board, included in the order or resolution designating polling places pursuant to this subsection, that no suitable polling place is available within a precinct, a polling place for that precinct may be designated within an adjacent precinct.

2. Adjacent precincts may be combined if boundaries so established are included in election districts prescribed by law for state elected officials and political subdivisions including community college districts but not including elected officials prescribed by titles 30 and 48. The officer in charge of elections may also split a precinct for administrative purposes. The polling places shall be listed in separate sections of the order or resolution.

3. On a specific finding of the board that the number of persons who are listed as early voters pursuant to section 16-544 AND WHO ARE NOT EXPECTED TO HAVE THEIR BALLOTS TABULATED AT THE POLLING PLACE AS PRESCRIBED IN SECTION 16-579.02 is likely to substantially reduce the number of voters appearing at one or more specific polling places at that election, adjacent precincts may be consolidated by combining polling places and precinct boards for that election. The board of supervisors shall ensure that a reasonable and adequate number of polling places will be designated for that election. Any consolidated polling places shall be listed in separate sections of the order or resolution of the board.

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4. On a specific resolution of the board, the board may authorize the use of voting centers in place of or in addition to specifically designated polling places. A voting center shall allow any voter in that county to receive the appropriate ballot for that voter on election day after presenting identification as prescribed in section 16-579 and to lawfully cast the ballot. Voting centers may be established in coordination and consultation with the county recorder, at other county offices or at other locations in the county deemed appropriate.

5. On a specific resolution of the board of supervisors that is limited to a specific election date and that is voted on by a recorded vote, the board may authorize the county recorder or other officer in charge of elections to use emergency voting centers as follows:

(a) The board shall specify in the resolution the location and the hours of operation of the emergency voting centers.

(b) A qualified elector voting at an emergency voting center shall provide identification as prescribed in section 16-579, except that notwithstanding section 16-579, subsection A, paragraph 2, for any voting at an emergency voting center, the county recorder or other officer in charge of elections may allow a qualified elector to update the elector's voter registration information as provided for in the secretary of state's instructions and procedures manual adopted pursuant to section 16-452.

(c) If an emergency voting center established pursuant to this section becomes unavailable and there is not sufficient time for the board of supervisors to convene to approve an alternate location for that emergency voting center, the county recorder or other officer in charge of elections may make changes to the approved emergency voting center location and shall notify the public and the board of supervisors regarding that change as soon as practicable. The alternate emergency voting center shall be as close in proximity to the approved emergency voting center location as possible.

C. If the board fails to designate the place for holding the election, or if it cannot be held at or about the place designated, the justice of the peace in the precinct, two days before the election, by an order, copies of which the justice of the peace shall immediately post in three public places in the precinct, shall designate the place within the precinct for holding the election. If there is no justice of the peace in the precinct, or if the justice of the peace fails to do so, the election board of the precinct shall designate and give notice of the place within the precinct of holding the election. For any election in which there are no candidates for elected office appearing on the ballot, the board may consolidate polling places and precinct boards and may consolidate the tabulation of results for that election if all of the following apply:

1. All affected voters are notified by mail of the change at least thirty-three days before the election.

2. Notice of the change in polling places includes notice of the new voting location, notice of the hours for voting on election day and notice of the telephone number to call for voter assistance.

3. All affected voters receive information on early voting that includes the application used to request an early voting ballot.

D. The board is not required to designate a polling place for special district mail ballot elections held pursuant to article 8.1 of this chapter,

but the board may designate one or more sites for voters to deposit marked ballots until 7:00 p.m. on the day of the election.

E. Except as provided in subsection F of this section, a public school shall provide sufficient space for use as a polling place for any city, county or state election when requested by the officer in charge of elections.

F. The principal of the school may deny a request to provide space for use as a polling place for any city, county or state election if, within two weeks after a request has been made, the principal provides a written statement indicating a reason the election cannot be held in the school, including any of the following:

1. Space is not available at the school.
2. The safety or welfare of the children would be jeopardized.

G. The board shall make available to the public as a public record a list of the polling places for all precincts in which the election is to be held.

H. Except in the case of an emergency, any facility that is used as a polling place on election day or that is used as an early voting site during the period of early voting shall allow persons to electioneer and engage in other political activity outside of the seventy-five foot limit prescribed by section 16-515 in public areas and parking lots used by voters. This subsection does not allow the temporary or permanent construction of structures in public areas and parking lots or the blocking or other impairment of access to parking spaces for voters. The county recorder or other officer in charge of elections shall post on its website at least two weeks before election day a list of those polling places in which emergency conditions prevent electioneering and shall specify the reason the emergency designation was granted and the number of attempts that were made to find a polling place before granting an emergency designation. If the polling place is not on the website list of polling places with emergency designations, electioneering and other political activity shall be allowed outside of the seventy-five foot limit. If an emergency arises after the county recorder or other officer in charge of elections' initial website posting, the county recorder or other officer in charge of elections shall update the website as soon as is practicable to include any new polling places, shall highlight the polling place location on the website and shall specify the reason the emergency designation was granted and the number of attempts that were made to find a polling place before granting an emergency designation.

I. For the purposes of this section, a county recorder or other officer in charge of elections shall designate a polling place as an emergency polling place and thus prohibit persons from electioneering and engaging in other political activity outside of the seventy-five foot limit prescribed by section 16-515 but inside the property of the facility that is hosting the polling place if any of the following occurs:

1. An act of God renders a previously set polling place as unusable.
2. A county recorder or other officer in charge of elections has exhausted all options and there are no suitable facilities in a precinct that are willing to be a polling place unless a facility can be given an emergency designation.

J. The secretary of state shall provide through the instructions and procedures manual adopted pursuant to section 16-452 the maximum allowable wait time for any election that is subject to section 16-204 and provide for a method to reduce voter wait time at the polls in the primary and general elections. The method shall consider at least all of the following for primary and general elections in each precinct:

1. The number of ballots voted in the prior primary and general elections.

2. The number of registered voters who voted early in the prior primary and general elections.

3. The number of registered voters and the number of registered voters who cast an early ballot for the current primary or general election.

Ch. 271 { 4. THE NUMBER OF REGISTERED VOTERS WHOSE EARLY BALLOTS WERE TABULATED ON-SITE AS PRESCRIBED IN SECTION 16-579.02 IN THE PRIOR PRIMARY AND GENERAL ELECTIONS.

~~4.~~ 5. The number of election board members and clerks and the number of rosters that will reduce voter wait time at the polls.

EXPLANATION OF BLEND  
SECTION 16-544

Laws 2022, Chapters 270 and 277

Laws 2022, Ch. 270, section 2

Effective September 24, 2022

Laws 2022, Ch. 277, section 11

Effective September 24, 2022

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 270 and Ch. 277 text changes to section 16-544 are blended in the form shown on the following pages.

BLEND OF SECTION 16-544  
Laws 2022, Chapters 270 and 277

16-544. Active early voting list; civil penalty; violation;  
classification; definition

A. Any voter may request to be included on a list of voters to receive an early ballot by mail for any election for which the county voter registration roll is used to prepare the election register. The county recorder of each county shall maintain the active early voting list as part of the voter registration roll.

B. In order to be included on the active early voting list, the voter shall make a written request specifically requesting that the voter's name be added to the active early voting list for all elections in which the applicant is eligible to vote. An early voter request form shall conform to requirements prescribed in the instructions and procedures manual issued pursuant to section 16-452. The application shall allow for the voter to provide the voter's name, residence address, mailing address in the voter's county of residence, date of birth and signature and shall state that the voter is attesting that the voter is a registered voter who is eligible to vote in the county of residence. The voter shall not list a mailing address that is outside of this state for the purpose of the active early voting list unless the voter is an absent uniformed services voter or overseas voter as defined in the uniformed and overseas citizens absentee voting act of 1986 (P.L. 99-410; 52 United States Code section 20310). In lieu of the application, the applicant may submit a written request that contains the required information.

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C. On receipt of a request to be included on the active early voting list, the county recorder or other officer in charge of elections shall compare the signature on the request form with the voter's signature on the voter's registration form and, if the request is from the voter, shall mark the voter's registration file as an active early ballot request.

D. Not less than ninety days before any polling place election scheduled in March or August, the county recorder or other officer in charge of elections shall mail to all voters who are eligible for the election and who are included on the active early voting list an election notice by nonforwardable mail that is marked with the statement required by the postmaster to receive an address correction notification. If an election is not formally called by a jurisdiction by the one hundred ~~twentieth~~ EIGHTIETH day before the election, the recorder or other officer in charge of elections is not required to send the election notice. The notice shall include the dates of the elections that are the subject of the notice, the dates that the voter's ballot is expected to be mailed and the address where the ballot will be mailed. If the upcoming election is a partisan open primary election and the voter is not registered as a member of one of the political parties that is recognized for purposes of that primary, the

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notice shall include information on the procedure for the voter to designate a political party ballot. The notice shall be delivered with return postage prepaid and shall also include a means for the voter to do any of the following:

1. Change the mailing address for the voter's ballot to another location in the voter's county of residence.

2. Update the voter's residence address in the voter's county of residence.

3. Request that the voter not be sent a ballot for the upcoming election or elections indicated on the notice.

E. If the notice that is mailed to the voter is returned undeliverable by the postal service, the county recorder or other officer in charge of elections shall take the necessary steps to contact the voter at the voter's new residence address in order to update that voter's address or to move the voter to inactive status as prescribed in section 16-166, subsection A. If a voter is moved to inactive status, the voter shall be removed from the active early voting list. If the voter is removed from the active early voting list, the voter shall only be added to the active early voting list again if the voter submits a new request pursuant to this section.

F. Not later than the first day of early voting, the county recorder or other officer in charge of elections shall mail an early ballot to all eligible voters included on the active early voting list in the same manner prescribed in section 16-542, subsection C. If the voter has not returned the notice or otherwise notified the election officer within forty-five days before the election that the voter does not wish to receive an early ballot by mail for the election or elections indicated, the ballot shall automatically be scheduled for mailing.

G. If a voter who is on the active early voting list is not registered as a member of a recognized political party and fails to notify the county recorder of the voter's choice for political party ballot within forty-five days before a partisan open primary election, the following apply:

1. The voter shall not automatically be sent a ballot for that partisan open primary election only and the voter's name shall remain on the active early voting list for future elections.

2. To receive an early ballot for the primary election, the voter shall submit the voter's choice for political party ballot to the county recorder.

H. After a voter has requested to be included on the active early voting list, the voter shall be sent an early ballot by mail automatically for any election at which a voter at that residence address is eligible to vote until any of the following occurs:

1. The voter requests in writing to be removed from the active early voting list.

2. The voter's registration or eligibility for registration is moved to inactive status or canceled as otherwise provided by law.

3. The notice sent by the county recorder or other officer in charge of elections is returned undeliverable and the county recorder or officer in charge of elections is unable to contact the voter to determine the voter's continued desire to remain on the list.

4. The voter fails to vote an early ballot in all elections for two consecutive election cycles. For the purposes of this paragraph, "election" means any regular primary or regular general election for which there was a federal race on the ballot or for which a city or town candidate primary or first election or city or town candidate second, general or runoff election was on the ballot. This paragraph does not apply to:

(a) A special taxing district that is authorized pursuant to section 16-191 to conduct its own elections.

(b) A special district mail ballot election that is conducted pursuant to article 8.1 of this chapter.

I. A voter may make a written request at any time to be removed from the active early voting list. The request shall include the voter's name, residence address, date of birth and signature. On receipt of a completed request to remove a voter from the active early voting list, the county recorder or other officer in charge of elections shall remove the voter's name from the list as soon as practicable.

Chs. 270 and 277 — J. An absent uniformed services voter or overseas voter as defined in the uniformed and overseas citizens absentee voting act of 1986 (P.L. 99-410; 52 United States Code section 20310) is eligible to be placed on the active early voting list pursuant to this section.

K. A voter's failure to vote an early ballot once received does not constitute grounds to remove the voter from the active early voting list, except that a county recorder shall remove a voter from the active early voting list if both of the following apply:

1. The county recorder or other officer in charge of elections complies with subsection M of this section.

2. The voter fails to vote using an early ballot in all of the following elections for two consecutive election cycles:

(a) A regular primary and regular general election for which there was a federal race on the ballot.

(b) A city or town candidate primary or first election and a city or town candidate second, general or runoff election.

L. On or before January 15 of each odd-numbered year, the county recorder or other officer in charge of elections shall send a notice to each voter who is on the active early voting list and who did not vote an early ballot in all elections for two consecutive election cycles as prescribed by subsection K of this section. If the voter has provided the voter's telephone or mobile phone number or email address to the county recorder, the county recorder may additionally provide the notice to the voter by telephone call, text message or email. The notice shall inform the voter that if the voter wishes to remain on the active early voting list, the voter shall do both of the following with the notice received:

1. Confirm in writing the voter's desire to remain on the active early voting list.

2. Return the completed notice to the county recorder or other officer in charge of elections within ninety days after the notice is sent to the voter. The notice shall be signed by the voter and shall contain the voter's address and date of birth.

M. If a voter receives a notice as prescribed by subsection L of this section and the voter fails to respond within the ninety-day period, the

county recorder or other officer in charge of elections shall remove the voter's name from the active early voting list.

N. A candidate, political committee or other organization may distribute active early voting list request forms to voters. If the active early voting list request forms include a printed address for return, that address shall be the political subdivision that will conduct the election. Failure to use the political subdivision as the return addressee is punishable by a civil penalty of up to three times the cost of the production and distribution of the active early voting list request.

O. All original and completed active early voting list request forms that are received by a candidate, political committee or other organization shall be submitted within six business days after receipt by a candidate or political committee or eleven days before the election day, whichever is earlier, to the political subdivision that will conduct the election. Any person, political committee or other organization that fails to submit a completed active early voting list request form within the prescribed time is subject to a civil penalty of up to \$25 per day for each completed form withheld from submittal. Any person who knowingly fails to submit a completed active early voting list request form before the submission deadline for the election immediately following the completion of the form is guilty of a class 6 felony.

P. A PERSON WHO RECEIVES AN EARLY BALLOT AT AN ADDRESS AT WHICH ANOTHER PERSON FORMERLY RESIDED, WITHOUT VOTING THE BALLOT OR SIGNING THE ENVELOPE, SHALL WRITE "NOT AT THIS ADDRESS" ON THE ENVELOPE AND PLACE THE MAIL PIECE IN A UNITED STATES POSTAL SERVICE COLLECTION BOX OR OTHER MAIL RECEPTACLE. ON RECEIPT THE COUNTY RECORDER OR OTHER OFFICER IN CHARGE OF ELECTIONS SHALL PROCEED IN THE MANNER PRESCRIBED IN SUBSECTION E OF THIS SECTION.

Ch. 270 Q. WHEN THE COUNTY RECORDER RECEIVES CONFIRMATION FROM ANOTHER COUNTY THAT A PERSON REGISTERED HAS REGISTERED TO VOTE IN THAT OTHER COUNTY, THE COUNTY RECORDER SHALL REMOVE THAT PERSON FROM THE ACTIVE EARLY VOTING LIST.

R. IF THE COUNTY RECORDER RECEIVES CREDIBLE INFORMATION THAT A PERSON HAS REGISTERED TO VOTE IN A DIFFERENT COUNTY, THE COUNTY RECORDER SHALL CONFIRM THE PERSON'S VOTER REGISTRATION WITH THAT OTHER COUNTY AND, ON CONFIRMATION, SHALL REMOVE THAT PERSON FROM THE COUNTY'S ACTIVE EARLY VOTING LIST PURSUANT TO SUBSECTION Q OF THIS SECTION.

~~P.~~ S. For the purposes of this section, "election cycle" means the two-year period beginning on January 1 in the year after a statewide general election or, for cities and towns, the two-year period beginning on the first day of the calendar quarter after the calendar quarter in which the city's or town's second, runoff or general election is scheduled and ending on the last day of the calendar quarter in which the city's or town's immediately following second, runoff or general election is scheduled, however that election is designated by the city or town.

EXPLANATION OF BLEND  
SECTION 28-2351

Laws 2022, Chapters 28, 29, 75, 110, 127, 143, 193, 248 and 294

Laws 2022, Ch. 28, section 1	Effective September 24, 2022
Laws 2022, Ch. 29, section 1	Effective September 24, 2022
Laws 2022, Ch. 75, section 1	Effective September 24, 2022
Laws 2022, Ch. 110, section 1	Effective September 24, 2022
Laws 2022, Ch. 127, section 1	Effective September 24, 2022
Laws 2022, Ch. 143, section 1	Effective September 24, 2022
Laws 2022, Ch. 193, section 1	Effective September 24, 2022
Laws 2022, Ch. 248, section 1	Effective September 24, 2022
Laws 2022, Ch. 294, section 1	Effective September 24, 2022

Explanation

Since these nine enactments are compatible, the Laws 2022, Ch. 28, Ch. 29, Ch. 75, Ch. 110, Ch. 127, Ch. 143, Ch. 193, Ch. 248 and Ch. 294 text changes to section 28-2351 are blended in the form shown on the following page.

BLEND OF SECTION 28-2351

Laws 2022, Chapters 28, 29, 75, 110, 127, 143, 193, 248 and 294

28-2351. License plate provided; design

A. Notwithstanding any other law, the department shall provide to every owner one license plate for each vehicle registered. At the request of the owner and on payment of a fee in an amount prescribed by the director by rule, the department shall provide one additional license plate for a vehicle for which a special plate is requested pursuant to this chapter.

B. The license plate shall display the number assigned to the vehicle and to the owner of the vehicle and the name of this state, which may be abbreviated. The director shall coat the license plate with a reflective material that is consistent with the determination of the department regarding the color and design of license plates and special plates. THE BACKGROUND COLOR OF THE LICENSE PLATE SHALL CONTRAST SIGNIFICANTLY WITH THE COLOR OF THE LETTERS AND NUMERALS ON THE LICENSE PLATE AND WITH THE NAME OF THIS STATE ON THE LICENSE PLATE. THE NAME OF THIS STATE SHALL APPEAR ON THE LICENSE PLATE IN CAPITAL LETTERS IN SANS SERIF FONT AND BE THREE-FOURTHS OF AN INCH IN HEIGHT. The director shall design the license plate and the letters and numerals on the license plate to be of sufficient size to be plainly readable during daylight from a distance of one hundred feet. In addition to the standard license plate issued for a trailer before August 12, 2005, the director shall issue a license plate for trailers that has a design that is similar to the standard size license plate for trailers but that is the same size as the license plate for motorcycles. The trailer owner shall notify the department which size license plate the owner wants for the trailer.

Ch. 75

C. Notwithstanding any other law, the department shall not contract with a nongovernmental entity to purchase or secure reflective material for the plates issued by the department unless the department has made a reasonable effort to secure qualified bids or proposals from as many individual responsible respondents as possible.

D. The department shall determine the color and design of the license plate SUBJECT TO THE REQUIREMENTS PRESCRIBED BY SUBSECTION B OF THIS SECTION. All other plates issued by the department, except the plates THAT ARE DESIGNED OR REDESIGNED BEFORE SEPTEMBER 24, 2022 AND THAT ARE issued pursuant to sections 28-2404, 28-2412, 28-2413, 28-2414, 28-2416, 28-2416.01, 28-2417 through ~~28-2470.09~~ 28-2470.17, 28-2472, 28-2473, 28-2474, 28-2475, 28-2476 and 28-4533 and article 14 of this chapter, shall be the same color as and similar in design to the license plate as determined by the department.

Ch. 75

Chs. 28,  
29, 110,  
127, 143,  
193, 248  
and 294

E. A passenger motor vehicle that is rented without a driver shall receive the same type of license plate as is issued for a private passenger motor vehicle.

EXPLANATION OF BLEND  
SECTION 28-2403

Laws 2022, Chapters 28, 29, 110, 127, 143, 193, 248 and 294

Laws 2022, Ch. 28, section 2	Effective September 24, 2022
Laws 2022, Ch. 29, section 2	Effective September 24, 2022
Laws 2022, Ch. 110, section 2	Effective September 24, 2022
Laws 2022, Ch. 127, section 2	Effective September 24, 2022
Laws 2022, Ch. 143, section 2	Effective September 24, 2022
Laws 2022, Ch. 193, section 2	Effective September 24, 2022
Laws 2022, Ch. 248, section 2	Effective September 24, 2022
Laws 2022, Ch. 294, section 2	Effective September 24, 2022

Explanation

Since these eight enactments are compatible, the Laws 2022, Ch. 28, Ch. 29, Ch. 110, Ch. 127, Ch. 143, Ch. 193, Ch. 248 and Ch. 294 text changes to section 28-2403 are blended in the form shown on the following page.

BLEND OF SECTION 28-2403  
Laws 2022, Chapters 28, 29, 110, 127, 143, 193, 248 and 294

28-2403. Special plates; transfers; violation; classification

A. Except as otherwise provided in this article, the department shall issue or renew special plates in lieu of the regular license plates pursuant to the following conditions and procedures and only if the requirements prescribed by this article for the requested special plates are met:

1. Except as provided in sections 28-2416 and 28-2416.01, a person who is the registered owner of a vehicle registered with the department or who applies for an original or renewal registration of a vehicle may submit to the department a completed application form as prescribed by the department with the fee prescribed by section 28-2402 for special plates in addition to the registration fee prescribed by section 28-2003.

2. Except for plates issued pursuant to sections 28-2404, 28-2412, 28-2413, 28-2414, 28-2416, 28-2416.01, 28-2417 through ~~28-2470.09~~ 28-2470.17, 28-2472, 28-2473, 28-2474, 28-2475 and 28-2476 and article 14 of this chapter, the special plates shall be the same color as and similar to the design of the regular license plates that is determined by the department.

3. Except as provided in section 28-2416, the department shall issue special plates only to the owner or lessee of a vehicle that is currently registered, including any vehicle that has a declared gross weight, as defined in section 28-5431, of twenty-six thousand pounds or less.

4. Except as provided in sections 28-2416 and 28-2416.01, the department shall charge the fee prescribed by section 28-2402 for each annual renewal of special plates in addition to the registration fee prescribed by section 28-2003.

B. Except as provided in sections 28-2416 and 28-2416.01, on notification to the department and on payment of the transfer fee prescribed by section 28-2402, a person who is issued special plates may transfer the special plates to another vehicle the person owns or leases. Persons who are issued special plates for hearing impaired persons pursuant to section 28-2408 and international symbol of access special plates pursuant to section 28-2409 are exempt from the transfer fee. If a person who is issued special plates sells, trades or otherwise releases ownership of the vehicle on which the plates have been displayed, the person shall immediately report the transfer of the plates to the department or the person shall surrender the plates to the department as prescribed by the director. It is unlawful for a person to whom the plates have been issued to knowingly allow them to be displayed on a vehicle except the vehicle authorized by the department.

C. The special plates shall be affixed to the vehicle for which registration is sought in lieu of the regular license plates.

D. A person is guilty of a class 3 misdemeanor who:

1. Violates subsection B of this section.

2. Fraudulently gives false or fictitious information in the application for or renewal of special plates or placards issued pursuant to this article.

3. Conceals a material fact or otherwise commits fraud in the application for or renewal of special plates or placards issued pursuant to this article.

Chs. 28,  
29, 110,  
127, 143,  
193, 248  
and 294

EXPLANATION OF BLEND  
SECTION 28-3053

Laws 2022, Chapters 290 and 347

Laws 2022, Ch. 290, section 7

Effective September 24, 2022

Laws 2022, Ch. 347, section 2

Effective September 24, 2022

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 290 and Ch. 347 text changes to section 28-3053 are blended in the form shown on the following pages.

The Laws 2022, Ch. 290 version of section 28-3053, subsection A struck "nine" and added "the following". The Ch. 347 version struck "nine" and added "ten". Since this would not produce a substantive change, the blend version reflects the Ch. 290 version.

BLEND OF SECTION 28-3053  
Laws 2022, Chapters 290 and 347

28-3053. Student transportation advisory council

A. The ~~school bus~~ STUDENT TRANSPORTATION advisory council is established consisting of [~~nine~~] THE FOLLOWING members appointed by the governor. ~~The governor shall appoint the members as follows:~~ Chs. 290 and 347

1. One member representing the department of public safety.
2. One member representing the state board of education.
3. ONE MEMBER REPRESENTING THE STATE BOARD FOR CHARTER SCHOOLS.
- ~~3.~~ 4. One member from a school district with a student count of less than six hundred IN A COUNTY WITH A POPULATION OF LESS THAN THREE HUNDRED THOUSAND PERSONS.
- ~~4.~~ 5. One member from a school district with a student count of six hundred or more but less than three thousand.
- ~~5.~~ 6. One member from a school district with a student count of MORE THAN three thousand or more but less than ten thousand.
- ~~6.~~ One member from a school district with a student count of ten thousand or more.
7. One member representing transportation administrators.
8. One member who is a certified school bus driver or school bus driver instructor.
9. One member representing a private sector school bus service provider OR A PRIVATE SECTOR STUDENT TRANSPORTATION SERVICE PROVIDER.
10. ONE MEMBER FROM A CHARTER SCHOOL WITH A STUDENT COUNT OF LESS THAN SIX HUNDRED.
11. ONE MEMBER FROM A CHARTER SCHOOL WITH A STUDENT COUNT OF MORE THAN SIX HUNDRED.

Ch. 290

Chs. 290 and 347

12. ONE MEMBER WITH EXPERTISE IN ELECTRIC VEHICLE FLEETS, ELECTRIC VEHICLE CHARGING INFRASTRUCTURE OR CHARGING MANAGEMENT SERVICES.

13. TWO PUBLIC MEMBERS.

B. The members shall serve staggered three-year terms unless a member vacates the position. Appointment to fill a vacancy resulting other than from expiration of a term is for the unexpired portion of the term only.

Ch. 290

C. The ~~school bus~~ STUDENT TRANSPORTATION advisory council shall:

1. Meet at least TWICE annually.
2. Select a chairperson from its members.
3. Advise and assist the department of public safety in developing the rules required by sections 28-900 and 28-3228.
4. Recommend curricula for school bus driver safety and training courses required by section 28-3228.
5. Advise and consult with the department of public safety concerning matters related to the certification of school bus drivers and the safety

Ch. 290 — of school buses AND VEHICLES DESCRIBED IN SECTION 15-925.

Ch. 290

6. ADVISE AND CONSULT WITH THE DEPARTMENT OF PUBLIC SAFETY CONCERNING MATTERS RELATED TO MODERNIZING AND INNOVATING K-12 STUDENT TRANSPORTATION TO REDUCE TRANSPORTATION BARRIERS FOR STUDENTS, INCREASE ACCESS TO PUBLIC SCHOOL OPTIONS AND PROVIDE MORE TRANSPORTATION OPTIONS FOR SCHOOL DISTRICTS AND CHARTER SCHOOLS, INCLUDING ELECTRIC TRANSPORTATION.

7. ADVISE AND CONSULT WITH THE DEPARTMENT OF ADMINISTRATION CONCERNING PURCHASING STRATEGIES TO MAXIMIZE TRANSPORTATION RESOURCES AND FIND EFFICIENCIES TO MODERNIZE AND PROPERLY SIZE TRANSPORTATION VEHICLES AND SYSTEMS.

~~6.~~ 8. Establish a mailing list that includes any party expressing an interest in the council's activities. The council shall provide written notice to each person on the list at least fifteen days before the date on which the meeting is to be held. The notice shall be sent by mail or electronic means to the party's last address of record with the council or by any other method reasonably calculated to effect actual notice to any party expressing interest in the council's activities. Written notice by electronic means is effective when transmitted. For other methods written notice is effective on receipt or five days after the date shown on the postmark stamped on the envelope, whichever is earlier.

Ch. 347

9. PREAPPROVE CONTRACT CARRIERS AND PRIVATE PARTIES AS PRESCRIBED IN SECTION 15-923, SUBSECTION B.

Ch. 290

D. Members of the ~~school bus~~ STUDENT TRANSPORTATION advisory council are not eligible to receive compensation or reimbursement for expenses.

EXPLANATION OF BLEND  
SECTION 28-3228

Laws 2022, Chapters 59 and 290

Laws 2022, Ch. 59, section 41

Effective September 24, 2022

Laws 2022, Ch. 290, section 8

Effective September 24, 2022

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 59 and Ch. 290 text changes to section 28-3228 are blended in the form shown on the following pages.

BLEND OF SECTION 28-3228  
Laws 2022, Chapters 59 and 290

28-3228. School bus drivers; student transportation requirements; rules; cancellation of certificate

A. A person shall not operate a school bus ~~transporting~~ THAT IS DESIGNED FOR SIXTEEN OR MORE PASSENGERS AND THAT TRANSPORTS school children unless the person possesses the appropriate license class for the size of school bus being operated that is issued by the department of transportation, a bus endorsement that is issued by the department of transportation and a school bus certificate that is issued by the department of public safety. A PERSON SHALL NOT OPERATE A VEHICLE DESCRIBED IN SECTION 15-925 TO TRANSPORT SCHOOLCHILDREN UNLESS THE PERSON POSSESSES THE APPROPRIATE LICENSE CLASS FOR THE SIZE OF THE VEHICLE BEING OPERATED, A SCHOOL BUS DRIVER CERTIFICATE THAT IS ISSUED BY THE DEPARTMENT OF PUBLIC SAFETY AND A VALID FINGERPRINT CLEARANCE CARD AS REQUIRED BY SUBSECTION D OF THIS SECTION.

B. To be certified as a school bus driver FOR A VEHICLE THAT IS DESIGNED FOR SIXTEEN OR MORE PASSENGERS[,] a person shall do both of the following:

1. Meet and maintain the minimum standards prescribed by this section and rules adopted by the department of public safety in consultation with the ~~school bus~~ STUDENT TRANSPORTATION advisory council established by section 28-3053.

2. Complete an initial instructional course on school bus driver safety and training, including behind the wheel training.

C. The department of public safety in consultation with the ~~school bus~~ STUDENT TRANSPORTATION advisory council established by section 28-3053 shall adopt rules that establish minimum standards for the certification of school bus drivers AND DRIVERS OF OTHER VEHICLES DESCRIBED IN SECTION 15-925. In cooperation with local school districts AND CHARTER SCHOOLS, the department of public safety shall provide for school bus ~~driver~~ TRANSPORTATION safety and training courses. The standards established shall:

1. Include requirements concerning [~~moral character,~~] knowledge of ~~school bus operation~~ OPERATING A SCHOOL BUS OR A VEHICLE DESCRIBED IN SECTION 15-925, pupil and motor vehicle safety, physical impairments that might affect the applicant's ability to safely operate a school bus OR VEHICLE DESCRIBED IN SECTION 15-925 or that might endanger the health or safety of ~~school bus~~ passengers, knowledge of first aid, establishment of school bus AND OTHER VEHICLE safety and training courses, a refresher course to be completed on at least a biennial basis and other matters as the department of public safety and the ~~school bus~~ STUDENT TRANSPORTATION advisory council established by section 28-3053 prescribe for the protection of the public.

2. Require tests to detect the presence of alcohol or the use of a drug in violation of title 13, chapter 34 that may adversely affect the

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and 290

Ch. 59

Ch. 290

ability of the applicant to safely operate a school bus OR VEHICLE DESCRIBED IN SECTION 15-925.

3. Authorize the performance of hearing tests with or without the use of a hearing aid as provided in 49 Code of Federal Regulations section 391.41.

4. Require the applicant to possess a commercial driver license issued by the department, except that:

(a) Notwithstanding subsection A of this section the applicant may possess a commercial driver license issued by another state if the applicant will be driving a school bus for a school district that is adjacent to that state.

(b) AN APPLICANT TO DRIVE A VEHICLE DESCRIBED IN SECTION 15-925 DOES NOT NEED TO POSSESS OR OBTAIN A COMMERCIAL DRIVER LICENSE. THIS SUBDIVISION APPLIES ONLY IF A COMMERCIAL DRIVER LICENSE IS NOT REQUIRED BY STATE OR FEDERAL LAW TO OPERATE THE VEHICLE BASED ON THE VEHICLE'S GROSS VEHICLE WEIGHT RATING OR OCCUPANCY.

D. Each person who applies for a school bus driver certificate shall have a valid fingerprint clearance card that is issued pursuant to title 41, chapter 12, article 3.1 and shall submit an identity verified fingerprint card as described in section 15-106 that the department of public safety shall use to process the fingerprint clearance card as outlined in section 15-106.

E. A person who is issued a school bus driver certificate shall maintain a valid identity verified fingerprint clearance card for the duration of any school bus driver certification period.

F. The department of public safety shall suspend a school bus driver certificate if the fingerprint clearance card is invalid, suspended, canceled or revoked.

G. The department of public safety shall issue a school bus driver certificate to an applicant who meets the requirements of this section. The certificate is valid if the applicant maintains the minimum standards established by this section.

H. The department of public safety may cancel the certificate if the person's license to drive is suspended, canceled, revoked or disqualified. The department of public safety shall cancel the certificate if the person fails to maintain the minimum standards established pursuant to this section. A person whose application for a certificate is refused or whose certificate is canceled for failure to meet or maintain the minimum standards may request and receive a hearing from the department of public safety.

I. The department of public safety shall enforce the rules adopted pursuant to this section.

Ch. 290

EXPLANATION OF BLEND  
SECTION 28-6501

Laws 2022, Chapters 28, 29, 110, 127, 143, 193, 248 and 294

Laws 2022, Ch. 28, section 4	Effective September 24, 2022
Laws 2022, Ch. 29, section 4	Effective September 24, 2022
Laws 2022, Ch. 110, section 4	Effective September 24, 2022
Laws 2022, Ch. 127, section 4	Effective September 24, 2022
Laws 2022, Ch. 143, section 4	Effective September 24, 2022
Laws 2022, Ch. 193, section 4	Effective September 24, 2022
Laws 2022, Ch. 248, section 4	Effective September 24, 2022
Laws 2022, Ch. 294, section 4	Effective September 24, 2022

Explanation

Since these eight enactments are compatible, the Laws 2022, Ch. 28, Ch. 29, Ch. 110, Ch. 127, Ch. 143, Ch. 193, Ch. 248 and Ch. 294 text changes to section 28-6501 are blended in the form shown on the following page.

BLEND OF SECTION 28-6501

Laws 2022, Chapters 28, 29, 110, 127, 143, 193, 248 and 294

28-6501. Definition of highway user revenues

In this article, unless the context otherwise requires or except as otherwise provided by statute, "highway user revenues" means all monies received in this state from licenses, taxes, penalties, interest and fees authorized by the following:

1. Chapters 2, 7, 8 and 15 of this title, except for:

(a) The special plate administration fees prescribed in sections 28-2404, 28-2407, 28-2412 through ~~28-2470.09~~ 28-2470.17 and 28-2514.

(b) The donations prescribed in sections 28-2404, 28-2407, 28-2412 through 28-2415, 28-2417 through ~~28-2470.09~~ 28-2470.17, 28-2473, 28-2474, 28-2475 and 28-2476.

2. Section 28-1177.

3. Chapters 10 and 11 of this title.

4. Chapter 16, articles 1, 2 and 4 of this title, except as provided in sections 28-5926 and 28-5927.

Chs. 28,  
29, 110,  
127, 143,  
193, 248  
and 294

EXPLANATION OF BLEND  
SECTION 28-6991

Laws 2022, Chapters 28, 29, 110, 127, 143, 193, 248 and 294

Laws 2022, Ch. 28, section 5	Effective September 24, 2022
Laws 2022, Ch. 29, section 5	Effective September 24, 2022
Laws 2022, Ch. 110, section 5	Effective September 24, 2022
Laws 2022, Ch. 127, section 5	Effective September 24, 2022
Laws 2022, Ch. 143, section 5	Effective September 24, 2022
Laws 2022, Ch. 193, section 5	Effective September 24, 2022
Laws 2022, Ch. 248, section 5	Effective September 24, 2022
Laws 2022, Ch. 294, section 5	Effective September 24, 2022

Explanation

Since these eight enactments are compatible, the Laws 2022, Ch. 28, Ch. 29, Ch. 110, Ch. 127, Ch. 143, Ch. 193, Ch. 248 and Ch. 294 text changes to section 28-6991 are blended in the form shown on the following pages.

BLEND OF SECTION 28-6991

Laws 2022, Chapters 28, 29, 110, 127, 143, 193, 248 and 294

28-6991. State highway fund; sources

The state highway fund is established that consists of:

1. Monies distributed from the Arizona highway user revenue fund pursuant to chapter 18 of this title.
2. Monies appropriated by the legislature.
3. Monies received from donations for the construction, improvement or maintenance of state highways or bridges. These monies shall be credited to a special account and shall be spent only for the purpose indicated by the donor.
4. Monies received from counties or cities under cooperative agreements, including proceeds from bond issues. The state treasurer shall deposit these monies to the credit of the fund in a special account on delivery to the treasurer of a concise written agreement between the department and the county or city stating the purposes for which the monies are surrendered by the county or city, and these monies shall be spent only as stated in the agreement.
5. Monies received from the United States under an act of Congress to provide aid for the construction of rural post roads, but monies received on projects for which the monies necessary to be provided by this state are wholly derived from sources mentioned in paragraphs 2 and 3 of this section shall be allotted by the department and deposited by the state treasurer in the special account within the fund established for each project. On completion of the project, on the satisfaction and discharge in full of all obligations of any kind created and on request of the department, the treasurer shall transfer the unexpended balance in the special account for the project into the state highway fund, and the unexpended balance and any further federal aid thereafter received on account of the project may be spent under the general provisions of this title.
6. Monies in the custody of an officer or agent of this state from any source that is to be used for the construction, improvement or maintenance of state highways or bridges.
7. Monies deposited in the state general fund and arising from the disposal of state personal property belonging to the department.
8. Receipts from the sale or disposal of any or all other property held by the department and purchased with state highway monies.
9. Monies generated pursuant to section 28-410.
10. Monies distributed pursuant to section 28-5808, subsection B, paragraph 2, subdivision (d).
11. Monies deposited pursuant to sections 28-1143, 28-2353 and 28-3003.

Chs. 28,  
29, 110,  
127, 143,  
193, 248  
and 294

12. Except as provided in section 28-5101, the following monies:
  - (a) Monies deposited pursuant to section 28-2206 and section 28-5808, subsection B, paragraph 2, subdivision (e).
  - (b) \$1 of each registration fee and \$1 of each title fee collected pursuant to section 28-2003.
  - (c) \$2 of each late registration penalty collected by the director pursuant to section 28-2162.
  - (d) The air quality compliance fee collected pursuant to section 49-542.
  - (e) The special plate administration fees collected pursuant to sections 28-2404, 28-2407, 28-2412 through 28-2416, 28-2416.01, 28-2417 through ~~28-2470.09~~ 28-2470.17 and 28-2514.
  - (f) Monies collected pursuant to sections 28-372, 28-2155 and 28-2156 if the director is the registering officer.
13. Monies deposited pursuant to chapter 5, article 5 of this title.
14. Donations received pursuant to section 28-2269.
15. Dealer and registration monies collected pursuant to section 28-4304.
16. Abandoned vehicle administration monies deposited pursuant to section 28-4804.
17. Monies deposited pursuant to section 28-710, subsection D, paragraph 2.
18. Monies deposited pursuant to section 28-2065.
19. Monies deposited pursuant to section 28-7311.
20. Monies deposited pursuant to section 28-7059.
21. Monies deposited pursuant to section 28-1105.
22. Monies deposited pursuant to section 28-2448, subsection D.
23. Monies deposited pursuant to section 28-3415.
24. Monies deposited pursuant to section 28-3002, subsection A, paragraph 14.
25. Monies deposited pursuant to section 28-7316.
26. Monies deposited pursuant to section 28-4302.
27. Monies deposited pursuant to section 28-3416.
28. Monies deposited pursuant to section 28-4504.
29. Monies deposited pursuant to section 28-2098.
30. Monies deposited pursuant to sections 28-2321, 28-2324, 28-2325, 28-5474, 28-5739, 28-5863 and 28-5864.

EXPLANATION OF BLEND  
SECTION 28-6993

Laws 2022, Chapters 28, 29, 110, 127, 143, 193, 248 and 294

Laws 2022, Ch. 28, section 6	Effective September 24, 2022
Laws 2022, Ch. 29, section 6	Effective September 24, 2022
Laws 2022, Ch. 110, section 6	Effective September 24, 2022
Laws 2022, Ch. 127, section 6	Effective September 24, 2022
Laws 2022, Ch. 143, section 6	Effective September 24, 2022
Laws 2022, Ch. 193, section 6	Effective September 24, 2022
Laws 2022, Ch. 248, section 6	Effective September 24, 2022
Laws 2022, Ch. 294, section 6	Effective September 24, 2022

Explanation

Since these eight enactments are compatible, the Laws 2022, Ch. 28, Ch. 29, Ch. 110, Ch. 127, Ch. 143, Ch. 193, Ch. 248 and Ch. 294 text changes to section 28-6993 are blended in the form shown on the following pages.

BLEND OF SECTION 28-6993

Laws 2022, Chapters 28, 29, 110, 127, 143, 193, 248 and 294

28-6993. State highway fund; authorized uses

A. Except as provided in subsection B of this section and section 28-6538, the state highway fund shall be used for any of the following purposes in strict conformity with and subject to the budget as provided by this section and by sections 28-6997 through 28-7003:

1. To pay salaries, wages, necessary travel expenses and other expenses of officers and employees of the department and the incidental office expenses, including telegraph, telephone, postal and express charges and printing, stationery and advertising expenses.

2. To pay for both:

(a) Equipment, supplies, machines, tools, department offices and laboratories established by the department.

(b) The construction and repair of buildings or yards of the department.

3. To pay the cost of both:

(a) Engineering, construction, improvement and maintenance of state highways and parts of highways forming state routes.

(b) Highways under cooperative agreements with the United States that are entered into pursuant to this chapter and an act of Congress providing for the construction of rural post roads.

4. To pay land damages incurred by reason of establishing, opening, altering, relocating, widening or abandoning portions of a state route or state highway.

5. To reimburse the department revolving account.

6. To pay premiums on authorized indemnity bonds and on compensation insurance under the workers' compensation act.

7. To defray lawful expenses and costs required to administer and carry out the intent, purposes and provisions of this title, including repayment of obligations entered into pursuant to this title, payment of interest on obligations entered into pursuant to this title, repayment of loans and other financial assistance, including repayment of advances and interest on advances made to the department pursuant to section 28-7677, and payment of all other obligations and expenses of the board and department pursuant to chapter 21 of this title.

8. To pay lawful bills and charges incurred by the state engineer.

9. To acquire, construct or improve entry roads to state parks or roads within state parks.

10. To acquire, construct or improve entry roads to state prisons.

11. To pay the cost of relocating a utility facility pursuant to section 28-7156.

12. For the purposes provided in subsections C, D and E of this section and sections 28-1143, 28-2353 and 28-3003.

13. To pay the cost of issuing an Arizona centennial special plate pursuant to section 28-2448.

14. To pay for all of the following:

(a) The enforcement by the department of public safety and the department of transportation of vehicle safety requirements within twenty-five miles of the border between this state and Mexico.

(b) Costs related to procuring electronic equipment, automated systems or improvements to existing electronic equipment or automated systems for relieving vehicle congestion at ports of entry on the border between this state and Mexico.

(c) Constructing, maintaining and upgrading transportation facilities, including roads, streets and highways, approved by the board within twenty-five miles of the border between this state and Mexico.

(d) As approved by the board, constructing and maintaining transportation facilities in the CANAMEX high priority corridor as defined in section 332 of the national highway system designation act of 1995 (P.L. 104-59; 109 Stat. 568).

(e) Activities of the department that include collecting transportation and trade data in the United States and Mexico for the purposes of constructing transportation facilities, improving public safety, improving truck processing time and relieving congestion at ports of entry on the border between this state and Mexico. The department may enter into an agreement with the Arizona-Mexico commission and provide funding to the commission for the purposes of this subdivision.

(f) A commitment or investment necessary for the department or another agency of this state to obtain federal monies that are designated for expenditure pursuant to this section.

B. For each fiscal year, the department of transportation shall allocate and transfer monies in the state highway fund to the department of public safety for funding a portion of highway patrol costs in eight installments in each of the first eight months of a fiscal year that do not exceed \$10,000,000.

C. Subject to legislative appropriation, the department may use the monies in the state highway fund as prescribed in section 28-6991, paragraph 12 to carry out the duties imposed by this title for registration or titling of vehicles, to operate joint title, registration and driver licensing offices, to cover the administrative costs of issuing the air quality compliance sticker, modifying the year validating tab and issuing the windshield sticker and to cover expenses and costs in issuing special plates pursuant to sections 28-2404, 28-2407, 28-2412 through ~~28-2470.09~~ 28-2470.17 and 28-2514.

Chs. 28,  
29, 110,  
127, 143,  
193, 248  
and 294

D. The department shall use monies deposited in the state highway fund pursuant to chapter 5, article 5 of this title only as prescribed by that article.

E. Monies deposited in the state highway fund pursuant to section 28-2269 shall be used only as prescribed by that section.

F. Monies deposited in the state highway fund pursuant to section 28-710, subsection D, paragraph 2 shall only be used for state highway work zone traffic control devices.

G. The department may exchange monies distributed to the state highway fund pursuant to section 28-6538, subsection A, paragraph 1 for local government surface transportation program federal monies suballocated to councils of government and metropolitan planning organizations if the local government scheduled to receive the federal monies concurs. An exchange of state highway fund monies pursuant to this subsection shall be in an amount that is at least equal to ninety percent of the federal obligation authority that exists in the project for which the exchange is proposed.

H. The department shall use monies deposited in the state highway fund pursuant to section 28-1105, subsection A, paragraph 2, subdivision (a) only for a transportation facility that is located within twenty drivable miles of the international port of entry and shall spend the monies proportionally based on the amount of total monies collected pursuant to section 28-1105, subsection A, paragraph 2, subdivision (a). For the purposes of this subsection, "transportation facility" means a highway or a state route or a county, city or town road that is used by a commercial vehicle or a commercial vehicle combination for which an axle fee is paid pursuant to section 28-5474.

EXPLANATION OF BLEND  
SECTION 28-8335

Laws 2022, Chapters 264 and 321

Laws 2022, Ch. 264, section 16

Effective September 24, 2022

Laws 2022, Ch. 321, section 1

Effective September 24, 2022  
(Retroactive to July 1, 2021)

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 264 and Ch. 321 text changes to section 28-8335 are blended in the form shown on the following page.

BLEND OF SECTION 28-8335  
Laws 2022, Chapters 264 and 321

28-8335. License tax; tax rate

A. An annual license tax is imposed on all aircraft based in this state and required to be registered pursuant to this article, unless an exemption for the aircraft is established pursuant to this article. The license tax is payable to the department on initial registration and annually

Ch. 264 — ~~on or before the last day of February PURSUANT TO SECTION 28-8322.01.~~

Chs. 264 and 321 { B. Except as provided in sections 28-8336, ~~through~~ 28-8337, 28-8338, 28-8339, 28-8340 AND 28-8341, the department shall determine and assess the license tax prescribed by subsection A of this section on the basis of one-half ~~per cent~~ PERCENT of the average fair market value of the particular make, model and year of aircraft. THE AVERAGE FAIR MARKET VALUE:

Ch. 321 { 1. MAY NOT HAVE AN ANNUAL PERCENTAGE CHANGE THAT IS MORE THAN THE ANNUAL PERCENTAGE CHANGE IN THE AVERAGE CONSUMER PRICE INDEX AS PUBLISHED BY THE UNITED STATES DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS.

2. IN FISCAL YEAR 2021-2022, SHALL BE BENCHMARKED TO WHAT THE AVERAGE FAIR MARKET VALUE OF THE AIRCRAFT WAS IN 2019. \_\_\_\_\_ Ch. 321

Chs. 264 and 321 { C. The tax assessed under this [~~subsection~~ SECTION] shall ~~not~~ be ~~less than twenty dollars~~ AT LEAST \$20 for a full year of registration.

EXPLANATION OF BLEND  
SECTION 31-412

Laws 2022, Chapters 197 and 245

Laws 2022, Ch. 197, section 10

Effective September 24, 2022

Laws 2022, Ch. 245, section 4

Effective September 24, 2022

Explanation

Since these two enactments are identical, the Laws 2022, Ch. 197 and Ch. 245 text changes to section 31-412 are blended in the form shown on the following pages.

BLEND OF SECTION 31-412  
Laws 2022, Chapters 197 and 245

31-412. Criteria for release on parole; release; custody of parolee; definition

A. If a prisoner is certified as eligible for parole pursuant to section 41-1604.09 the board of executive clemency shall authorize the release of the applicant on parole if the applicant has reached the applicant's earliest parole eligibility date pursuant to section 41-1604.09, subsection D and it appears to the board, in its sole discretion, that there is a substantial probability that the applicant will remain at liberty without violating the law and that the release is in the best interests of the state. The applicant shall thereupon be allowed to go on parole in the legal custody and under the control of the state department of corrections, until the board revokes the parole or grants an absolute discharge from parole or until the prisoner reaches the prisoner's individual earned release credit date pursuant to section 41-1604.10. When the prisoner reaches the prisoner's individual earned release credit date the prisoner's parole shall be terminated and the prisoner shall no longer be under the authority of the board but shall be subject to revocation under section 41-1604.10.

B. Notwithstanding subsection A of this section, the director of the state department of corrections may certify as eligible for parole any prisoner, regardless of the classification of the prisoner, who has reached the prisoner's parole eligibility date pursuant to section 41-1604.09, subsection D, unless an increased term has been imposed pursuant to section 41-1604.09, subsection F, for the sole purpose of parole to the custody of any other jurisdiction to serve a term of imprisonment imposed by the other jurisdiction or to stand trial on criminal charges in the other jurisdiction or for the sole purpose of parole to the custody of the state department of corrections to serve any consecutive term imposed on the prisoner. On review of an application for parole pursuant to this subsection the board may authorize parole if, in its discretion, parole appears to be in the best interests of the state.

C. A prisoner who is otherwise eligible for parole, who is not on home arrest or work furlough and who is currently serving a sentence for a conviction of a serious offense or conspiracy to commit or attempt to commit a serious offense shall not be granted parole or absolute discharge from imprisonment except by one of the following votes:

1. A majority affirmative vote if four or more members consider the action.
2. A unanimous affirmative vote if three members consider the action.
3. A unanimous affirmative vote if two members consider the action pursuant to section 31-401, subsection I and the chairman concurs after reviewing the information considered by the two members.

D. The board, as a condition of parole, shall order a prisoner to make any court-ordered restitution.

E. Payment of restitution by the prisoner in accordance with subsection D of this section shall be made through the clerk of the superior court in the county in which the prisoner was sentenced for the offense for which the prisoner has been imprisoned in the same manner as restitution is paid as a condition of probation. The clerk of the superior court, on request, shall make the prisoner's restitution payment history available to the board, victim, victim's attorney and department without cost.

F. The board shall not disclose the address of the victim or the victim's immediate family to any party without the written consent of the victim or the victim's family.

G. For the purposes of this section, "serious offense" includes any of the following:

1. A serious offense as defined in section 13-706, subsection F, paragraph 1, subdivision (a), (b), (c), (d), (e), (g), (h), (i), (j) or (k).

2. A dangerous crime against children as defined in section 13-705. The citation of section 13-705 is not a necessary element for a serious offense designation.

3. A conviction under a prior criminal code for any offense that possesses reasonably equivalent offense elements as the offense elements that are listed under section 13-705, subsection ~~R~~ T, paragraph 1 or section 13-706, subsection F, paragraph 1.

Chs. 197  
and 245

EXPLANATION OF BLEND  
SECTION 32-1234

Laws 2022, Chapters 59 and 135

Laws 2022, Ch. 59, section 57

Effective September 24, 2022

Laws 2022, Ch. 135, section 5

Effective September 24, 2022

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 59 and Ch. 135 text changes to section 32-1234 are blended in the form shown on the following page.

BLEND OF SECTION 32-1234  
Laws 2022, Chapters 59 and 135

32-1234. Dental consultant license

A. A person may apply for a dental consultant license if the applicant demonstrates to the board's satisfaction that the applicant:

1. Has continuously held a license to practice dentistry for at least twenty-five years issued by one or more states or territories of the United States or the District of Columbia; ~~but is not currently licensed to practice dentistry in Arizona.~~

Chs. 59  
and 135

~~2. Is of good moral character.~~

Ch. 59

~~3.~~ 2. Has not had a license to practice dentistry revoked by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

~~4.~~ 3. Is not currently under suspension or restriction by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

~~5.~~ 4. Has not surrendered, relinquished or given up a license to practice dentistry in lieu of disciplinary action by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

~~6.~~ 5. Meets the applicable requirements of section 32-1232.

Ch. 135

~~7.~~ 6. Meets the requirements of section 32-1233, ~~paragraphs~~ PARAGRAPH 1 ~~and~~ 3. If an applicant has taken a state written theory examination instead of the written national dental board examinations, the applicant must provide the board with official documentation of passing the written theory examinations in the state where the applicant holds a current license. The board shall then determine the applicant's eligibility for a license pursuant to this section.

~~8.~~ 7. Meets the application requirements as prescribed in rule by the board.

B. The board shall suspend an application for a dental consultant license if the applicant is currently under investigation by a dental regulatory board in another jurisdiction in the United States. The board shall not issue or deny a license to the applicant until the investigation is resolved.

C. A person to whom a dental consultant license is issued shall practice dentistry only in the course of the person's employment or on behalf of an entity licensed under title 20 with the practice limited to supervising or conducting utilization review or other claims or case management activity on behalf of the entity licensed pursuant to title 20. A person who holds a dental consultant license is prohibited from providing direct patient care.

Chs. 59  
and 135

D. This section ~~shall~~ DOES not ~~be deemed to~~ require a person to apply for or hold a dental consultant license in order for that person to serve as a consultant to or engage in claims review activity for an entity licensed pursuant to title 20.

E. Except as provided in subsection B of this section, a dental consultant licensee is subject to all of the provisions of this chapter that are applicable to licensed dentists.

EXPLANATION OF BLEND  
SECTION 32-1296

Laws 2022, Chapters 59 and 135

Laws 2022, Ch. 59, section 59

Effective September 24, 2022

Laws 2022, Ch. 135, section 14

Effective September 24, 2022

Explanation

Since the Ch. 59 version includes all the changes made by the Ch. 135 version, the Laws 2022, Ch. 59 amendment of section 32-1296 is the blend of both the Laws 2022, Ch. 59 and Ch. 135 versions.

BLEND OF SECTION 32-1296  
Laws 2022, Chapters 59 and 135

32-1296. Qualifications of applicant

A. To be eligible for certification to practice denture technology an applicant shall:

- Ch. 59 ——— ~~1. Be of good moral character.~~  
~~2.~~ 1. Hold a high school diploma or its equivalent.  
~~3.~~ 2. Present to the board evidence of graduation from a recognized denturist school or a certificate of satisfactory completion of a course or curriculum in denture technology from a recognized denturist school.
- Chs. 59 and 135 ——— ~~4.~~ 3. Pass a ~~board-approved~~ BOARD-APPROVED examination.
- B. A candidate for certification shall submit a written application to the board that includes a nonrefundable Arizona dental jurisprudence examination fee as prescribed by the board.

EXPLANATION OF BLEND  
SECTION 32-1901

Laws 2022, Chapters 98 and 362

Laws 2022, Ch. 98, section 1

Effective September 24, 2022

Laws 2022, Ch. 362, section 1

Effective September 24, 2022

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 98 and Ch. 362 text changes to section 32-1901 are blended in the form shown on the following pages.

BLEND OF SECTION 32-1901  
Laws 2022, Chapters 98 and 362

32-1901. Definitions

In this chapter, unless the context otherwise requires:

1. "Administer" means directly applying a controlled substance, prescription-only drug, dangerous drug or narcotic drug, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by a practitioner or by the practitioner's authorized agent or the patient or research subject at the direction of the practitioner.

2. "Advertisement" means all representations that are disseminated in any manner or by any means other than by labeling for the purpose of inducing, or that are likely to induce, directly or indirectly, the purchase of drugs, devices, poisons or hazardous substances.

3. "Advisory letter" means a nondisciplinary letter to notify a licensee or permittee that either:

(a) While there is insufficient evidence to support disciplinary action, the board believes that continuation of the activities that led to the investigation may result in further board action against the licensee or permittee.

(b) The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.

(c) While the licensee or permittee has demonstrated substantial compliance through rehabilitation, remediation or reeducation that has mitigated the need for disciplinary action, the board believes that repeating the activities that led to the investigation may result in further board action against the licensee or permittee.

4. "Antiseptic", if a drug is represented as such on its label, means a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment or dusting powder or other use that involves prolonged contact with the body.

5. "Authorized officers of the law" means legally empowered peace officers, compliance officers of the board of pharmacy and agents of the division of narcotics enforcement and criminal intelligence of the department of public safety.

6. "Automated prescription-dispensing kiosk" means a mechanical system that is operated as an extension of a pharmacy, that maintains all transaction information within the pharmacy operating system, that is separately permitted from the pharmacy and that performs operations that either:

(a) Accept a prescription or refill order, store prepackaged or repackaged medications, label and dispense patient-specific prescriptions and provide counseling on new or refilled prescriptions.

(b) Dispense or deliver a prescription or refill that has been prepared by or on behalf of the pharmacy that oversees the automated prescription-dispensing kiosk.

7. "Board" or "board of pharmacy" means the Arizona state board of pharmacy.

8. "Certificate of composition" means a list of a product's ingredients.

9. "Certificate of free sale" means a document that authenticates a product that is generally and freely sold in domestic or international channels of trade.

10. "Color additive" means a material that either:

(a) Is any dye, pigment or other substance that is made by a process of synthesis or similar artifice or that is extracted, isolated or otherwise derived, with or without intermediate or final change of identity, from any vegetable, animal, mineral or other source.

(b) If added or applied to a drug, or to the human body or any part of the human body, is capable of imparting color, except that color additive does not include any material that has been or may be exempted under the federal act. Color includes black, white and intermediate grays.

11. "Compounding" means preparing, mixing, assembling, packaging or labeling a drug by a pharmacist or an intern or pharmacy technician under the pharmacist's supervision, for the purpose of dispensing to a patient based on a valid prescription order. Compounding includes preparing drugs in anticipation of prescription orders prepared on routine, regularly observed prescribing patterns and preparing drugs as an incident to research, teaching or chemical analysis or for administration by a medical practitioner to the medical practitioner's patient and not for sale or dispensing. Compounding does not include preparing commercially available products from bulk compounds or preparing drugs for sale to pharmacies, practitioners or entities for the purpose of dispensing or distribution.

12. "Compressed medical gas distributor" means a person that holds a current permit issued by the board to distribute compressed medical gases to compressed medical gas suppliers and other entities that are registered, licensed or permitted to use, administer or distribute compressed medical gases.

13. "Compressed medical gases" means gases and liquid oxygen that a compressed medical gas distributor or manufacturer has labeled in compliance with federal law.

14. "Compressed medical gas order" means an order for compressed medical gases that is issued by a medical practitioner.

15. "Compressed medical gas supplier" means a person that holds a current permit issued by the board to supply compressed medical gases pursuant to a compressed medical gas order and only to the consumer or the patient.

16. "Controlled substance" means a drug, substance or immediate precursor that is identified, defined or listed in title 36, chapter 27, article 2 or the rules adopted pursuant to title 36, chapter 27, article 2.

17. "Corrosive" means any substance that when it comes in contact with living tissue will cause destruction of the tissue by chemical action.

18. "Counterfeit drug" means a drug that, or the container or labeling of which, without authorization, bears the trademark, trade name or other identifying mark, imprint, number or device, or any likeness of these, of a manufacturer, distributor or dispenser other than the person that in fact manufactured, distributed or dispensed that drug.

19. "Dangerous drug" has the same meaning prescribed in section 13-3401.

20. "Day" means a business day.

21. "Decree of censure" means an official action that is taken by the board and that may include a requirement for restitution of fees to a patient or consumer.

22. "Deliver" or "delivery" means the actual, constructive or attempted transfer from one person to another whether or not there is an agency relationship.

23. "Deputy director" means a pharmacist who is employed by the board and selected by the executive director to perform duties as prescribed by the executive director.

24. "Device", except as used in paragraph 18 of this section, section 32-1965, paragraph 4 and section 32-1967, subsection A, paragraph 15 and subsection C, means an instrument, apparatus or contrivance, including its components, parts and accessories, including all such items under the federal act, that is intended either:

(a) For use in diagnosing, curing, mitigating, treating or preventing disease in the human body or other animals.

(b) To affect the structure or any function of the human body or other animals.

25. "Director" means the director of the division of narcotics enforcement and criminal investigation of the department of public safety.

26. "Direct supervision of a pharmacist" means that the pharmacist is present. If relating to the sale of certain items, direct supervision of a pharmacist means that a pharmacist determines the legitimacy or advisability of a proposed purchase of those items.

27. "Dispense" means to deliver to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including prescribing, administering, packaging, labeling or compounding as necessary to prepare for that delivery.

28. "Dispenser" means a practitioner who dispenses.

29. "Distribute" means to deliver, other than by administering or dispensing.

30. "Distributor" means a person who distributes.

31. "Drug" means:

(a) Articles that are recognized, or for which standards or specifications are prescribed, in the official compendium.

(b) Articles that are intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in the human body or other animals.

(c) Articles other than food that are intended to affect the structure or any function of the human body or other animals.

(d) Articles that are intended for use as a component of any articles specified in subdivision (a), (b) or (c) of this paragraph but does not include devices or their components, parts or accessories.

32. "Drug enforcement administration" means the drug enforcement administration of the United States department of justice or its successor agency.

33. "Drug or device manufacturing" means producing, preparing, propagating or processing a drug or device, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical synthesis and includes any packaging or repackaging of substances or labeling or relabeling of its container and promoting and marketing the same. Drug or device manufacturing does not include compounding.

34. "Durable medical equipment" means technologically sophisticated medical equipment as prescribed by the board in rule that a patient or consumer may use in a home or residence and that may be a prescription-only device.

35. "Durable medical equipment distributor":

(a) Means a person that stores or distributes durable medical equipment other than to the patient or consumer.

(b) Includes a virtual durable medical equipment distributor as prescribed in rule by the board.

36. "Durable medical equipment supplier":

(a) Means a person that sells, leases or supplies durable medical equipment to the patient or consumer.

(b) Includes a virtual durable medical equipment supplier as prescribed in rule by the board.

37. "Economic poison" means any substance that alone, in chemical combination with or in formulation with one or more other substances is a pesticide within the meaning of the laws of this state or the federal insecticide, fungicide and rodenticide act and that is used in producing, storing or transporting raw agricultural commodities.

38. "Enteral feeding" means nourishment that is provided by means of a tube inserted into the stomach or intestine.

39. "Established name", with respect to a drug or ingredient of a drug, means any of the following:

(a) The applicable official name.

(b) If there is no such name and the drug or ingredient is an article recognized in an official compendium, the official title in an official compendium.

(c) If neither subdivision (a) nor (b) of this paragraph applies, the common or usual name of the drug.

40. "Executive director" means the executive director of the board of pharmacy.

41. "Federal act" means the federal laws and regulations that pertain to drugs, devices, poisons and hazardous substances and that are official at the time any drug, device, poison or hazardous substance is affected by this chapter.

42. "Full-service wholesale permittee":

(a) Means a permittee who may distribute prescription-only drugs and devices, controlled substances and over-the-counter drugs and devices to pharmacies or other legal outlets from a place devoted in whole or in part to wholesaling these items.

(b) Includes a virtual wholesaler as defined in rule by the board.

43. "Good manufacturing practice" means a system for ensuring that products are consistently produced and controlled according to quality

standards and covering all aspects of design, monitoring and control of manufacturing processes and facilities to ensure that products do not pose any risk to the consumer or public.

44. "Highly toxic" means any substance that falls within any of the following categories:

(a) Produces death within fourteen days in half or more than half of a group of ten or more laboratory white rats each weighing between two hundred and three hundred grams, at a single dose of fifty milligrams or less per kilogram of body weight, when orally administered.

(b) Produces death within fourteen days in half or more than half of a group of ten or more laboratory white rats each weighing between two hundred and three hundred grams, if inhaled continuously for a period of one hour or less at an atmospheric concentration of two hundred parts per million by volume or less of gas or vapor or two milligrams per liter by volume or less of mist or dust, provided the concentration is likely to be encountered by humans if the substance is used in any reasonably foreseeable manner.

(c) Produces death within fourteen days in half or more than half of a group of ten or more rabbits tested in a dosage of two hundred milligrams or less per kilogram of body weight, if administered by continuous contact with the bare skin for twenty-four hours or less. If the board finds that available data on human experience with any substance indicate results different from those obtained on animals in the dosages or concentrations prescribed in this paragraph, the human data shall take precedence.

45. "Hospital" means any institution for the care and treatment of the sick and injured that is approved and licensed as a hospital by the department of health services.

46. "Intern" means a pharmacy intern.

47. "Internship" means the practical, experiential, hands-on training of a pharmacy intern under the supervision of a preceptor.

48. "Irritant" means any substance, other than a corrosive, that on immediate, prolonged or repeated contact with normal living tissue will induce a local inflammatory reaction.

49. "Jurisprudence examination" means a board-approved pharmacy law examination that is written and administered in cooperation with the national association of boards of pharmacy or another board-approved pharmacy law examination.

50. "Label" means a display of written, printed or graphic matter on the immediate container of any article that, unless easily legible through the outside wrapper or container, also appears on the outside wrapper or container of the article's retail package. For the purposes of this paragraph, the immediate container does not include package liners.

51. "Labeling" means all labels and other written, printed or graphic matter that either:

(a) Is on any article or any of its containers or wrappers.

(b) Accompanies that article.

52. "Letter of reprimand" means a disciplinary letter that is a public document issued by the board and that informs a licensee or permittee that the licensee's or permittee's conduct violates state or federal law and may require the board to monitor the licensee or permittee.

53. "Limited service pharmacy" means a pharmacy that is approved by the board to practice a limited segment of pharmacy as indicated by the permit issued by the board.

54. "Manufacture" or "manufacturer":

(a) Means every person who prepares, derives, produces, compounds, processes, packages or repackages or labels any drug in a place, other than a pharmacy, that is devoted to manufacturing the drug.

(b) Includes a virtual manufacturer as defined in rule by the board.

55. "Marijuana" has the same meaning prescribed in section 13-3401.

56. "Medical practitioner" means any medical doctor, doctor of osteopathic medicine, dentist, podiatrist, veterinarian or other person who is licensed and authorized by law to use and prescribe drugs and devices to treat sick and injured human beings or animals or to diagnose or prevent sickness in human beings or animals in this state or any state, territory or district of the United States.

57. "Medication order" means a written or verbal order from a medical practitioner or that person's authorized agent to administer a drug or device.

58. "Narcotic drug" has the same meaning prescribed in section 13-3401.

59. "New drug" means either:

(a) Any drug of which the composition is such that the drug is not generally recognized among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs as safe and effective for use under the conditions prescribed, recommended or suggested in the labeling.

(b) Any drug of which the composition is such that the drug, as a result of investigations to determine its safety and effectiveness for use under such conditions, has become so recognized, but that has not, other than in the investigations, been used to a material extent or for a material time under those conditions.

60. "Nonprescription drug" or "over-the-counter drug" means any nonnarcotic medicine or drug that may be sold without a prescription and that is prepackaged and labeled for use by the consumer in accordance with the requirements of the laws of this state and federal law. Nonprescription drug does not include:

(a) A drug that is primarily advertised and promoted professionally to medical practitioners and pharmacists by manufacturers or primary distributors.

(b) A controlled substance.

(c) A drug that is required to bear a label that states "Rx only".

(d) A drug that is intended for human use by hypodermic injection.

61. "Nonprescription drug wholesale permittee":

(a) Means a permittee who may distribute only over-the-counter drugs and devices to pharmacies or other lawful outlets from a place devoted in whole or in part to wholesaling these items.

(b) Includes a virtual wholesaler as defined in rule by the board.

62. "Notice" means personal service or the mailing of a copy of the notice by certified mail and email addressed either to the person at the person's latest address of record in the board office or to the person and

the person's attorney using the most recent information provided to the board in the board's licensing database.

63. "Nutritional supplementation" means vitamins, minerals and caloric supplementation. Nutritional supplementation does not include medication or drugs.

64. "Official compendium" means the latest revision of the United States pharmacopeia and the national formulary or any current supplement.

65. "Other jurisdiction" means one of the other forty-nine states, the District of Columbia, the Commonwealth of Puerto Rico or a territory of the United States of America.

66. "Package" means a receptacle that is defined or described in the United States pharmacopeia and the national formulary as adopted by the board.

67. "Packaging" means the act or process of placing a drug item or device in a container for the purpose or intent of dispensing or distributing the item or device to another.

68. "Parenteral nutrition" means intravenous feeding that provides an individual with fluids and essential nutrients the individual needs while the individual is unable to receive adequate fluids or feedings by mouth or by enteral feeding.

69. "Person" means an individual, partnership, corporation and association, and their duly authorized agents.

70. "Pharmaceutical care" means the provision of drug therapy and other pharmaceutical patient care services.

71. "Pharmacist" means an individual who is currently licensed by the board to practice the profession of pharmacy in this state.

72. "Pharmacist in charge" means the pharmacist who is responsible to the board for a licensed establishment's compliance with the laws and administrative rules of this state and of the federal government pertaining to the practice of pharmacy, the manufacturing of drugs and the distribution of drugs and devices.

73. "Pharmacist licensure examination" means a board-approved examination that is written and administered in cooperation with the national association of boards of pharmacy or any other board-approved pharmacist licensure examination.

74. "Pharmacy":

(a) means:

(i) (a) Any place where drugs, devices, poisons or related hazardous substances are offered for sale at retail or where prescription orders are dispensed by a licensed pharmacist.

(ii) (b) Any place that ~~has displayed~~ DISPLAYS on it or in it THE PLACE OR THAT DISPLAYS A SIGN ON THE PLACE the words "pharmaceutical chemist", "apothecary", "druggist", "pharmacy", "drugstore", "drugs" or "drug sundries", or any of these words or combinations COMBINATION of these words, or ANY words of similar import either MEANING in English or any other language, or that is advertised by any sign containing any of these words.

(iii) (c) Any place where the characteristic ~~symbols~~ SYMBOL of pharmacy or the characteristic prescription sign "Rx" is exhibited ~~and where drugs are stored or dispensed.~~

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~~(iv) (d) Any place or a portion of any building or OTHER structure OR PORTION OF A BUILDING OR OTHER STRUCTURE that is leased, used or controlled by the A permittee to conduct the business authorized by the board at the address for which SPECIFIED ON the permit was issued and that is enclosed and secured when a pharmacist is not in attendance TO THE PERMITTEE.~~

~~(v) (e) A remote dispensing site pharmacy.~~

~~(vi) (f) A remote hospital site HOSPITAL-SITE pharmacy, as defined by the board in rule, that operates under direct or remote supervision by a pharmacist pursuant to rules adopted by the board.~~

~~(b) (g) includes A satellite pharmacy.~~

75. "Pharmacy intern" means a person who has all of the qualifications and experience prescribed in section 32-1923.

76. "Pharmacy technician" means a person who is licensed pursuant to this chapter.

77. "Pharmacy technician trainee" means a person who is licensed pursuant to this chapter.

78. "Poison" or "hazardous substance" includes any of the following if intended and suitable for household use or use by children:

(a) Any substance that, according to standard works on medicine, pharmacology, pharmacognosy or toxicology, if applied to, introduced into or developed within the body in relatively small quantities by its inherent action uniformly produces serious bodily injury, disease or death.

(b) A toxic substance.

(c) A highly toxic substance.

(d) A corrosive substance.

(e) An irritant.

(f) A strong sensitizer.

(g) A mixture of any of the substances described in this paragraph, if the substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children.

(h) A substance that is designated by the board to be a poison or hazardous substance. This subdivision does not apply to radioactive substances, economic poisons subject to the federal insecticide, fungicide and rodenticide act or the state pesticide act, foods, drugs and cosmetics subject to state laws or the federal act or substances intended for use as fuels when stored in containers and used in the heating, cooking or refrigeration system of a house. This subdivision applies to any substance or article that is not itself an economic poison within the meaning of the federal insecticide, fungicide and rodenticide act or the state pesticide act, but that is a poison or hazardous substance within the meaning of this paragraph by reason of bearing or containing an economic poison or hazardous substance.

79. "Practice of pharmacy":

(a) Means furnishing the following health care services as a medical professional:

(i) Interpreting, evaluating and dispensing prescription orders in the patient's best interests.

(ii) Compounding drugs pursuant to or in anticipation of a prescription order.

(iii) Labeling drugs and devices in compliance with state and federal requirements.

(iv) Participating in drug selection and drug utilization reviews, drug administration, drug or drug-related research and drug therapy monitoring or management.

(v) Providing patient counseling necessary to provide pharmaceutical care.

(vi) Properly and safely storing drugs and devices in anticipation of dispensing.

(vii) Maintaining required records of drugs and devices.

(viii) Offering or performing acts, services, operations or transactions that are necessary to conduct, operate, manage and control a pharmacy.

Ch. 98 { ~~(ix) Initiating, monitoring and modifying drug therapy~~ PROVIDING PATIENT CARE SERVICES pursuant to a ~~protocol-based drug therapy~~ COLLABORATIVE PRACTICE agreement with a provider as outlined in section 32-1970.

(x) Initiating and administering immunizations or vaccines pursuant to section 32-1974.

(b) Does not include initiating a prescription order for any medication, drug or other substance used to induce or cause a medication abortion as defined in section 36-2151.

80. "Practitioner" means any physician, dentist, veterinarian, scientific investigator or other person who is licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of professional practice or research in this state, or any pharmacy, hospital or other institution that is licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of professional practice or research in this state.

81. "Preceptor" means a pharmacist who is serving as the practical instructor of an intern and who complies with section 32-1923.

82. "Precursor chemical" means a substance that is:

(a) The principal compound that is commonly used or that is produced primarily for use and that is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.

(b) Listed in section 13-3401, paragraph 26 or 27.

83. "Prescription" means either a prescription order or a prescription medication.

84. "Prescription medication" means any drug, including label and container according to context, that is dispensed pursuant to a prescription order.

85. "Prescription-only device" includes:

(a) Any device that is limited by the federal act to use under the supervision of a medical practitioner.

(b) Any device required by the federal act to bear on its label essentially the legend "Rx only".

86. "Prescription-only drug" does not include a controlled substance but does include:

(a) Any drug that because of its toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use is not generally recognized among experts, qualified by scientific training and experience to evaluate its safety and efficacy, as safe for use except by or under the supervision of a medical practitioner.

(b) Any drug that is limited by an approved new drug application under the federal act or section 32-1962 to use under the supervision of a medical practitioner.

(c) Every potentially harmful drug, the labeling of which does not bear or contain full and adequate directions for use by the consumer.

(d) Any drug, other than a controlled substance, that is required by the federal act to bear on its label the legend "Rx only".

87. "Prescription order" means any of the following:

(a) An order to a pharmacist for drugs or devices that is issued and signed by a duly licensed medical practitioner in the authorized course of the practitioner's professional practice.

(b) An order that is transmitted to a pharmacist through word of mouth, telephone or other means of communication directed by that medical practitioner. Prescription orders received by word of mouth, telephone or other means of communication shall be maintained by the pharmacist pursuant to section 32-1964, and the record so made by the pharmacist constitutes the original prescription order to be dispensed by the pharmacist. This paragraph does not alter or affect laws of this state or any federal act requiring a written prescription order.

Ch. 98 — ~~protocol-based drug therapy~~ COLLABORATIVE PRACTICE agreement with a provider as outlined in section 32-1970, or immunizations or vaccines administered by a pharmacist pursuant to section 32-1974.

(d) A diet order or an order for enteral feeding, nutritional supplementation or parenteral nutrition that is initiated by a registered dietitian or other qualified nutrition professional in a hospital pursuant to section 36-416.

88. "Professionally incompetent" means:

(a) Incompetence based on a variety of factors, including a lack of sufficient pharmaceutical knowledge or skills or experience to a degree likely to endanger the health of patients.

(b) When considered with other indications of professional incompetence, a pharmacist or pharmacy intern who fails to obtain a passing score on a board-approved pharmacist licensure examination or a pharmacy technician or pharmacy technician trainee who fails to obtain a passing score on a board-approved pharmacy technician licensure examination.

89. "Radioactive substance" means a substance that emits ionizing radiation.

90. "Remote dispensing site pharmacy" means a pharmacy where a pharmacy technician or pharmacy intern prepares, compounds or dispenses prescription medications under remote supervision by a pharmacist.

Ch. 362 { 91. "REMOTE HOSPITAL-SITE PHARMACY" MEANS A PHARMACY LOCATED IN A SATELLITE FACILITY THAT OPERATES UNDER THE LICENSE ISSUED BY THE DEPARTMENT OF HEALTH SERVICES TO THE HOSPITAL OF WHICH IT IS A SATELLITE.

~~91.~~ 92. "Remote supervision by a pharmacist" means that a pharmacist directs and controls the actions of pharmacy technicians and pharmacy interns through the use of audio and visual technology.

~~92.~~ 93. "Revocation" or "revoke" means the official cancellation of a license, permit, registration or other approval authorized by the board for a period of two years unless otherwise specified by the board. A request or new application for reinstatement may be presented to the board for review before the conclusion of the specified revocation period upon review of the executive director.

~~93.~~ 94. "Safely engage in employment duties" means that a permittee or the permittee's employee is able to safely engage in employment duties related to the manufacture, sale, distribution or dispensing of drugs, devices, poisons, hazardous substances, controlled substances or precursor chemicals.

Ch. 362 { 95. "SATELLITE FACILITY" HAS THE SAME MEANING PRESCRIBED IN SECTION 36-422.

~~94.~~ 96. "Satellite pharmacy" means a work area located within a hospital or on a hospital campus that is not separated by other commercial property or residential property, that is under the direction of a pharmacist, that is a remote extension of a centrally licensed hospital pharmacy, that is owned by and dependent on the centrally licensed hospital pharmacy for administrative control, staffing and drug procurement and that is not required to be separately permitted.

~~95.~~ 97. "Symbol" means the characteristic symbols that have historically identified pharmacy, including show globes and mortar and pestle, and the sign "Rx".

~~96.~~ 98. "Third-party logistics provider" means an entity that provides or coordinates warehousing or other logistics services for the following items, but that does not take ownership of the items, and that distributes those items as directed by a manufacturer, wholesaler, dispenser or durable medical equipment supplier that is permitted by the board:

- (a) Narcotic drugs or other controlled substances.
- (b) Dangerous drugs as defined in section 13-3401.
- (c) Prescription-only drugs and devices.
- (d) Nonprescription drugs and devices.
- (e) Precursor chemicals.
- (f) Regulated chemicals as defined in section 13-3401.

~~97.~~ 99. "Toxic substance" means a substance, other than a radioactive substance, that has the capacity to produce injury or illness in humans through ingestion, inhalation or absorption through any body surface.

~~98.~~ 100. "Ultimate user" means a person who lawfully possesses a drug or controlled substance for that person's own use, for the use of a member of that person's household or for administering to an animal owned by that person or by a member of that person's household.

EXPLANATION OF BLEND  
SECTION 32-1901.01

Laws 2022, Chapters 59 and 362

Laws 2022, Ch. 59, section 70

Effective September 24, 2022

Laws 2022, Ch. 362, section 2

Effective September 24, 2022

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 59 and Ch. 362 text changes to section 32-1901.01 are blended in the form shown on the following pages.

BLEND OF SECTION 32-1901.01  
Laws 2022, Chapters 59 and 362

32-1901.01. Definition of unethical conduct and unprofessional conduct; permittees; licensees

A. In this chapter, unless the context otherwise requires, for the purposes of disciplining a permittee, "unethical conduct" means the following, whether occurring in this state or elsewhere:

1. Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude or any drug-related offense. In either case, conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.

Ch. 59 — 2. Committing an act that is substantially related to the qualifications, functions or duties of a permittee and that demonstrates either a lack of good moral character or an actual or potential unfitness to hold a permit in light of the public's safety.

3. Working under the influence of alcohol or other drugs.

4. Using alcohol or other drugs to such a degree as to render the permittee unfit to perform the permittee's employment duties.

5. Violating a federal or state law or administrative rule relating to the manufacture, sale or distribution of drugs, devices, poisons, hazardous substances or precursor chemicals.

6. Violating a federal or state law or administrative rule relating to marijuana, prescription-only drugs, narcotics, dangerous drugs, controlled substances or precursor chemicals.

7. Violating state or federal reporting or recordkeeping requirements on transactions relating to precursor chemicals.

~~8. Failing to report in writing to the board any evidence that a pharmacist or pharmacy intern is or may be professionally incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable safely to engage in the practice of pharmacy.~~

Ch. 362 — ~~9. Failing to report in writing to the board any evidence that a pharmacy technician or pharmacy technician trainee is or may be professionally incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable safely to engage in the permissible activities of a pharmacy technician or pharmacy technician trainee.~~

~~10. Failing to report in writing to the board any evidence that appears to show that a permittee or permittee's employee is or may be guilty of unethical conduct, is or may be mentally or physically unable safely to engage in employment duties related to manufacturing, selling, distributing or dispensing drugs, devices, poisons, hazardous substances, controlled substances or precursor chemicals or is or may be violating this chapter or a rule adopted under this chapter.~~

~~11.~~ 8. Intending to sell, transfer or distribute, or to offer for sale, transfer or distribution, or selling, transferring, distributing or dispensing or offering for sale, transfer or distribution an imitation controlled substance, imitation over-the-counter drug or imitation prescription-only drug as defined in section 13-3451.

~~12.~~ 9. Having the permittee's permit to manufacture, sell, distribute or dispense drugs, devices, poisons, hazardous substances or precursor chemicals denied or disciplined in another jurisdiction.

~~13.~~ 10. Committing an offense in another jurisdiction that if committed in this state would be grounds for discipline.

~~14.~~ 11. Obtaining or attempting to obtain a permit or a permit renewal by fraud, by misrepresentation or by knowingly taking advantage of the mistake of another person or an agency.

~~15.~~ 12. Wilfully making a false report or record that is required by this chapter, that is required by federal or state laws pertaining to drugs, devices, poisons, hazardous substances or precursor chemicals or that is required to pay for drugs, devices, poisons or hazardous substances or precursor chemicals or for services pertaining to such drugs or substances.

~~16.~~ 13. Knowingly filing with the board any application, renewal or other document that contains false or misleading information.

~~17.~~ 14. Providing false or misleading information or omitting material information in any communication to the board or the board's employees or agents.

~~18.~~ 15. Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, this chapter.

~~19.~~ 16. Violating a formal order, terms of probation, a consent agreement or a stipulation issued or entered into by the board or its executive director pursuant to this chapter.

~~20.~~ 17. Failing to comply with a board subpoena or failing to comply in a timely manner with a board subpoena without providing any explanation to the board for not complying with the subpoena.

~~21.~~ 18. Failing to provide the board or its employees or agents or an authorized federal or state official conducting a site investigation, inspection or audit with access to any place for which a permit has been issued or for which an application for a permit has been submitted.

~~22.~~ 19. Failing to notify the board of a change of ownership, management or pharmacist in charge.

~~23.~~ 20. Failing to promptly produce on the request of the official conducting a site investigation, inspection or audit any book, record or document.

~~24.~~ 21. Overruling or attempting to overrule a pharmacist in matters of pharmacy ethics or interpreting laws pertaining to the practice of pharmacy or the distribution of drugs or devices.

~~25.~~ 22. Distributing premiums or rebates of any kind in connection with the sale of prescription medication, other than to the prescription medication recipient.

~~26.~~ 23. Failing to maintain effective controls against the diversion of controlled substances or precursor chemicals to unauthorized persons or entities.

~~27-~~ 24. Fraudulently claiming to have performed a service.

~~28-~~ 25. Fraudulently charging a fee for a service.

~~29-~~ 26. Advertising drugs or devices, or services pertaining to drugs or devices, in a manner that is untrue or misleading in any particular, and that is known, or that by the exercise of reasonable care should be known, to be untrue or misleading.

B. In this chapter, unless the context otherwise requires, for the purposes of disciplining a pharmacist or pharmacy intern, "unprofessional conduct" means the following, whether occurring in this state or elsewhere:

1. Using alcohol or other drugs to such a degree as to render the licensee unfit to practice the profession of pharmacy.

2. Violating any federal or state law, rule or regulation relating to the manufacture or distribution of drugs and devices or the practice of pharmacy.

3. Dispensing a different drug or brand of drug in place of the drug or brand of drug ordered or prescribed without the express permission in each case of the orderer, or in the case of a prescription order, the medical practitioner. The conduct prohibited by this paragraph does not apply to substitutions authorized pursuant to section 32-1963.01.

4. Obtaining or attempting to obtain a license to practice pharmacy or a license renewal by fraud, by misrepresentation or by knowingly taking advantage of the mistake of another person or an agency.

5. Having the licensee's license to practice pharmacy denied or disciplined in another jurisdiction.

6. Claiming professional superiority in compounding or dispensing prescription orders.

7. Failing to comply with the mandatory continuing professional pharmacy education requirements of sections 32-1936 and 32-1937 and rules adopted by the board.

8. Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude or any drug-related offense. In either case, conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.

9. Working under the influence of alcohol or other drugs.

10. Violating a federal or state law or administrative rule relating to marijuana, prescription-only drugs, narcotics, dangerous drugs, controlled substances or precursor chemicals when determined by the board or by conviction in a federal or state court.

11. Knowingly dispensing a drug without a valid prescription order as required pursuant to section 32-1968, subsection A.

12. Knowingly dispensing a drug on a prescription order that was issued in the course of the conduct of business of dispensing drugs pursuant to diagnosis by mail or the internet, unless the order was any of the following:

(a) Made by a physician who provides temporary patient supervision on behalf of the patient's regular treating licensed health care professional or provides a consultation requested by the patient's regular treating licensed health care professional.

(b) Made in an emergency medical situation as defined in section 41-1831.

(c) Written to prepare a patient for a medical examination.

(d) Written or the prescription medications were issued for use by a county or tribal public health department for immunization programs or emergency treatment or in response to an infectious disease investigation, a public health emergency, an infectious disease outbreak or an act of bioterrorism. For the purposes of this subdivision, "bioterrorism" has the same meaning prescribed in section 36-781.

(e) Written or antimicrobials were dispensed by the prescribing or dispensing physician to a contact as defined in section 36-661 who is believed to have had significant exposure risk as defined in section 36-661 with another person who has been diagnosed with a communicable disease as defined in section 36-661.

(f) Written or the prescription medications were issued for administering immunizations or vaccines listed in the United States centers for disease control and prevention's recommended immunization schedule to a household member of a patient.

(g) For epinephrine auto-injectors that are written or dispensed for a school district or charter school and that are to be stocked for emergency use pursuant to section 15-157 or for an authorized entity to be stocked pursuant to section 36-2226.01.

(h) Written by a licensee through a telehealth program that is covered by the policies and procedures adopted by the administrator of a hospital or outpatient treatment center.

(i) Written pursuant to a physical or mental health status examination that was conducted through telehealth as defined in section 36-3601 and consistent with federal law.

(j) For naloxone hydrochloride or any other opioid antagonist approved by the United States food and drug administration and written or dispensed for use pursuant to section 36-2228 or 36-2266.

13. Failing to report in writing to the board any evidence that a pharmacist or pharmacy intern is or may be professionally incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable to safely engage in the practice of pharmacy.

14. Failing to report in writing to the board any evidence that a pharmacy technician or pharmacy technician trainee is or may be professionally incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable to safely engage in the permissible activities of a pharmacy technician or pharmacy technician trainee.

15. Failing to report in writing to the board any evidence that a permittee or a permittee's employee is or may be guilty of unethical conduct or is or may be violating this chapter or a rule adopted under this chapter.

16. Committing an offense in another jurisdiction that if committed in this state would be grounds for discipline.

17. Knowingly filing with the board any application, renewal or other document that contains false or misleading information.

18. Providing false or misleading information or omitting material information in any communication to the board or the board's employees or agents.

Ch. 59 — 19. Violating or attempting to violate, directly or indirectly, or assisting in or abetting in the violation of, or conspiring to violate, this chapter.

20. Violating a formal order, terms of probation, a consent agreement or a stipulation issued or entered into by the board or its executive director pursuant to this chapter.

21. Failing to comply with a board subpoena or failing to comply in a timely manner with a board subpoena without providing any explanation to the board for not complying with the subpoena.

22. Refusing without just cause to allow authorized agents of the board to examine documents that are required to be kept pursuant to this chapter or title 36.

23. Participating in an arrangement or agreement to allow a prescription order or a prescription medication to be left at, picked up from, accepted by or delivered to a place that is not licensed as a pharmacy. This paragraph does not prohibit a pharmacist or a pharmacy from using an employee or a common carrier to pick up prescription orders at or deliver prescription medications to the office or home of a medical practitioner, the residence of a patient or a patient's hospital.

24. Paying rebates or entering into an agreement for paying rebates to a medical practitioner or any other person in the health care field.

25. Providing or causing to be provided to a medical practitioner prescription order blanks or forms bearing the pharmacist's or pharmacy's name, address or other means of identification.

26. Fraudulently claiming to have performed a professional service.

27. Fraudulently charging a fee for a professional service.

28. Failing to report a change of the licensee's home address, contact information, employer or employer's address as required by section 32-1926.

29. Failing to report a change in the licensee's residency status as required by section 32-1926.01.

30. Failing to maintain effective controls against the diversion of controlled substances or precursor chemicals to unauthorized persons or entities.

C. In this chapter, unless the context otherwise requires, for the purposes of disciplining a pharmacy technician or pharmacy technician trainee, "unprofessional conduct" means the following, whether occurring in this state or elsewhere:

1. Using alcohol or other drugs to such a degree as to render the licensee unfit to perform the licensee's employment duties.

2. Violating a federal or state law or administrative rule relating to the manufacture or distribution of drugs or devices.

3. Obtaining or attempting to obtain a pharmacy technician or pharmacy technician trainee license or a pharmacy technician license renewal by fraud, by misrepresentation or by knowingly taking advantage of the mistake of another person or an agency.

4. Having the licensee's license to practice as a pharmacy technician denied or disciplined in another jurisdiction.

5. Failing to comply with the mandatory continuing professional education requirements of section 32-1925, subsection H and rules adopted by the board.

6. Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude or any drug-related offense. In either case, conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.

7. Working under the influence of alcohol or other drugs.

8. Violating a federal or state law or administrative rule relating to marijuana, prescription-only drugs, narcotics, dangerous drugs, controlled substances or precursor chemicals when determined by the board or by conviction in a federal or state court.

9. Failing to report in writing to the board any evidence that a pharmacist or pharmacy intern is or may be professionally incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable to safely engage in the practice of pharmacy.

10. Failing to report in writing to the board any evidence that a pharmacy technician or pharmacy technician trainee is or may be professionally incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable to safely engage in the permissible activities of a pharmacy technician or pharmacy technician trainee.

11. Failing to report in writing to the board any evidence that a permittee or a permittee's employee is or may be guilty of unethical conduct or is or may be violating this chapter or a rule adopted under this chapter.

12. Committing an offense in another jurisdiction that if committed in this state would be grounds for discipline.

13. Knowingly filing with the board any application, renewal or other document that contains false or misleading information.

14. Providing false or misleading information or omitting material information in any communication to the board or the board's employees or agents.

Ch. 59 — 15. Violating or attempting to violate, directly or indirectly, or assisting in or abetting in the violation of, or conspiring to violate, this chapter.

16. Violating a formal order, terms of probation, a consent agreement or a stipulation issued or entered into by the board or its executive director pursuant to this chapter.

17. Failing to comply with a board subpoena or failing to comply in a timely manner with a board subpoena without providing any explanation to the board for not complying with the subpoena.

18. Failing to report a change of the licensee's home address, contact information, employer or employer's address as required by section 32-1926.

19. Failing to report a change in the licensee's residency status as required by section 32-1926.01.

EXPLANATION OF BLEND  
SECTION 32-2101

Laws 2022, Chapters 126 and 298

Laws 2022, Ch. 126, section 1

Effective September 24, 2022

Laws 2022, Ch. 298, section 1

Effective September 24, 2022

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 126 and Ch. 298 text changes to section 32-2101 are blended in the form shown on the following pages.

BLEND OF SECTION 32-2101  
Laws 2022, Chapters 126 and 298

32-2101. Definitions

In this chapter, unless the context otherwise requires:

1. "Acting in concert" means evidence of collaborating to pursue a concerted plan.

Ch. 126 — 2. "Advertising" means ~~the attempt~~ ATTEMPTING by publication, dissemination, exhibition, solicitation or circulation, oral or written, or for broadcast on radio or television to induce directly or indirectly any person to enter into any obligation or acquire any title or interest in lands subject to this chapter, including the land sales contract to be used and any photographs, drawings or artist's presentations of physical conditions or facilities existing or to exist on the property. Advertising does not include:

(a) Press releases or other communications delivered to newspapers, periodicals or other news media for general information or public relations purposes if no charge is made by the newspapers, periodicals or other news media for ~~the publication~~ TO PUBLISH or use of any part of these communications.

(b) Communications to stockholders as follows:

(i) Annual reports and interim financial reports.

(ii) Proxy materials.

(iii) Registration statements.

(iv) Securities prospectuses.

(v) Applications for listing of securities on stock exchanges.

(vi) Prospectuses.

(vii) Property reports.

(viii) Offering statements.

3. "Affiliate" means a person who, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the person specified.

4. "Associate broker" means a licensed broker who is employed by another broker. Unless otherwise specifically provided, an associate broker has the same license privileges as a salesperson.

5. "Barrier" means a natural or man-made ~~geographical~~ GEOGRAPHIC feature that prevents parcels of land from being practicably, reasonably and economically united or reunited and that was not caused or created by the owner of the parcels.

6. "Blanket encumbrance"[:]

(a) Means EITHER:

(i) Any mortgage, any deed of trust or any other encumbrance or lien ~~securing~~ THAT SECURES or ~~evidencing~~ EVIDENCES the payment of ~~money~~ MONIES and ~~affecting~~ THAT AFFECTS more than one lot or parcel of subdivided land.

, OR

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(ii) An agreement affecting THAT AFFECTS more than one lot or parcel by which the subdivider holds the subdivision under an option, contract to sell or trust agreement. ~~Blanket encumbrance~~

(b) Does not include taxes and assessments that are levied by public authority.

7. "Board" means the ~~state~~ real estate advisory board.

8. "Broker", when used without modification, means a person who is licensed as a broker under this chapter or who is required to be licensed as a broker under this chapter.

9. "Business broker" means a real estate broker who acts as an intermediary or agent between sellers or buyers, or both, in the sale or purchase, or both, of businesses or business opportunities where a lease or sale of real property is either a direct or incidental part of the transaction.

10. "Camping site" means a space that is designed and promoted for the purpose of locating any trailer, tent, tent trailer, pickup camper or other similar device used for camping.

11. "Cemetery" or "cemetery property" means any one, or a combination of more than one, of the following in a place that is used, or intended to be used, and dedicated for cemetery purposes:

(a) A burial park, for earth interments.

(b) A mausoleum, for crypt or vault entombments.

(c) A crematory, or a crematory and columbarium, for cinerary interments.

(d) A cemetery plot, including interment rights, mausoleum crypts, niches and burial spaces.

12. "Cemetery broker" means a person other than a real estate broker or real estate salesperson who, for another, for compensation:

(a) Sells, leases or exchanges cemetery property or interment services of or for another, or on the person's own account.

(b) Offers for another or for the person's own account to buy, sell, lease or exchange cemetery property or interment services.

(c) Negotiates the purchase and sale, lease or exchange of cemetery property or interment services.

(d) Negotiates the purchase or sale, lease or exchange, or lists or solicits, or negotiates a loan on or leasing of cemetery property or interment services.

13. "Cemetery salesperson" means a natural person who acts on the person's own behalf or through and on behalf of a professional limited liability company or a professional corporation engaged by or on behalf of a licensed cemetery or real estate broker, or through and on behalf of a corporation, partnership or limited liability company that is licensed as a cemetery or real estate broker, to perform any act or transaction included in the definition of cemetery broker.

14. "Commissioner" means the state real estate commissioner.

15. "Common promotional plan" means a plan, undertaken by a person or a group of persons acting in concert, to offer lots for sale or lease. If the land is offered for sale by a person or group of persons acting in concert, and the land is contiguous or is known, designated or advertised as a common unit or by a common name, the land is presumed, without regard

to the number of lots covered by each individual offering, as being offered for sale or lease as part of a common promotional plan. Separate subdividers selling lots or parcels in separately platted subdivisions within a master planned community shall not be deemed to be offering their combined lots for sale or lease as part of a common promotional plan.

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16. "Compensation" means any fee, commission, salary, ~~money~~ MONIES or other valuable consideration for services rendered or to be rendered as well as the promise of consideration whether contingent or not.

17. "Contiguous"[:]

(a) Means lots, parcels or fractional interests that share a common boundary or point.

(b) DOES NOT INCLUDE lots, parcels or fractional interests ~~are not contiguous if they~~ THAT are separated by either of the following:

~~(a)~~ (i) A barrier.

~~(b)~~ (ii) A road, street or highway that has been established by this state or by any agency or political subdivision of this state, that has been designated by the federal government as an interstate highway or that has been regularly maintained by this state or by any agency or political subdivision of this state and has been used continuously by the public for at least the last five years.

18. "Control" or "controlled" means a person who, through ownership, voting rights, power of attorney, proxy, management rights, operational rights or other rights, has the right to make decisions binding on an entity, whether a corporation, a partnership or any other entity.

19. "Corporation licensee" means a lawfully organized corporation that is registered with the Arizona corporation commission and that has an officer licensed as the designated broker pursuant to section 32-2125.

20. "Department" means the state real estate department.

21. "Designated broker" means ~~the~~ A natural person who is licensed as a broker under this chapter and who is either:

(a) Designated to act on behalf of an employing real estate, cemetery or membership camping entity.

(b) Doing business as a sole proprietor.

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22. "Developer"[:]

(a) Means a person who offers real property in a development for sale, lease or use, either immediately or in the future, on the person's own behalf or on behalf of another person, under this chapter. ~~Developer~~

(b) Does not include a person whose involvement with a development is limited to ~~the~~ listing of property within the development for sale, lease or use.

23. "Development" means any division, proposed division or use of real property that the department has authority to regulate, including subdivided and unsubdivided lands, cemeteries, condominiums, timeshares, membership campgrounds and stock cooperatives.

24. "Employing broker" means a person who is licensed or is required to be licensed as a:

(a) Broker entity pursuant to section 32-2125, subsection A.

(b) Sole proprietorship if the sole proprietor is a broker licensed pursuant to this chapter.

25. "Fractional interest" means an undivided interest in improved or unimproved land, lots or parcels of any size created for the purpose of sale or lease and evidenced by any receipt, certificate, deed or other document conveying the interest. Undivided interests in land, lots or parcels created in the names of a husband and wife as community property, joint tenants or tenants in common, or in the names of other persons who, acting together as part of a single transaction, acquire the interests without a purpose to divide the interests for present or future sale or lease shall be deemed to constitute only one fractional interest.

26. "Improved lot or parcel" means a lot or parcel of a subdivision on which there is a residential, commercial or industrial building or concerning which a contract has been entered into between a subdivider and a purchaser that obligates the subdivider directly, or indirectly through a building contractor, to completely construct a residential, commercial or industrial building on the lot or parcel within two years after the date on which the contract of sale for the lot is entered into.

27. "Inactive license" means a license that is issued pursuant to article 2 of this chapter to a licensee who is on inactive status during the current license period and who is not engaged by or on behalf of a broker.

28. "Lease" or "leasing" includes any lease, whether it is the sole, the principal or any incidental part of a transaction.

29. "License" means the whole or part of any agency permit, certificate, approval, registration, public report, charter or similar form of permission required by this chapter.

30. "Licensee" means a person to whom a license for the current license period has been granted under any provision of this chapter, and, for the purposes of section 32-2153, subsection A, includes original license applicants.

31. "License period" means the two-year period beginning with the date of original issue or renewal of a particular license and ending on the expiration date, if any.

32. "Limited liability company licensee" means a lawfully organized limited liability company that has a member or manager who is a natural person and who is licensed as the designated broker pursuant to section 32-2125.

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33. "LIVE CLASSROOM COURSE" MEANS A COURSE OR INSTRUCTIONAL SEGMENT DELIVERED IN EITHER AN IN-PERSON CLASSROOM INSTRUCTIONAL FORMAT OR A SYNCHRONOUS REMOTE INSTRUCTIONAL FORMAT THAT ALLOWS STUDENTS TO OBSERVE AND PARTICIPATE REMOTELY IN AN INSTRUCTIONAL SEGMENT VIA LIVESTREAMING.

~~33.~~ 34. "Lot reservation" means an expression of interest by a prospective purchaser in buying at some time in the future a subdivided or unsubdivided lot, unit or parcel in this state. In all cases, a subsequent affirmative action by the prospective purchaser must be taken to create a contractual obligation to purchase.

~~34.~~ 35. "Master planned community" means a development that consists of two or more separately platted subdivisions and that is either subject to a master declaration of covenants, conditions or restrictions, is subject to restrictive covenants sufficiently uniform in character to clearly

indicate a general scheme for improving or developing real property or is governed or administered by a master owner's association.

~~35.~~ 36. "Member" means a member of the real estate advisory board.

~~36.~~ 37. "Membership camping broker" means a person, other than a salesperson, who, for compensation:

(a) Sells, purchases, lists, exchanges or leases membership camping contracts.

(b) Offers to sell, purchase, exchange or lease membership camping contracts.

(c) Negotiates or offers, attempts or agrees to negotiate the sale, purchase, exchange or lease of membership camping contracts.

(d) Advertises or holds himself out as being engaged in the business of selling, buying, exchanging or leasing membership camping contracts or counseling or advising regarding membership camping contracts.

(e) Assists or directs in procuring prospects calculated or intended to result in the sale, purchase, listing, exchange or lease of membership camping contracts.

(f) Performs any of the foregoing acts as an employee or on behalf of a membership camping operator or membership contract owner.

~~37.~~ 38. "Membership camping contract" means an agreement that is offered or sold in this state evidencing a purchaser's right or license to use the camping or outdoor recreation facilities of a membership camping operator and includes a membership that provides for this use.

~~38.~~ 39. "Membership camping operator"[:]

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(a) Means an enterprise, other than one that is tax exempt under section 501(c)(3) of the internal revenue code of 1986, as amended, that solicits membership paid for by a fee or periodic payments and has as one of its purposes camping or outdoor recreation, including the use of camping sites primarily by members. ~~Membership camping operator~~

(b) Does not include camping or recreational trailer parks that are open to the general public and that contain camping sites rented for a per use fee or a mobile home park.

~~39.~~ 40. "Membership camping salesperson" means a natural person who acts on the person's own behalf or through and on behalf of a professional limited liability company or a professional corporation engaged by or on behalf of a licensed membership camping or real estate broker, or by or on behalf of a corporation, partnership or limited liability company that is licensed as a membership camping or real estate broker, to perform any act or participate in any transaction in a manner included in the definition of membership camping broker.

~~40.~~ 41. "Online course" means prelicensure education that is a planned learning experience with a geographic separation that may be synchronous or asynchronous, that does not require real-time interaction between a student and an instructor and that uses a platform with self-paced or prerecorded lessons and materials that a student can access via the internet to proceed at the student's own pace.

~~41.~~ 42. "Partnership licensee" means a partnership with a managing general partner who is licensed as the designated broker pursuant to section 32-2125.

~~42.~~ 43. "Permanent access", as required under article 4 of this chapter, means permanent access from the subdivision to any federal, state or county highway.

Ch. 126 { ~~43.~~ 44. "Perpetual care" or "endowed care"[:]  
(a) Means maintaining and caring, in all places where interments have been made, for the trees, shrubs, roads, streets and other improvements and embellishments contained within or forming a part of the cemetery. ~~but~~  
(b) Does not include maintaining or repairing monuments, tombs, copings or other man-made ornaments as associated with individual burial spaces.

~~44.~~ 45. "Perpetual or endowed-care cemetery" means a cemetery in which lots or other burial spaces are sold or transferred under the representation that the cemetery will receive perpetual care or endowed care free of further cost to the purchaser after payment of the original purchase price for the lot, burial space or interment right.

~~45.~~ 46. "Person" means any individual, corporation, partnership or company and any other form of multiple organization for carrying on business, foreign or domestic.

~~46.~~ 47. "Private cemetery" means a cemetery or place that is not licensed under article 6 of this chapter, where burials or interments of human remains are made, in which sales or transfers of interment rights or burial plots are not made to the public and in which not more than ten interments or burials occur annually.

~~47.~~ 48. "Promotion" or "promotional practice" means advertising and any other act, practice, device or scheme to induce directly or indirectly any person to enter into any obligation or acquire any title or interest in or use of real property subject to this chapter, including meetings with prospective purchasers, arrangements for prospective purchasers to visit real property, travel allowances and discount, exchange, refund and cancellation privileges.

~~48.~~ 49. "Real estate" includes leasehold-interests and any estates in land as defined in title 33, chapter 2, articles 1 and 2, regardless of whether located in this state.

~~49.~~ 50. "Real estate broker" means a person, other than a salesperson, who, for another and for compensation:

(a) Sells, exchanges, purchases, rents or leases real estate, businesses and business opportunities or timeshare interests.

(b) Offers to sell, exchange, purchase, rent or lease real estate, businesses and business opportunities or timeshare interests.

(c) Negotiates or offers, attempts or agrees to negotiate the sale, exchange, purchase, rental or leasing of real estate, businesses and business opportunities or timeshare interests.

(d) Lists or offers, attempts or agrees to list real estate, businesses and business opportunities or timeshare interests for sale, lease or exchange.

(e) Auctions or offers, attempts or agrees to auction real estate, businesses and business opportunities or timeshare interests.

(f) Buys, sells, offers to buy or sell or otherwise deals in options on real estate, businesses and business opportunities or timeshare interests

or improvements to real estate, businesses and business opportunities or timeshare interests.

(g) Collects or offers, attempts or agrees to collect rent for the use of real estate, businesses and business opportunities or timeshare interests. This subdivision does not apply to a person who is not a licensee, who works for a real estate broker or a real estate salesperson, who collects in-person rent and related fees on behalf of the real estate broker or real estate salesperson for the use of real estate as part of the person's clerical duties and who provides a receipt when rent is paid.

(h) Advertises or holds himself out as being engaged in the business of buying, selling, exchanging, renting or leasing real estate, businesses and business opportunities or timeshare interests or counseling or advising regarding real estate, businesses and business opportunities or timeshare interests.

(i) Assists or directs in procuring prospects that are calculated to result in the sale, exchange, leasing or rental of real estate, businesses and business opportunities or timeshare interests.

(j) Assists or directs in negotiating any transaction calculated or intended to result in the sale, exchange, leasing or rental of real estate, businesses and business opportunities or timeshare interests.

(k) Incident to the sale of real estate, businesses and business opportunities negotiates or offers, attempts or agrees to negotiate a loan secured or to be secured by any mortgage or other encumbrance on or transfer of real estate, businesses and business opportunities or timeshare interests  
Ch. 126 — subject to section 32-2155, subsection ~~C~~ D. This subdivision does not apply to mortgage brokers as defined in and subject to title 6, chapter 9, article 1.

(l) Engages in the business of assisting or offering to assist another in filing an application for the purchase or lease of, or in locating or entering on, lands owned by the state or federal government.

(m) Claims, demands, charges, receives, collects or contracts to collect an advance fee in connection with any employment enumerated in this section, including employment undertaken to promote the sale or lease of real property by advance fee listing, by furnishing rental information to a prospective tenant for a fee paid by the prospective tenant, by ~~advertisement~~ ADVERTISING or by any other offering to sell, lease, exchange or rent real property or selling kits connected therewith. This ~~shall~~ DOES not include the activities of any communications media of general circulation or coverage not primarily engaged in the ~~advertisement~~ of ADVERTISING real estate or any communications media activities that are specifically exempt from applicability of this article under section 32-2121.  
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(n) Engages in any of the acts listed in subdivisions (a) through (m) of this paragraph for the sale or lease of other than real property if a real property sale or lease is a part of, contingent on or ancillary to the transaction.

(o) Performs any of the acts listed in subdivisions (a) through (m) of this paragraph as an employee of, or in behalf of, the owner of real estate, or interest in the real estate, or improvements affixed on the real estate, for compensation.

(p) Acts as a business broker.

~~50.~~ 51. "Real estate sales contract" means an agreement in which one party agrees to convey title to real estate to another party on the satisfaction of specified conditions set forth in the contract.

~~51.~~ 52. "Real estate salesperson" means a natural person who acts on the person's own behalf or through and on behalf of a professional limited liability company or a professional corporation engaged by or on behalf of a licensed real estate broker, or by or on behalf of a limited liability company, partnership or corporation that is licensed as a real estate broker, to perform any act or participate in any transaction in a manner included in the definition of real estate broker subject to section 32-2155.

~~52.~~ 53. "Sale" or "lease" includes every disposition, transfer, option or offer or attempt to dispose of or transfer real property, or an interest, use or estate in the real property, including offering the property as a prize or gift if a monetary charge or consideration for whatever purpose is required.

~~53.~~ 54. "Salesperson", when used without modification, means a natural person who acts on the person's own behalf or through and on behalf of a professional limited liability company or a professional corporation licensed under this chapter or any person required to be licensed as a salesperson under this chapter.

Ch. 126 — ~~54.~~ 55. "School" means a person or entity that offers a course of study towards TOWARD completion of the education requirements leading to licensure or renewal of licensure under this chapter.

~~55.~~ 56. "Stock cooperative" means a corporation to which all of the following apply:

(a) The corporation is formed or used to hold title to improved real property in fee simple or for a term of years.

(b) All or substantially all of the shareholders of the corporation each receive a right of exclusive occupancy in a portion of the real property to which the corporation holds title.

(c) The right of occupancy may only be transferred with the concurrent transfer of the shares of stock in the corporation held by the person having the right of occupancy.

Ch. 126 — ~~56.~~ 57. "Subdivider"[:]  
(a) Means any person who offers for sale or lease six or more lots, parcels or fractional interests in a subdivision or who causes land to be subdivided into a subdivision for the subdivider or for others, or who undertakes to develop a subdivision. ~~but~~  
(b) Does not include a public agency or officer authorized by law to create subdivisions.

~~57.~~ 58. "Subdivision" or "subdivided lands":

(a) Means improved or unimproved land or lands divided or proposed to be divided for the purpose of sale or lease, whether immediate or future, into six or more lots, parcels or fractional interests.

(b) Includes a stock cooperative, lands divided or proposed to be divided as part of a common promotional plan and residential condominiums as defined in title 33, chapter 9.

(c) Does not include:

(i) Leasehold offerings of one year or less.

(ii) The division or proposed division of land located in this state into lots or parcels each of which is or will be thirty-six acres or more in area including to the centerline of dedicated roads or easements, if any, contiguous to the lot or parcel.

(iii) The leasing of agricultural lands or apartments, offices, stores, hotels, motels, pads or similar space within an apartment building, industrial building, rental recreational vehicle community, rental manufactured home community, rental mobile home park or commercial building.

(iv) The subdivision into or development of parcels, plots or fractional portions within the boundaries of a cemetery that has been formed and approved pursuant to this chapter.

(v) A sale or lease of a lot, parcel or fractional interest that occurs ten or more years after the sale or lease of another lot, parcel or fractional interest if the other lot, parcel or fractional interest is not subject to this article and is treated as an independent parcel unless, on investigation by the commissioner, there is evidence of intent to subdivide.

~~58.~~ 59. "Timeshare" or "timeshare property" means real property ownership or right of occupancy in real property pursuant to article 9 of this chapter. For the purposes of this chapter, a timeshare is not a security unless it meets the definition of a security under section 44-1801.

~~59.~~ 60. "Trustee"[:]

(a) Means:

~~(a)~~ a person who EITHER:

(i) Is designated under section 32-2194.27 to act as a trustee for an endowment-care cemetery fund.

~~(b) A person holding~~

(ii) HOLDS bare legal title to real property under a subdivision trust. ~~A trustee shall~~

(b) ~~DOES not be deemed to be~~ INCLUDE a developer, subdivider, broker or salesperson within this chapter.

~~60.~~ 61. "Unimproved lot or parcel" means a lot or parcel of a subdivision that is not an improved lot or parcel.

~~61.~~ 62. "Unsubdivided lands":

(a) Means land or lands divided or proposed to be divided for the purpose of sale or lease, whether immediate or future, into six or more lots, parcels or fractional interests and the lots or parcels are thirty-six acres or more each but less than one hundred sixty acres each, or that are offered, known or advertised under a common promotional plan for sale or lease, except that agricultural leases shall not be included in this definition.

(b) Includes any land that is sold and that would otherwise constitute the sixth lot, parcel or fractional interest if the sale occurs ten or more years after the earliest of the previous five sales and if all of the sales consist of property that was originally contained within the same parcel that is thirty-six acres or more and less than one hundred sixty acres.

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EXPLANATION OF BLEND  
SECTION 32-2124

Laws 2022, Chapters 59 and 298

Laws 2022, Ch. 59, section 79

Effective September 24, 2022

Laws 2022, Ch. 298, section 2

Effective September 24, 2022

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 59 and Ch. 298 text changes to section 32-2124 are blended in the form shown on the following pages.

BLEND OF SECTION 32-2124  
Laws 2022, Chapters 59 and 298

32-2124. Qualifications of licensees

Ch. 59 — A. Except as otherwise provided in this chapter, the commissioner shall require proof, through the application or otherwise, as the commissioner deems advisable with due regard to the interests of the public, as to the ~~honesty, truthfulness, good character~~ and competency of the applicant and shall require that the applicant has:

1. If for an original real estate broker's license, at least three years' actual experience as a licensed real estate salesperson or real estate broker during the five years immediately preceding the time of application.

2. If for an original cemetery broker's license, either a current real estate broker's license, or if the applicant does not have a current real estate broker's license, at least three years' actual experience as a cemetery salesperson or broker or as a licensed real estate salesperson or broker during the five years immediately preceding the time of application.

3. If for an original membership camping broker's license, either a current real estate broker's license, or if the applicant does not have a current real estate broker's license, at least three years' actual experience as a licensed membership camping salesperson or broker or as a licensed real estate salesperson or broker during the five years immediately preceding the time of application.

4. If for any type of broker's or salesperson's license, not had a license denied within one year immediately preceding application in this state pursuant to section 32-2153 or a similar statute in any other state.

5. If for any type of broker's or salesperson's license, not had a license revoked within the two years immediately preceding application in this state pursuant to section 32-2153 or a similar statute in any other state.

6. If reapplying for a license that expired more than one year before the date of application, met all current education and experience requirements and retakes the examination the same as if the applicant were applying for the license for the first time.

7. If for a real estate, cemetery or membership camping broker's license, other than a renewal application, an equivalent amount of active experience within the immediately preceding five years in the field in which the applicant is applying for the broker's license, as a substitute for the licensed active experience otherwise required in paragraphs 1, 2 and 3 of this subsection. The licensed active experience required may be met if the applicant can demonstrate to the commissioner's satisfaction that the applicant has an equivalent amount of experience in the past five years that, if the applicant had held a license, would have been sufficient to fulfill the licensed experience requirement.

B. All applicants other than renewal applicants under section 32-2130 for a real estate salesperson's license shall show evidence satisfactory to the commissioner that they have completed a real estate salesperson's course that is prescribed and approved by the commissioner and that is at least ninety classroom hours, or its equivalent, of instruction in a real estate school certified by the commissioner and have satisfactorily passed an examination on the course. An applicant may complete the real estate

Ch. 298 { salesperson's course prescribed by this subsection through A LIVE CLASSROOM COURSE OR an online course if the LIVE CLASSROOM COURSE OR online course is offered by a real estate school that is certified by the commissioner. ~~but~~ The applicant must complete an examination on the LIVE CLASSROOM COURSE OR THE online course in person. AN APPLICANT MAY COMPLETE THE REQUIRED COURSE OR INSTRUCTIONAL SEGMENTS IN ANY COMBINATION OF IN-PERSON OR SYNCHRONOUS REMOTE DELIVERY METHODS.

Ch. 59 { ~~In no case shall~~ The real estate salesperson's course completion or its equivalent MAY NOT be more than ten years before the date of application unless, at the time of application, the commissioner determines in the commissioner's discretion that the applicant has work experience in a real estate-related field and education that together are equivalent to the prelicensure education requirement. The commissioner may waive all or a portion of the prelicensure course requirement, other than the twenty-seven-hour Arizona-specific course, for an applicant who holds a current real estate license in another state.

C. All applicants other than renewal applicants under section 32-2130 for a real estate broker's license shall show evidence satisfactory to the commissioner that they have completed a real estate broker's course that is prescribed and approved by the commissioner and that is at least ninety classroom hours, or the equivalent, of instruction in a real estate school certified by the commissioner and have satisfactorily passed an examination on the course. An applicant may complete the real estate broker's course

Ch. 298 { prescribed by this subsection through A LIVE CLASSROOM COURSE OR an online course if the LIVE CLASSROOM COURSE OR online course is offered by a real estate school that is certified by the commissioner. ~~but~~ The applicant must complete an examination on the LIVE CLASSROOM COURSE OR online course in person. AN APPLICANT MAY COMPLETE THE REQUIRED COURSE OR INSTRUCTIONAL SEGMENTS IN ANY COMBINATION OF IN-PERSON OR SYNCHRONOUS REMOTE DELIVERY METHODS.

Ch. 59 { ~~In no case shall~~ The real estate broker's course completion or its equivalent MAY NOT be more than ten years before the date of application unless, at the time of application, the commissioner determines in the commissioner's discretion that the applicant has work experience in a real estate-related field and education that together are equivalent to the prelicensure education requirement. The commissioner may waive all or a portion of the prelicensure course requirement, other than the twenty-seven-hour Arizona-specific course, for an applicant who holds a current real estate license in another state.

D. Before receiving any license provided for by this chapter, an applicant must be at least eighteen years of age.

E. The commissioner shall ascertain by a written, electronic or other examination method that an applicant for a real estate license has:

1. An appropriate knowledge of the English language, including reading, writing and spelling, and of arithmetical computations common to real estate practices.

2. At a minimum, an understanding of the general purpose and legal effect of any real estate practices, principles and related forms, including agency contracts, real estate contracts, deposit receipts, deeds, mortgages, deeds of trust, security agreements, bills of sale, land contracts of sale and property management, and of any other areas that the commissioner deems necessary and proper.

3. A thorough understanding of the obligations between principal and agent, the principles of real estate and business opportunity practice, the applicable canons of business ethics, the provisions of this chapter and rules adopted pursuant to this chapter.

4. An appropriate knowledge of other real estate practices and principles as determined by the commissioner.

F. The commissioner shall ascertain by a written, electronic or other examination method that an applicant for a license as a cemetery broker or a cemetery salesperson has:

1. Appropriate knowledge of the English language, including reading, writing and spelling, and of elementary arithmetic.

2. A general understanding of:

(a) Cemetery associations, cemetery corporations and duties of cemetery directors and officers.

(b) Plot ownership, deeds, certificates of ownership, contracts of sale, liens and leases.

(c) Establishing, dedicating, maintaining, managing, operating, improving, preserving and conducting a cemetery.

(d) The provisions of this chapter and rules adopted pursuant to this chapter relating to the organization and regulation of cemeteries and the licensing and regulation of cemetery brokers and cemetery salespersons.

3. A general understanding of the obligations between principal and agent, the principles of cemetery practice and the canons of business ethics pertaining to the operation of cemeteries and the sale of cemetery property.

G. The commissioner shall ascertain by a written, electronic or other examination method that an applicant for a license as a membership camping broker or a membership camping salesperson has:

1. An appropriate knowledge of the English language, including reading, writing and spelling, and of elementary arithmetic.

2. A general understanding of:

(a) The general purposes and legal effect of contracts and agency contracts.

(b) Establishing, maintaining, managing and operating a membership campground.

(c) The provisions of this chapter and rules adopted pursuant to this chapter relating to the organization and regulation of membership campgrounds and the licensing and regulation of membership camping brokers and membership camping salespersons.

3. A general understanding of the obligations between principal and agent and the canons of business ethics pertaining to the operation and promotion of membership campgrounds.

H. A renewal applicant for a real estate, cemetery or membership camping broker's or salesperson's license is not required to submit to an examination if the application is made within twelve months after the license expires and the license is not canceled, terminated or suspended at the time of application.

I. The examination for a broker's license shall be more exacting and stringent and of a broader scope than the examination for a salesperson's license.

J. An applicant for a real estate salesperson's or broker's license who currently holds at least an equivalent license in another state may be exempt from taking the national portion of the real estate examination if the applicant can demonstrate passing a national examination within the past five years that is satisfactorily similar to the one administered by the department.

K. Identification of each applicant whose licensing requirement was allowed to be met by an equivalent alternative pursuant to this section shall be included in the annual performance report presented by the board to the governor pursuant to section 32-2104.

L. An applicant for an original real estate salesperson's license, after ~~completion of~~ COMPLETING the requirements of subsection B of this section, shall provide certification to the department at the time of application evidencing completion of six hours of instruction in real estate contract law and contract writing. This instruction shall include participation by the applicant in ~~the~~ drafting of contracts to purchase real property, listing agreements and lease agreements.

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M. The commissioner shall not issue a license to a person who has been convicted of a felony offense and who is currently incarcerated for the conviction, paroled or under community supervision and under the supervision of a parole or community supervision officer or who is on probation as a result of the conviction.

N. The commissioner shall require an out-of-state applicant for a license that is issued pursuant to section 32-4302 to pass an examination specific to the laws of this state relating to this chapter before the commissioner issues the license to the applicant.

EXPLANATION OF BLEND  
SECTION 32-2153

Laws 2022, Chapters 59 and 126

Laws 2022, Ch. 59, section 80

Effective September 24, 2022

Laws 2022, Ch. 126, section 2

Effective September 24, 2022

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 59 and Ch. 126 text changes to section 32-2153 are blended in the form shown on the following pages.

The Laws 2022, Ch. 126 version of section 32-2153, subsection A, paragraph 9 struck "coming" and inserted "THAT COMES". The Ch. 59 version struck the first "and". Since this would not produce a substantive change, the blend version reflects the Ch. 126 version.

The Laws 2022, Ch. 126 version of section 32-2153, subsection A, paragraph 16 added "these" before the second "monies". The Ch. 59 version added "those" before the second "monies". Since this would not produce a substantive change, the blend version reflects the Ch. 126 version.

BLEND OF SECTION 32-2153  
Laws 2022, Chapters 59 and 126

32-2153. Grounds for denial, suspension or revocation of licenses; letters of concern; provisional license; retention of jurisdiction by commissioner; definitions

Ch. 126 { A. The commissioner may suspend or revoke a license, deny the issuance of a license, issue a letter of concern to a licensee, issue a provisional license or deny the renewal or the right of renewal of a license issued under this chapter if it appears that the holder or applicant, within five years immediately preceding, in the ~~performance of~~ PERFORMING or ~~attempt~~ ATTEMPTING to perform any acts authorized by the license or by this chapter, has:

1. Pursued a course of misrepresentation or made false promises, either directly or through others, whether acting in the role of a licensee or a principal in a transaction.

2. Acted for more than one party in a transaction without the knowledge or consent of all parties to the transaction.

3. Disregarded or violated any of the provisions of this chapter or any rules adopted by the commissioner.

4. Knowingly authorized, directed, connived at or aided in the publication, advertisement, distribution or circulation of any material false or misleading statement or representation concerning the licensee's business or any land, cemetery property, subdivision or membership campground or camping contract offered for sale in this or any other state.

5. Knowingly used the term "real estate broker", "cemetery broker" or "membership camping broker" without THE legal right to do so.

Chs. 59 and 126 { 6. Employed any unlicensed salesperson or unlicensed associate broker.

7. Accepted compensation as a licensee for the ~~performance of~~ PERFORMING any of the acts specified in this chapter from any person ~~other than the licensed broker to whom the licensee is licensed, the licensed professional corporation of which the licensee is an officer and shareholder or the licensed professional limited liability company of which the licensee is a member or manager~~ WHO IS NOT AUTHORIZED TO PROVIDE COMPENSATION PURSUANT TO SECTION 32-2155.

Ch. 126 { 8. Represented or attempted to represent a broker other than the broker to whom the salesperson or associate broker is licensed.

9. Failed, within a reasonable time, to account for or to remit any monies, to surrender to the rightful owner any documents or other valuable property ~~coming~~ THAT COMES into the licensee's possession and that belongs to others, or to issue an appraisal report on real property or cemetery property in which the licensee has an interest, unless the nature and extent of the interest are fully disclosed in the report.

10. Paid or received any rebate, profit, compensation or commission in violation of this chapter.

11. Induced any party to a contract to break the contract for the purpose of substituting a new contract with the same or a different principal, if the substitution is motivated by the personal gain of the licensee.

12. Placed a sign on any property offering it for sale or for rent without the written authority of the owner or the owner's authorized agent.

13. Solicited, either directly or indirectly, prospects for the sale, lease or use of real property, cemetery property or membership camping contracts through a promotion of a speculative nature involving a game of chance or risk or through conducting lotteries or contests that are not specifically authorized under this chapter.

14. Failed to pay to the commissioner the renewal fee as specified in this chapter promptly and before the time specified.

15. Failed to keep an escrow or trust account or other record of ~~funds~~ MONIES deposited with the licensee relating to a real estate transaction.

16. Commingled the ~~money~~ MONIES or other property of the licensee's principal or client with the licensee's own or converted ~~that money~~ THESE MONIES or property to the licensee or another.

17. Failed or refused ~~upon~~ ON demand to produce any document, contract, book, record, information, compilation or report that is in the licensee's possession or that the licensee is required by law to maintain concerning any real estate, cemetery or membership camping business, services, activities or transactions involving or conducted by the licensee for inspection by the commissioner or the commissioner's representative.

18. Failed to maintain a complete record of each transaction ~~which~~ THAT comes within this chapter.

19. Violated the federal fair housing law, the Arizona civil rights law or any local ordinance of a similar nature.

20. Tendered to a buyer a wood infestation report in connection with the transfer of residential real property or an interest in residential real property knowing that wood infestation exists or that the wood infestation report was inaccurate or false as of the date of the tender or that an inspection was not done in conjunction with the preparation of the wood infestation report.

21. As a licensed broker, failed to exercise reasonable supervision over the activities of salespersons, associate brokers or others under the broker's employ or failed to exercise reasonable supervision and control over the activities for which a license is required of a corporation, limited liability company or partnership on behalf of which the broker acts as designated broker under section 32-2125.

22. Demonstrated negligence in performing any act for which a license is required.

23. Sold or leased a property to a buyer or lessee that was not the property represented to the buyer or lessee.

24. Violated any condition or term of a commissioner's order.

25. Signed the name of another person on any document or form without the express written consent of the person.

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and 126

26. As a licensed school, failed to exercise reasonable supervision over the activities for which a license is required for an owner, director, administrator or instructor in the school's employ.

Ch. 126 — B. The commissioner may suspend or revoke a license, deny the issuance of a license, issue a letter of concern to a licensee, issue a provisional license or deny the renewal or the right of renewal of a license issued under this chapter ~~when~~ IF it appears that the holder or applicant has:

Chs. 59 and 126 — 1. Procured or attempted to procure a license under this chapter for the holder or applicant or another by fraud, misrepresentation or deceit, or by filing an original or renewal application ~~which~~ THAT is false or misleading.

2. Been convicted in a court of competent jurisdiction in this or any other state of a felony or of any crime of forgery, theft, extortion, conspiracy to defraud, a crime of moral turpitude or any other like offense.

3. Made any substantial misrepresentation.

4. Made any false promises of a character likely to influence, persuade or induce.

Chs. 59 and 126 — 5. Been guilty of any conduct, whether of the same or a different character than specified in this section, ~~which~~ THAT constitutes fraud or dishonest dealings.

Ch. 126 — 6. Engaged in the business of a real estate BROKER, cemetery BROKER or membership camping broker or real estate, cemetery or membership camping salesperson without holding a license as prescribed in this chapter.

Ch. 59 — ~~7. Not shown that the holder or applicant is a person of honesty, truthfulness and good character.~~

~~8.~~ 7. Demonstrated incompetence to perform any duty or requirement of a licensee under or arising from this chapter. For the purposes of this paragraph, "incompetence" means a lack of basic knowledge or skill appropriate to the type of license the person holds or a failure to appreciate the probable consequences of the licensee's action or inaction.

~~9.~~ 8. Violated the terms of any criminal or administrative order, decree or sentence.

~~10.~~ 9. Violated any federal or state law, regulation or rule that relates to real estate or securities or that involves forgery, theft, extortion, fraud, substantial misrepresentation, dishonest dealings or violence against another person or failure to deal fairly with any party to a transaction that materially and adversely affected the transaction. This paragraph applies equally to violations of which the licensee was convicted in any lawful federal or state tribunal and to any admissions made in any settlement agreement by the licensee to violations.

~~11.~~ 10. Failed to respond in the course of an investigation or audit by providing documents or written statements.

C. A judgment based on a court's finding or stipulation of fraud by a licensee following a trial on the merits or a criminal conviction of a licensee that results in a payment from the real estate recovery fund is prima facie evidence of a violation and grounds for discipline under this section.

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D. The commissioner may deny, suspend or revoke the issuance of a license upon ON application by a corporation, a limited liability company or a partnership if it appears that an owner, officer, director, member, manager, partner, stockholder owning ten per cent PERCENT or more of the stock in the corporation or limited liability company or person exercising control of the entity is a current or former licensee whose license as a broker or a salesperson has been denied, suspended or revoked.

E. The lapsing or suspension of a license by operation of law or by order or decision of the commissioner or a court of law or the voluntary surrender of a license by a licensee shall DOES not deprive the commissioner of jurisdiction to do any of the following:

1. Proceed with any investigation of or action or disciplinary proceeding against the licensee.

2. Render a decision suspending or revoking the license, or denying the renewal or right of renewal of the license.

3. Assess a civil penalty pursuant to section 32-2160.01.

F. For the purposes of this section:

1. "Letter of concern" means an advisory letter to notify a licensee that, while the conduct or evidence does not warrant other disciplinary action, the commissioner believes that the licensee should modify or eliminate certain practices and that continuation of the activities may result in further disciplinary action against the licensee.

2. "Provisional license" means a license that the department issues and that allows a licensee to practice subject to either a consent order as prescribed in section 32-2153.01 or the commissioner's terms, conditions and restrictions.

EXPLANATION OF BLEND  
SECTION 32-4222

Laws 2022, Chapters 59 and 281

Laws 2022, Ch. 59, section 96

Effective September 24, 2022

Laws 2022, Ch. 281, section 2

Effective September 24, 2022

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 59 and Ch. 281 text changes to section 32-4222 are blended in the form shown on the following pages.

BLEND OF SECTION 32-4222  
Laws 2022, Chapters 59 and 281

32-4222. Qualifications for licensure

A. An applicant for a license as a massage therapist shall:

1. Be at least eighteen years of age.
2. Be a citizen or legal resident of the United States.
3. Satisfy the requirements of section 32-4224.

Ch. 59 — ~~4. Be of good moral character.~~

~~5.~~ 4. Receive either a high school diploma or general equivalency diploma or a similar document or certificate or submit proof that the applicant has passed an ability to benefit examination recognized by the United States department of education.

~~6.~~ 5. Pay the fees established pursuant to section 32-4227.

~~7.~~ 6. Within five years preceding the date of the application FOR INITIAL LICENSURE, not have been convicted of:

Ch. 281 — ~~(a) A class 1, 2 or 3 felony.~~

~~(b) A class 4, 5 or 6 felony offense involving moral turpitude that has a reasonable relationship to the practice of massage therapy.~~

Chs. 59 and 281 — ~~(c) a misdemeanor involving prostitution or solicitation or other ANOTHER similar offense involving moral turpitude that has a reasonable relationship to the practice of massage therapy.~~

Ch. 59 — ~~8.~~ 7. Within the ~~past~~ PRECEDING five years, not have voluntarily surrendered a license under section 32-4254 or not have had a license to practice massage therapy or another similar license revoked by a political subdivision of this state or a regulatory agency in another jurisdiction in the United States for an act that occurred in that jurisdiction and that would be subject to discipline pursuant to this chapter.

~~9.~~ 8. Not be currently under investigation, suspension or restriction by a political subdivision of this state or a regulatory agency in another jurisdiction in the United States for an act that occurred in that jurisdiction and that would be subject to discipline pursuant to this chapter. If the applicant is under investigation by a regulatory agency in another jurisdiction, the board shall suspend the application process and may not issue or deny a license to the applicant until the investigation is resolved.

Ch. 281 — ~~10.~~ 9. FOR INITIAL LICENSURE, submit a full set of fingerprints to the board 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. The board may charge the cost of each criminal background check to the applicant.

Ch. 281 — 10. BEGINNING JANUARY 1, 2023, POSSESS A VALID FINGERPRINT CLEARANCE CARD ISSUED PURSUANT TO TITLE 41, CHAPTER 12, ARTICLE 3.1 FOR INITIAL LICENSURE, LICENSE RENEWAL, A TEMPORARY LICENSE OR LICENSE REINSTATEMENT PURSUANT TO THIS CHAPTER.

B. In addition to the requirements of subsection A of this section, an applicant for licensure as a massage therapist shall either:

1. Have successfully completed a course of study of massage therapy or bodywork therapy consisting of a minimum of five hundred classroom and clinical hours of supervised instruction at a board recognized school in this state that is accredited by an agency recognized by the secretary of the United States department of education.

2. Have done both of the following:

(a) Successfully completed a course of study in massage therapy or bodywork therapy consisting of a minimum of five hundred classroom and clinical hours of supervised instruction at a school in this state that is licensed by the state board for private postsecondary education or at a school outside of this state that is recognized by the board pursuant to section 32-4228.

(b) Successfully passed an examination administered by a national board accredited by the certifying agency that has been approved by the national commission on competency assurance and that is in good standing with that agency or have successfully passed an examination that is administered or approved by the board.

C. The board may adopt rules to allow it to consider the education and experience of an applicant who came from a foreign country. The board by rule may increase the minimum number of classroom hours of supervised instruction at a board recognized school that an applicant for licensure must successfully have completed.

D. If the board is satisfied that an applicant meets the requirements of this section, the board shall issue a license to the applicant.

E. The board, by rule, shall establish communication proficiency requirements related to an applicant's ability to protect health and safety in connection with the practice of massage therapy.

F. Subject to the board's approval, the executive director may issue licenses to applicants who meet the requirements of this chapter.

G. The board may deny an application for a license if the applicant committed an act that would subject a person licensed under this chapter to disciplinary action.

EXPLANATION OF BLEND  
SECTION 33-1261

Laws 2022, Chapters 125 and 272

Laws 2022, Ch. 125, section 1

Effective September 24, 2022

Laws 2022, Ch. 272, section 1

Effective September 24, 2022

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 125 and Ch. 272 text changes to section 33-1261 are blended in the form shown on the following pages.

BLEND OF SECTION 33-1261  
Laws 2022, Chapters 125 and 272

33-1261. Flag display; for sale, rent or lease signs; political signs; political and community activities; applicability; definitions

A. Notwithstanding any provision in the condominium documents, an association shall not prohibit the outdoor display of any of the following:

1. ~~The American flag or an official or replica of a flag of THE UNIFORMED SERVICES OF the United States army, navy, air force, marine corps or coast guard~~ by a unit owner on that unit owner's property if the American flag or ~~military~~ A UNIFORMED SERVICES flag is displayed in a manner consistent with the federal flag code (P.L. 94-344; 90 Stat. 810; 4 United States Code sections 4 through 10).

2. The POW/MIA flag.

3. The Arizona state flag.

4. An Arizona Indian nations flag.

5. The Gadsden flag.

6. A FIRST RESPONDER FLAG. A FIRST RESPONDER FLAG MAY INCORPORATE THE DESIGN OF ONE OR TWO OTHER FIRST RESPONDER FLAGS TO FORM A COMBINED FLAG.

7. A BLUE STAR SERVICE FLAG OR A GOLD STAR SERVICE FLAG.

B. The association shall adopt reasonable rules and regulations regarding the placement and manner of display of the ~~American flag, the military flag, the POW/MIA flag, the Arizona state flag or an Arizona Indian nations flag~~ FLAGS PRESCRIBED BY SUBSECTION A OF THIS SECTION. The association rules may regulate the location and size of flagpoles but shall

~~not prohibit the installation of~~ INSTALLING a flagpole.

C. Notwithstanding any provision in the condominium documents, an association shall not prohibit or charge a fee for the use of, the placement of or the indoor or outdoor display of a for sale, for rent or for lease sign and a sign rider by a unit owner on that owner's property in any combination, including a sign that indicates the unit owner is offering the property for sale by owner. The size of a sign offering a property for sale, for rent or for lease shall be in conformance with the industry standard size sign, which shall not exceed eighteen by twenty-four inches, and the industry standard size sign rider, which shall not exceed six by twenty-four inches. This subsection applies only to a commercially produced sign and an association may prohibit the use of USING signs that are not commercially produced. With respect to real estate for sale, for rent or for lease in the condominium, an association shall not prohibit in any way other than as is specifically authorized by this section or otherwise regulate any of the following:

1. Temporary open house signs or a unit owner's for sale sign. The association shall not require the use of particular signs indicating an open

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house or real property for sale and may not further regulate the use of temporary open house or for sale signs that are industry standard size and that are owned or used by the seller or the seller's agent.

2. Open house hours. The association may not limit the hours for an open house for real estate that is for sale in the condominium, except that the association may prohibit an open house being held before 8:00 a.m. or after 6:00 p.m. and may prohibit open house signs on the common elements of the condominium.

3. An owner's or an owner's agent's for rent or for lease sign unless an association's documents prohibit or restrict leasing of a unit or units. An association shall not further regulate a for rent or for lease sign or require the use of a particular for rent or for lease sign other than the for rent or for lease sign shall not be any larger than the industry standard size sign of eighteen by twenty-four inches and on or in the unit owner's property. If rental or leasing of a unit is allowed, the association may prohibit an open house for rental or leasing being held before 8:00 a.m. or after 6:00 p.m.

D. Notwithstanding any provision in the condominium documents, an association shall not prohibit door-to-door political activity, including solicitations of support or opposition regarding candidates or ballot issues, and shall not prohibit the circulation of CIRCULATING political petitions, including candidate nomination petitions or petitions in support of or opposition to an initiative, referendum or recall or other political issue on property normally open to visitors within the association, except that an association may do the following:

1. Restrict or prohibit door-to-door political activity regarding candidates or ballot issues from sunset to sunrise.

2. Require the prominent display of an identification tag for each person engaged in the activity, along with the prominent identification of the candidate or ballot issue that is the subject of the support or opposition.

E. Notwithstanding any provision in the condominium documents, an association shall not prohibit the indoor or outdoor display of a political sign by a unit owner by placement of a sign on that unit owner's property, including any limited common elements for that unit that are doors, walls or patios or other limited common elements that touch the unit, other than the roof. An association may prohibit the display of political signs as follows:

1. Earlier than seventy-one days before the day of a primary election.

2. Later than fifteen days after the day of the general election.

3. For a sign for a candidate in a primary election who does not advance to the general election, later than fifteen days after the primary election.

F. An association may regulate the size and number of political signs that may be placed in the common element ground, on a unit owner's property or on a limited common element for that unit if the association's regulation is not more restrictive than any applicable city, town or county ordinance that regulates the size and number of political signs on residential property. If the city, town or county in which the property is located does

not regulate the size and number of political signs on residential property, the association shall not limit the number of political signs, except that the maximum aggregate total dimensions of all political signs on a unit owner's property shall not exceed nine square feet. An association shall not make any regulations regarding the number of candidates supported, the number of public officers supported or opposed in a recall or the number of propositions supported or opposed on a political sign.

G. An association shall not require political signs to be commercially produced or professionally manufactured or prohibit the utilization of both sides of a political sign.

H. NOTWITHSTANDING ANY PROVISION IN THE CONDOMINIUM DOCUMENTS, AN ASSOCIATION MAY NOT PROHIBIT OR UNREASONABLY RESTRICT THE INDOOR OR OUTDOOR DISPLAY OF AN ASSOCIATION-SPECIFIC POLITICAL SIGN BY A UNIT OWNER BY PLACEMENT OF A SIGN ON THAT UNIT OWNER'S PROPERTY, INCLUDING ANY LIMITED COMMON ELEMENTS FOR THAT UNIT THAT ARE DOORS, WALLS OR PATIOS OR OTHER LIMITED COMMON ELEMENTS THAT TOUCH THE UNIT, OTHER THAN THE ROOF. AN ASSOCIATION MAY ADOPT REASONABLE RULES REGARDING THE PLACEMENT, LOCATION AND MANNER OF DISPLAY OF ASSOCIATION-SPECIFIC POLITICAL SIGNS, EXCEPT AN ASSOCIATION SHALL NOT DO ANY OF THE FOLLOWING:

1. PROHIBIT THE DISPLAY OF ASSOCIATION-SPECIFIC POLITICAL SIGNS BETWEEN THE DATE THAT THE ASSOCIATION PROVIDES WRITTEN OR ABSENTEE BALLOTS TO UNIT OWNERS AND THREE DAYS AFTER THE CONDOMINIUM ELECTION.

2. LIMIT THE NUMBER OF ASSOCIATION-SPECIFIC SIGNS, EXCEPT THAT THE ASSOCIATION MAY LIMIT THE AGGREGATE TOTAL DIMENSIONS OF ALL ASSOCIATION-SPECIFIC SIGNS ON A UNIT OWNER'S PROPERTY TO NOT MORE THAN NINE SQUARE FEET.

3. REQUIRE ASSOCIATION-SPECIFIC POLITICAL SIGNS TO BE COMMERCIALY PRODUCED OR PROFESSIONALLY MANUFACTURED OR PROHIBIT USING BOTH SIDES OF THE SIGN.

4. REGULATE THE NUMBER OF CANDIDATES SUPPORTED OR OPPOSED OR THE NUMBER OF BOARD MEMBERS SUPPORTED OR OPPOSED IN A RECALL OR THE NUMBER OF BALLOT MEASURES SUPPORTED OR OPPOSED ON AN ASSOCIATION-SPECIFIC POLITICAL SIGN.

5. MAKE ANY OTHER REGULATIONS REGARDING THE CONTENT OF AN ASSOCIATION-SPECIFIC POLITICAL SIGN, EXCEPT THAT THE ASSOCIATION MAY PROHIBIT USING PROFANITY AND DISCRIMINATORY TEXT, IMAGES OR CONTENT BASED ON RACE, COLOR, RELIGION, SEX, FAMILIAL STATUS OR NATIONAL ORIGIN AS PRESCRIBED BY FEDERAL OR STATE FAIR HOUSING LAWS.

~~H.~~ I. A condominium is not required to comply with subsection D of this section if the condominium restricts vehicular or pedestrian access to the condominium. This section does not require a condominium to make its common elements other than roadways and sidewalks that are normally open to visitors available for the circulation of political petitions to anyone who is not an owner or resident of the community.

J. NOTWITHSTANDING ANY PROVISION IN THE CONDOMINIUM DOCUMENTS, AN ASSOCIATION MAY NOT PROHIBIT OR UNREASONABLY RESTRICT A UNIT OWNER'S ABILITY TO PEACEFULLY ASSEMBLE AND USE COMMON ELEMENTS OF THE CONDOMINIUM IF DONE IN COMPLIANCE WITH REASONABLE RESTRICTIONS FOR THE USE OF THAT PROPERTY ADOPTED BY THE BOARD OF DIRECTORS. AN INDIVIDUAL UNIT OWNER OR GROUP OF UNIT OWNERS MAY ASSEMBLE TO DISCUSS MATTERS RELATED TO THE CONDOMINIUM,

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INCLUDING BOARD OF DIRECTOR ELECTIONS OR RECALLS, POTENTIAL OR ACTUAL BALLOT ISSUES OR REVISIONS TO THE CONDOMINIUM DOCUMENTS, PROPERTY MAINTENANCE OR SAFETY ISSUES OR ANY OTHER CONDOMINIUM MATTERS. A UNIT OWNER MAY INVITE ONE POLITICAL CANDIDATE OR ONE NON-UNIT OWNER GUEST TO SPEAK TO AN ASSEMBLY OF UNIT OWNERS ABOUT MATTERS RELATED TO THE CONDOMINIUM. THE ASSOCIATION SHALL NOT PROHIBIT A UNIT OWNER FROM POSTING NOTICES REGARDING THOSE ASSEMBLIES OF UNIT OWNERS ON BULLETIN BOARDS LOCATED ON THE COMMON ELEMENTS OR WITHIN COMMON ELEMENT FACILITIES. AN ASSEMBLY OF UNIT OWNERS PRESCRIBED BY THIS SUBSECTION DOES NOT CONSTITUTE AN OFFICIAL UNIT OWNERS' MEETING UNLESS THE MEETING IS NOTICED AND CONVENED AS PRESCRIBED IN THE CONDOMINIUM DOCUMENTS AND THIS CHAPTER.

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~~†~~ K. An association or managing agent that violates subsection C of this section forfeits and extinguishes the lien rights authorized under section 33-1256 against that unit for a period of six consecutive months from AFTER the date of the violation.

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~~‡~~ L. This section does not apply to timeshare plans or associations that are subject to chapter 20 of this title.

~~†~~ M. An association or managing agent that violates subsection C of this section forfeits and extinguishes the lien rights authorized under section 33-1256 against that unit for a period of six consecutive months from AFTER the date of the violation.

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~~†~~ N. For the purposes of this section[~~†~~]

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1. "ASSOCIATION-SPECIFIC POLITICAL SIGN" MEANS A SIGN THAT SUPPORTS OR OPPOSES A CANDIDATE FOR THE BOARD OF DIRECTORS OR THE RECALL OF A BOARD MEMBER OR A CONDOMINIUM BALLOT MEASURE THAT REQUIRES A VOTE OF THE ASSOCIATION UNIT OWNERS.

2. "FIRST RESPONDER FLAG" MEANS A FLAG THAT RECOGNIZES AND HONORS THE SERVICES OF ANY OF THE FOLLOWING:

(a) LAW ENFORCEMENT AND THAT IS LIMITED TO THE COLORS BLUE, BLACK AND WHITE, THE WORDS "LAW ENFORCEMENT", "POLICE", "OFFICERS", "FIRST RESPONDER", "HONOR OUR", "SUPPORT OUR" AND "DEPARTMENT" AND THE SYMBOL OF A GENERIC POLICE SHIELD IN A CREST OR STAR SHAPE.

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(b) FIRE DEPARTMENT AND THAT IS LIMITED TO THE COLORS RED, GOLD, BLACK AND WHITE, THE WORDS "FIRE", "FIGHTERS", "F", "D", "FD", "FIRST RESPONDER", "DEPARTMENT", "HONOR OUR" AND "SUPPORT OUR" AND THE SYMBOL OF A GENERIC MALTESE CROSS.

(c) PARAMEDICS OR EMERGENCY MEDICAL TECHNICIANS AND THAT IS LIMITED TO THE COLORS BLUE, BLACK AND WHITE, THE WORDS "FIRST RESPONDER", "PARAMEDIC", "EMERGENCY MEDICAL", "SERVICE", "TECHNICIAN", "HONOR OUR" AND "SUPPORT OUR" AND THE SYMBOL OF A GENERIC STAR OF LIFE.

3. "Political sign" means a sign that attempts to influence the outcome of an election, including supporting or opposing the recall of a public officer or supporting or opposing the circulation of a petition for a ballot measure, question or proposition or the recall of a public officer.

EXPLANATION OF BLEND  
SECTION 33-1808

Laws 2022, Chapters 125 and 272

Laws 2022, Ch. 125, section 2

Effective September 24, 2022

Laws 2022, Ch. 272, section 2

Effective September 24, 2022

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 125 and Ch. 272 text changes to section 33-1808 are blended in the form shown on the following pages.

BLEND OF SECTION 33-1808  
Laws 2022, Chapters 125 and 272

33-1808. Flag display; political signs; caution signs; for sale, rent or lease signs; political and community activities; definitions

A. Notwithstanding any provision in the community documents, an association shall not prohibit the outdoor front yard or backyard display of any of the following:

1. The American flag or an official or replica of a flag of THE UNIFORMED SERVICES OF the United States ~~army, navy, air force, marine corps or coast guard~~ by an association member on that member's property if the American flag or ~~military~~ A UNIFORMED SERVICES flag is displayed in a manner consistent with the federal flag code (P.L. 94-344; 90 Stat. 810; 4 United States Code sections 4 through 10).

2. The POW/MIA flag.

3. The Arizona state flag.

4. An Arizona Indian nations flag.

5. The Gadsden flag.

6. A FIRST RESPONDER FLAG. A FIRST RESPONDER FLAG MAY INCORPORATE THE DESIGN OF ONE OR TWO OTHER FIRST RESPONDER FLAGS TO FORM A COMBINED FLAG.

7. A BLUE STAR SERVICE FLAG OR A GOLD STAR SERVICE FLAG.

B. The association shall adopt reasonable rules and regulations regarding the placement and manner of display of the ~~American flag, the military flag, the POW/MIA flag, the Arizona state flag or an Arizona Indian nations flag~~ FLAGS PRESCRIBED BY SUBSECTION A OF THIS SECTION. The association rules may regulate the location and size of flagpoles, may limit the member to displaying not more than two flags at once and may limit the height of the flagpole to not more than the height of the rooftop of the member's home but shall not prohibit the ~~installation of~~ INSTALLING a flagpole in the front yard or backyard of the member's property.

C. Notwithstanding any provision in the community documents, an association shall not prohibit the indoor or outdoor display of a political sign by an association member on that member's property, except that an association may prohibit the display of political signs as follows:

1. Earlier than seventy-one days before the day of a primary election.

2. Later than fifteen days after the day of the general election.

3. For a sign for a candidate in a primary election who does not advance to the general election, later than fifteen days after the primary election.

D. An association may regulate the size and number of political signs that may be placed on a member's property if the association's regulation is not more restrictive than any applicable city, town or county ordinance that regulates the size and number of political signs on residential

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property. If the city, town or county in which the property is located does not regulate the size and number of political signs on residential property, the association shall not limit the number of political signs, except that the maximum aggregate total dimensions of all political signs on a member's property shall not exceed nine square feet.

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— E. Notwithstanding any provision in the community documents, an association shall not prohibit ~~the use of~~ USING cautionary signs regarding children if the signs are used and displayed as follows:

1. The signs are displayed in residential areas only.
2. The signs are removed within one hour of children ceasing to play.
3. The signs are displayed only when children are actually present within fifty feet of the sign.
4. The temporary signs are not taller than three feet in height.
5. The signs are professionally manufactured or produced.

F. Notwithstanding any provision in the community documents, an association shall not prohibit children who reside in the planned community from engaging in recreational activity on residential roadways that are under the jurisdiction of the association and on which the posted speed limit is twenty-five miles per hour or less.

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— G. Notwithstanding any provision in the community documents, an association shall not prohibit or charge a fee for the use of, the placement of or the indoor or outdoor display of a for sale, for rent or for lease sign and a sign rider by an association member on that member's property in any combination, including a sign that indicates the member is offering the property for sale by owner. The size of a sign offering a property for sale, for rent or for lease shall be in conformance with the industry standard size sign, which shall not exceed eighteen by twenty-four inches, and the industry standard size sign rider, which shall not exceed six by twenty-four inches. This subsection applies only to a commercially produced sign, and an association may prohibit ~~the use of~~ USING signs that are not commercially produced. With respect to real estate for sale, for rent or for lease in the planned community, an association shall not prohibit in any way other than as is specifically authorized by this section or otherwise regulate any of the following:

1. Temporary open house signs or a member's for sale sign. The association shall not require the use of particular signs indicating an open house or real property for sale and may not further regulate the use of temporary open house or for sale signs that are industry standard size and that are owned or used by the seller or the seller's agent.

2. Open house hours. The association may not limit the hours for an open house for real estate that is for sale in the planned community, except that the association may prohibit an open house being held before 8:00 a.m. or after 6:00 p.m. and may prohibit open house signs on the common areas of the planned community.

3. An owner's or an owner's agent's for rent or for lease sign unless an association's documents prohibit or restrict leasing of a member's property. An association shall not further regulate a for rent or for lease sign or require the use of a particular for rent or for lease sign other than the for rent or for lease sign shall not be any larger than the industry standard size sign of eighteen by twenty-four inches on or in the member's

property. If rental or leasing of a member's property is not prohibited or restricted, the association may prohibit an open house for rental or leasing being held before 8:00 a.m. or after 6:00 p.m.

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H. Notwithstanding any provision in the community documents, an association shall not prohibit door-to-door political activity, including solicitations of support or opposition regarding candidates or ballot issues, and shall not prohibit the circulation of CIRCULATING political petitions, including candidate nomination petitions or petitions in support of or opposition to an initiative, referendum or recall or other political issue on property normally open to visitors within the association, except that an association may do the following:

1. Restrict or prohibit the door-to-door political activity from sunset to sunrise.

2. Require the prominent display of an identification tag for each person engaged in the activity, along with the prominent identification of the candidate or ballot issue that is the subject of the support or opposition.

I. A planned community shall not make any regulations regarding the number of candidates supported, the number of public officers supported or opposed in a recall or the number of propositions supported or opposed on a political sign.

J. A planned community shall not require political signs to be commercially produced or professionally manufactured or prohibit the utilization of both sides of a political sign.

K. NOTWITHSTANDING ANY PROVISION IN THE COMMUNITY DOCUMENTS, AN ASSOCIATION MAY NOT PROHIBIT OR UNREASONABLY RESTRICT THE INDOOR OR OUTDOOR DISPLAY OF AN ASSOCIATION-SPECIFIC POLITICAL SIGN BY A MEMBER BY PLACEMENT OF A SIGN ON THAT MEMBER'S PROPERTY. AN ASSOCIATION MAY ADOPT REASONABLE RULES REGARDING THE PLACEMENT, LOCATION AND MANNER OF DISPLAY OF ASSOCIATION-SPECIFIC POLITICAL SIGNS, EXCEPT AN ASSOCIATION SHALL NOT DO ANY OF THE FOLLOWING:

1. PROHIBIT THE DISPLAY OF ASSOCIATION-SPECIFIC POLITICAL SIGNS BETWEEN THE DATE THAT THE ASSOCIATION PROVIDES WRITTEN OR ABSENTEE BALLOTS TO MEMBERS AND THREE DAYS AFTER THE PLANNED COMMUNITY ELECTION.

2. LIMIT THE NUMBER OF ASSOCIATION-SPECIFIC SIGNS, EXCEPT THAT THE ASSOCIATION MAY LIMIT THE AGGREGATE TOTAL DIMENSIONS OF ALL ASSOCIATION-SPECIFIC SIGNS ON A MEMBER'S PROPERTY TO NOT MORE THAN NINE SQUARE FEET.

3. REQUIRE ASSOCIATION-SPECIFIC POLITICAL SIGNS TO BE COMMERCIALY PRODUCED OR PROFESSIONALLY MANUFACTURED OR PROHIBIT USING BOTH SIDES OF THE SIGN.

4. REGULATE THE NUMBER OF CANDIDATES SUPPORTED OR OPPOSED OR THE NUMBER OF BOARD MEMBERS SUPPORTED OR OPPOSED IN A RECALL OR THE NUMBER OF BALLOT MEASURES SUPPORTED OR OPPOSED ON AN ASSOCIATION-SPECIFIC POLITICAL SIGN.

5. MAKE ANY OTHER REGULATIONS REGARDING THE CONTENT OF AN ASSOCIATION-SPECIFIC POLITICAL SIGN EXCEPT THAT THE ASSOCIATION MAY PROHIBIT USING PROFANITY AND DISCRIMINATORY TEXT, IMAGES OR CONTENT BASED ON RACE, COLOR, RELIGION, SEX, FAMILIAL STATUS OR NATIONAL ORIGIN AS PRESCRIBED BY FEDERAL OR STATE FAIR HOUSING LAWS.

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~~K.~~ L. A planned community is not required to comply with subsection H OF THIS SECTION if the planned community restricts vehicular or pedestrian access to the planned community. This section does not require a planned community to make its common elements other than roadways and sidewalks that are normally open to visitors available for the circulation of political petitions to anyone who is not an owner or resident of the community.

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M. NOTWITHSTANDING ANY PROVISION IN THE COMMUNITY DOCUMENTS, AN ASSOCIATION MAY NOT PROHIBIT OR UNREASONABLY RESTRICT A MEMBER'S ABILITY TO PEACEFULLY ASSEMBLE AND USE COMMON AREAS OF THE PLANNED COMMUNITY IF DONE IN COMPLIANCE WITH REASONABLE RESTRICTIONS FOR THE USE OF THAT PROPERTY ADOPTED BY THE BOARD OF DIRECTORS. AN INDIVIDUAL MEMBER OR GROUP OF MEMBERS MAY ASSEMBLE TO DISCUSS MATTERS RELATED TO THE PLANNED COMMUNITY, INCLUDING BOARD ELECTIONS OR RECALLS, POTENTIAL OR ACTUAL BALLOT ISSUES OR REVISIONS TO THE COMMUNITY DOCUMENTS, PROPERTY MAINTENANCE OR SAFETY ISSUES OR ANY OTHER PLANNED COMMUNITY MATTERS. A MEMBER MAY INVITE ONE POLITICAL CANDIDATE OR ONE NON-MEMBER GUEST TO SPEAK TO AN ASSEMBLY OF MEMBERS ABOUT MATTERS RELATED TO THE COMMUNITY. THE ASSOCIATION SHALL NOT PROHIBIT A MEMBER FROM POSTING NOTICES REGARDING THOSE ASSEMBLIES OF MEMBERS ON BULLETIN BOARDS LOCATED ON THE COMMON AREAS OR WITHIN COMMON AREA FACILITIES. AN ASSEMBLY OF MEMBERS PRESCRIBED BY THIS SUBSECTION DOES NOT CONSTITUTE AN OFFICIAL MEMBERS' MEETING UNLESS THE MEETING IS NOTICED AND CONVENED AS PRESCRIBED IN THE COMMUNITY DOCUMENTS AND THIS CHAPTER.

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and 272

~~L.~~ N. An association or managing agent that violates subsection G of this section forfeits and extinguishes the lien rights authorized under section 33-1807 against that member's property for a period of six consecutive months from AFTER the date of the violation.

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M. O. For the purposes of this section [:-] 1. "ASSOCIATION-SPECIFIC POLITICAL SIGN" MEANS A SIGN THAT SUPPORTS OR OPPOSES A CANDIDATE FOR THE BOARD OF DIRECTORS OR THE RECALL OF A BOARD MEMBER OR A PLANNED COMMUNITY BALLOT MEASURE THAT REQUIRES A VOTE OF THE ASSOCIATION MEMBERS.

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2. "FIRST RESPONDER FLAG" MEANS A FLAG THAT RECOGNIZES AND HONORS THE SERVICES OF ANY OF THE FOLLOWING:

(a) LAW ENFORCEMENT AND THAT IS LIMITED TO THE COLORS BLUE, BLACK AND WHITE, THE WORDS "LAW ENFORCEMENT", "POLICE", "OFFICERS", "FIRST RESPONDER", "HONOR OUR", "SUPPORT OUR" AND "DEPARTMENT" AND THE SYMBOL OF A GENERIC POLICE SHIELD IN A CREST OR STAR SHAPE.

(b) FIRE DEPARTMENT AND THAT IS LIMITED TO THE COLORS RED, GOLD, BLACK AND WHITE, THE WORDS "FIRE", "FIGHTERS", "F", "D", "FD", "FIRST RESPONDER", "DEPARTMENT", "HONOR OUR" AND "SUPPORT OUR" AND THE SYMBOL OF A GENERIC MALTESE CROSS.

(c) PARAMEDICS OR EMERGENCY MEDICAL TECHNICIANS AND THAT IS LIMITED TO THE COLORS BLUE, BLACK AND WHITE, THE WORDS "FIRST RESPONDER", "PARAMEDIC", "EMERGENCY MEDICAL", "SERVICE", "TECHNICIAN", "HONOR OUR" AND "SUPPORT OUR" AND THE SYMBOL OF A GENERIC STAR OF LIFE.

3. "Political sign" means a sign that attempts to influence the outcome of an election, including supporting or opposing the recall of a public officer or supporting or opposing the circulation of a petition for a ballot measure, question or proposition or the recall of a public officer.

EXPLANATION OF BLEND  
SECTION 36-422

Laws 2022, Chapters 34 and 128

Laws 2022, Ch. 34, section 4

Effective September 24, 2022

Laws 2022, Ch. 128, section 4

Effective September 24, 2022

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 34 and Ch. 128 text changes to section 36-422 are blended in the form shown on the following pages.

BLEND OF SECTION 36-422  
Laws 2022, Chapters 34 and 128

36-422. Application for license; notification of proposed change in status; joint licenses; definitions

A. A person who wishes to apply for a license to operate a health care institution pursuant to this chapter shall submit to the department all of the following:

1. An application on a written or electronic form that is prescribed, prepared and furnished by the department and that contains all of the following:

(a) The name and location of the health care institution.

(b) Whether the health care institution is to be operated as a proprietary or nonproprietary institution.

(c) The name of the governing authority. The applicant shall be the governing authority having the operative ownership of, or the governmental agency charged with the administration of, the health care institution sought to be licensed. If the applicant is a partnership that is not a limited partnership, the partners shall apply jointly, and the partners are jointly the governing authority for purposes of this article.

(d) The name and business or residential address of each controlling person and an affirmation that none of the controlling persons has been denied a license or certificate by a health profession regulatory board pursuant to title 32 or by a state agency pursuant to chapter 6, article 7 or chapter 17 of this title or a license to operate a health care institution in this state or another state or has had a license or certificate issued by a health profession regulatory board pursuant to title 32 or issued by a state agency pursuant to chapter 6, article 7 or chapter 17 of this title or a license to operate a health care institution revoked. If a controlling person has been denied a license or certificate by a health profession regulatory board pursuant to title 32 or by a state agency pursuant to chapter 6, article 7 or chapter 17 of this title or a license to operate a health care institution in this state or another state or has had a health care professional license or a license to operate a health care institution revoked, the controlling person shall include in the application a comprehensive description of the circumstances for the denial or the revocation.

(e) The class or subclass of health care institution to be established or operated.

(f) The types and extent of the health care services to be provided, including emergency services, community health services and services to indigent patients.

(g) The name and qualifications of the chief administrative officer implementing direction in that specific health care institution.

(h) Other pertinent information required by the department for the proper administration of this chapter and department rules.

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~~2. The architectural plans and specifications or the department's approval of the architectural plans and specifications~~ ATTESTATION required by section 36-421, subsection A.

3. The applicable application fee.

B. An application submitted pursuant to this section shall contain the written or electronic signature of:

1. If the applicant is an individual, the owner of the health care institution.

2. If the applicant is a partnership, limited liability company or corporation, two of the officers of the corporation or managing members of the partnership or limited liability company or the sole member of the limited liability company if it has only one member.

3. If the applicant is a governmental unit, the head of the governmental unit.

C. An application for licensure shall be submitted at least sixty but not more than one hundred twenty days before the anticipated date of operation. An application for a substantial compliance survey submitted pursuant to section 36-425, subsection G shall be submitted at least thirty days before the date on which the substantial compliance survey is requested.

D. If a current licensee intends to terminate the operation of a licensed health care institution or if a change of ownership is planned, the current licensee shall notify the director in writing at least thirty days before the termination of operation or change in ownership is to take place. The current licensee is responsible for preventing any interruption of services required to sustain the life, health and safety of the patients or residents. A new owner shall not begin operating the health care institution until the director issues a license to the new owner.

E. A licensed health care institution for which operations have not been terminated for more than thirty days may be relicensed pursuant to the codes and standards for architectural plans and specifications that were applicable under its most recent license.

F. If a person operates a hospital in a county with a population of more than five hundred thousand persons in a setting that includes satellite facilities of the hospital that are located separately from the main hospital building, the department at the request of the applicant or licensee shall issue a single group license to the hospital and its designated satellite facilities located within one-half mile of the main hospital building if all of the facilities meet or exceed department licensure requirements for the designated facilities. At the request of the applicant or licensee, the department shall also issue a single group license that includes the hospital and ~~not more than ten of its designated satellite facilities~~ that are located farther than one-half mile from the main hospital building if all of these facilities meet or exceed applicable department licensure requirements. Each facility included under a single group license is subject to the department's licensure requirements that are applicable to that category of facility. Subject to compliance with applicable licensure or accreditation requirements, the department shall reissue individual licenses for the facility of a hospital located in separate buildings from

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the main hospital building when requested by the hospital. This subsection does not apply to nursing care institutions and residential care institutions. The department is not limited in conducting inspections of an accredited health care institution to ensure that the institution meets department licensure requirements. If a person operates a hospital in a county with a population of five hundred thousand persons or less in a setting that includes satellite facilities of the hospital that are located separately from the main hospital building, the department at the request of the applicant or licensee shall issue a single group license to the hospital and its designated satellite facilities located within thirty-five miles of the main hospital building if all of the facilities meet or exceed department licensure requirements for the designated facilities. At the request of the applicant or licensee, the department shall also issue a

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single group license that includes the hospital and ~~not more than ten of~~ its designated satellite facilities that are located farther than thirty-five miles from the main hospital building if all of these facilities meet or exceed applicable department licensure requirements.

G. If a county with a population of more than one million persons or a special health care district in a county with a population of more than one million persons operates an accredited hospital that includes the hospital's accredited facilities that are located separately from the main hospital building and the accrediting body's standards as applied to all facilities meet or exceed the department's licensure requirements, the department shall issue a single license to the hospital and its facilities if requested to do so by the hospital. If a hospital complies with applicable licensure or accreditation requirements, the department shall reissue individual licenses for each hospital facility that is located in a separate building from the main hospital building if requested to do so by the hospital. This subsection does not limit the department's duty to inspect a health care institution to determine its compliance with department licensure standards. This subsection does not apply to nursing care institutions and residential care institutions.

H. An applicant or licensee must notify the department within thirty days after any change regarding a controlling person and provide the information and affirmation required pursuant to subsection A, paragraph 1, subdivision (d) of this section.

I. A behavioral health residential facility that provides services to children must notify the department within thirty days after the facility begins contracting exclusively with the federal government, receives only federal monies and does not contract with this state.

J. This section does not limit the application of federal laws and regulations to an applicant or licensee that is certified as a medicare or an Arizona health care cost containment system provider under federal law.

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K. Except for an outpatient treatment center providing THAT PROVIDES dialysis services or abortion procedures OR THAT IS EXEMPT FROM LICENSURE PURSUANT TO SECTION 36-402, SUBSECTION A, PARAGRAPH 12, a person wishing to begin operating an outpatient treatment center before a licensing inspection is completed shall submit all of the following:

1. The license application required pursuant to this section.
2. All applicable application and license fees.

3. A written request for a temporary license that includes:

(a) The anticipated date of operation.

(b) An attestation signed by the applicant that the applicant and the facility comply with and will continue to comply with the applicable licensing statutes and rules.

L. Within seven days after the department's receipt of the items required in subsection K of this section, but not before the anticipated operation date submitted pursuant to subsection C of this section, the department shall issue a temporary license that includes:

1. The name of the facility.

2. The name of the licensee.

3. The facility's class or subclass.

4. The temporary license's effective date.

5. The location of the licensed premises.

M. A facility may begin operating on the effective date of the temporary license.

N. The director may cease the issuance of temporary licenses at any time if the director believes that public health and safety is endangered.

O. AN OUTPATIENT TREATMENT CENTER THAT IS EXEMPT FROM LICENSURE PURSUANT TO SECTION 36-402, SUBSECTION A, PARAGRAPH 12 AND THAT HAS THE SAME GOVERNING AUTHORITY AS A HOSPITAL LICENSED PURSUANT TO THIS CHAPTER IS SUBJECT TO REASONABLE INSPECTION BY THE DEPARTMENT IF THE DIRECTOR HAS REASONABLE CAUSE TO BELIEVE THAT PATIENT HARM IS OR MAY BE OCCURRING AT THAT OUTPATIENT TREATMENT CENTER. A SUBSTANTIATED COMPLAINT THAT HARM IS OCCURRING AT AN EXEMPT OUTPATIENT TREATMENT CENTER IS A VIOLATION OF THIS CHAPTER AGAINST THE HOSPITAL'S LICENSE.

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~~Ø~~ P. For the purposes of this section:

1. "Accredited" means accredited by a nationally recognized accreditation organization.

2. "Satellite facility" means an outpatient facility at which the hospital provides outpatient medical services.

EXPLANATION OF BLEND  
SECTION 36-446.04

Laws 2022, Chapters 15 and 59

Laws 2022, Ch. 15, section 3

Effective September 24, 2022

Laws 2022, Ch. 59, section 97

Effective September 24, 2022

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 15 and Ch. 59 text changes to section 36-446.04 are blended in the form shown on the following pages.

BLEND OF SECTION 36-446.04  
Laws 2022, Chapters 15 and 59

36-446.04. Qualifications; period of validity; exemption

A. The board shall issue a license as a nursing care institution administrator pursuant to its rules to any person who meets the following qualifications:

- Ch. 59 — ~~1. Is of good character.~~  
~~2.~~ 1. Has satisfactorily completed a course of instruction and training approved by the board that:  
(a) Is designed and sufficiently administered to give the applicant knowledge of the proper needs to be served by nursing care institutions.  
(b) Includes a thorough background in the laws and rules governing the operation of nursing care institutions and the protection of the interests of the patients in nursing care institutions.  
(c) Includes thorough training in elements of good health care facilities administration.

- ~~3.~~ 2. Has passed an examination administered by the board designed to test for competency in the subject matter referred to in this subsection.  
~~4.~~ 3. Has met one of the following fingerprinting requirements:  
(a) Has a valid fingerprint clearance card issued pursuant to title 41, chapter 12, article 3.1 AND HAS NOT BEEN CONVICTED OF ANY FELONY INVOLVING VIOLENCE OR FINANCIAL FRAUD.

- Ch. 15 — (b) Has provided proof of the submission of an application for a fingerprint clearance card. An applicant who has been denied a fingerprint clearance card must also provide proof that the applicant qualifies for a good cause exception hearing pursuant to section 41-619.55 AND HAS NOT BEEN CONVICTED OF ANY FELONY INVOLVING VIOLENCE OR FINANCIAL FRAUD.

Ch. 15 — B. A person who is licensed pursuant to this section must maintain a valid fingerprint clearance card during the valid period of the person's license.

C. The board shall issue a certificate as an assisted living facility manager pursuant to its rules to a person who meets the following qualifications:

- Ch. 59 — ~~1. Is of good character.~~  
~~2.~~ 1. Has satisfactorily completed a course of instruction and training approved by the board that:  
(a) Is designed and sufficiently administered to give the applicant knowledge of the proper needs to be served by an assisted living facility.  
(b) Includes a thorough background in the laws governing the operation of assisted living facilities and the protection of the interests of the patients in assisted living facilities.  
(c) Includes thorough training in elements of assisted living facility administration.

~~3-~~ 2. Has passed an examination administered by the board that is designed to test for competency in the subject matter prescribed in this subsection.

~~4-~~ 3. Provides documentation satisfactory to the board that the applicant has completed two thousand eighty hours of paid work experience in a health related field within the preceding five years as prescribed by board rule.

~~5-~~ 4. Has met one of the following fingerprinting requirements:

Ch. 15 — { (a) Has a valid fingerprint clearance card issued pursuant to title 41, chapter 12, article 3.1 AND HAS NOT BEEN CONVICTED OF ANY FELONY INVOLVING VIOLENCE OR FINANCIAL FRAUD.

Ch. 15 — { (b) Has provided proof of the submission of an application for a fingerprint clearance card. An applicant who has been denied a fingerprint clearance card must also provide proof that the applicant qualifies for a good cause exception hearing pursuant to section 41-619.55 AND HAS NOT BEEN CONVICTED OF ANY FELONY INVOLVING VIOLENCE OR FINANCIAL FRAUD.

D. Notwithstanding any other provision of this article, beginning July 1, 2021, all new licenses and certifications issued by the board must be approved by both the board and the department of health services.

E. A person who is certified pursuant to this section must maintain a valid fingerprint clearance card during the valid period of the person's certificate.

Ch. 59 — ~~2-~~ F. In lieu of the requirements contained in subsection A, paragraph 2-1 ~~or subsection C, paragraph 2-1 [OF THIS SECTION]~~, an applicant may present satisfactory evidence to the board of sufficient education and training in the areas listed in ~~that~~ THE RESPECTIVE paragraph. Chs. 15 and 59

Chs. 15 and 59 — G. A license is nontransferable and remains in effect until ~~the following June 30~~ THIRTY DAYS AFTER THE LICENSEE'S BIRTHDAY of an ~~even numbered~~ EVEN-NUMBERED year, at which time the license may be renewed if the licensee otherwise complies with this article and ~~unless~~ the license has NOT been surrendered, suspended or revoked.

Ch. 15 — H. A certificate is nontransferable and remains in effect until ~~the following June 30~~ THIRTY DAYS AFTER THE CERTIFICATE HOLDER'S BIRTHDAY of an ~~odd numbered~~ ODD-NUMBERED year, at which time the certificate may be renewed if the certificate holder otherwise complies with this article and the certificate has not been surrendered, suspended or revoked.

Chs. 15 and 59 — I. This section does not apply to managers of adult foster care homes as defined in section 36-401.

EXPLANATION OF BLEND  
SECTION 36-501

Laws 2022, Chapters 250 and 299

Laws 2022, Ch. 250, section 1

Effective September 24, 2022

Laws 2022, Ch. 299, section 1

Effective September 24, 2022

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 250 and Ch. 299 text changes to section 36-501 are blended in the form shown on the following pages.

BLEND OF SECTION 36-501  
Laws 2022, Chapters 250 and 299

36-501. Definitions

In this chapter, unless the context otherwise requires:

1. "Administration" means the Arizona health care cost containment system administration.

2. "Admitting officer" means a psychiatrist or other physician or psychiatric and mental health nurse practitioner with experience in performing psychiatric examinations who has been designated as an admitting officer of the evaluation agency by the person in charge of the evaluation agency.

3. "AUTHORIZED TRANSPORTER" MEANS A TRANSPORTATION ENTITY THAT IS CONTRACTED WITH A CITY, TOWN OR COUNTY TO PROVIDE SERVICES PURSUANT TO THIS CHAPTER AND THAT IS EITHER:

(a) AN AMBULANCE SERVICE THAT HOLDS A VALID CERTIFICATE OF NECESSITY.

(b) A TRANSPORTATION PROVIDER AUTHORIZED BY THIS STATE TO PROVIDE SAFE BEHAVIORAL HEALTH TRANSPORTATION FOR INDIVIDUALS REQUIRING TRANSPORTATION PURSUANT TO THIS CHAPTER.

~~3.~~ 4. "Chief medical officer" means the chief medical officer under the supervision of the superintendent of the state hospital.

~~4.~~ 5. "Contraindicated" means that access is reasonably likely to endanger the life or physical safety of the patient or another person.

~~5.~~ 6. "Court" means the superior court in the county in this state in which the patient resides or was found before screening or emergency admission under this title.

~~6.~~ 7. "Criminal history" means police reports, lists of prior arrests and convictions, criminal case pleadings and court orders, including a determination that the person has been found incompetent to stand trial pursuant to section 13-4510.

~~7.~~ 8. "Danger to others" means that the judgment of a person who has a mental disorder is so impaired that the person is unable to understand the person's need for treatment and as a result of the person's mental disorder the person's continued behavior can reasonably be expected, on the basis of competent medical opinion, to result in serious physical harm.

~~8.~~ 9. "Danger to self":

(a) Means behavior that, as a result of a mental disorder:

(i) Constitutes a danger of inflicting serious physical harm on oneself, including attempted suicide or the serious threat thereof, if the threat is such that, when considered in the light of its context and in light of the individual's previous acts, it is substantially supportive of an expectation that the threat will be carried out.

(ii) Without hospitalization will result in serious physical harm or serious illness to the person.

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(b) Does not include behavior that establishes only the condition of having a grave disability.

~~9.~~ 10. "Department" means the department of health services.

~~10.~~ 11. "Detention" means the taking into custody of a patient or proposed patient.

~~11.~~ 12. "Director" means the director of the administration.

~~12.~~ 13. "Evaluation" means:

(a) A professional multidisciplinary analysis that may include firsthand observations or remote observations by interactive audiovisual media and that is based on data describing the person's identity, biography and medical, psychological and social conditions carried out by a group of persons consisting of not less than the following:

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and 299

— (i) Two licensed physicians, ~~who shall be~~ ARE qualified psychiatrists, if possible, or at least experienced in psychiatric matters, and who shall examine and report their findings independently. The person against whom a petition has been filed shall be notified that the person may select one of the physicians. A psychiatric resident in a training program approved by the American medical association or by the American osteopathic association may examine the person in place of one of the psychiatrists if the resident is supervised in the examination and preparation of the affidavit and testimony in court by a qualified psychiatrist appointed to assist in the resident's training, and if the supervising psychiatrist is available for discussion with the attorneys for all parties and for court appearance and testimony if requested by the court or any of the attorneys.

Chs. 250  
and 299

— (ii) Two other individuals, one of whom, if available, ~~shall be~~ IS a psychologist and in any event a social worker familiar with mental health and human services that may be available placement alternatives appropriate for treatment. An evaluation may be conducted on an inpatient basis, an outpatient basis or a combination of both, and every reasonable attempt shall be made to conduct the evaluation in any language preferred by the person.

(b) A physical examination that is consistent with the existing standards of care and that is performed by one of the evaluating physicians or by or under the supervision of a physician who is licensed pursuant to title 32, chapter 13 or 17 or a registered nurse practitioner who is licensed pursuant to title 32, chapter 15 if the results of that examination are reviewed or augmented by one of the evaluating physicians.

~~13.~~ 14. "Evaluation agency" means a health care agency that is licensed by the department and that has been approved pursuant to this title, providing those services required of such agency by this chapter.

~~14.~~ 15. "Family member" means a spouse, parent, adult child, adult sibling or other blood relative of a person undergoing treatment or evaluation pursuant to this chapter.

~~15.~~ 16. "Grave disability" means a condition evidenced by behavior in which a person, as a result of a mental disorder, is likely to come to serious physical harm or serious illness because the person is unable to provide for the person's own basic physical needs.

~~16.~~ 17. "Health care decision maker" has the same meaning prescribed in section 12-2801.

Chs. 250  
and 299

~~17.~~ 18. "Health care entity" means a health care provider, the department, the administration or a regional behavioral health authority THAT IS under contract with the administration.

~~18.~~ 19. "Health care provider" means a health care institution as defined in section 36-401 that is licensed as a behavioral health provider pursuant to department rules or a mental health provider.

~~19.~~ 20. "Independent evaluator" means a licensed physician, psychiatric and mental health nurse practitioner or psychologist WHO IS selected by the person to be evaluated or by such person's attorney.

~~20.~~ 21. "Informed consent" means a voluntary decision following presentation of all facts necessary to form the basis of an intelligent consent by the patient or guardian with no minimizing of known dangers of any procedures.

~~21.~~ 22. "Least restrictive treatment alternative" means the treatment plan and setting that infringe in the least possible degree with the patient's right to liberty and that are consistent with providing needed treatment in a safe and humane manner.

~~22.~~ 23. "Licensed physician" means any medical doctor or doctor of osteopathy who is either:

(a) Licensed in this state.

(b) A full-time hospital physician licensed in another state and serving on the staff of a hospital operated or licensed by the United States government.

~~23.~~ 24. "Medical director of an evaluation agency" means a psychiatrist, or other licensed physician experienced in psychiatric matters, who is designated in writing by the governing body of the agency as the person in charge of the medical services of the agency for the purposes of this chapter and may include the chief medical officer of the state hospital.

~~24.~~ 25. "Medical director of a mental health treatment agency" means a psychiatrist, or other licensed physician experienced in psychiatric matters, who is designated in writing by the governing body of the agency as the person in charge of the medical services of the agency for the purposes of this chapter and includes the chief medical officer of the state hospital.

~~25.~~ 26. "Mental disorder" means a substantial disorder of the person's emotional processes, thought, cognition or memory. Mental disorder is distinguished from:

(a) Conditions that are primarily those of drug abuse, alcoholism or intellectual disability, unless, in addition to one or more of these conditions, the person has a mental disorder.

(b) The declining mental abilities that directly accompany impending death.

(c) Character and personality disorders characterized by lifelong and deeply ingrained antisocial behavior patterns, including sexual behaviors that are abnormal and prohibited by statute unless the behavior results from a mental disorder.

~~26.~~ 27. "Mental health provider" means any physician or provider of mental health or behavioral health services WHO IS involved in evaluating, caring for, treating or rehabilitating a patient.

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and 299

~~27.~~ 28. "Mental health treatment agency" means the state hospital or a health care agency that is licensed by the department and that provides those services that are required of the agency by this chapter.

~~28.~~ 29. "Outpatient treatment" or "combined inpatient and outpatient treatment" means any treatment program not requiring continuous inpatient hospitalization.

~~29.~~ 30. "Outpatient treatment plan" means a treatment plan that does not require continuous inpatient hospitalization.

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and 299

~~30.~~ 31. "Patient" means any person WHO IS undergoing examination, evaluation or behavioral or mental health treatment under this chapter.

~~31.~~ 32. "Peace officers" means sheriffs of counties, constables, marshals and policemen of cities and towns.

~~32.~~ 33. "Persistent or acute disability" means a severe mental disorder that meets all the following criteria:

(a) SIGNIFICANTLY IMPAIRS JUDGMENT, REASON, BEHAVIOR OR CAPACITY TO RECOGNIZE REALITY.

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~~(a)~~ (b) If not treated, has a substantial probability of causing the person to suffer or continue to suffer severe and abnormal mental, emotional or physical harm ~~that significantly impairs judgment, reason, behavior or capacity to recognize reality.~~

~~(b)~~ (c) Substantially impairs the person's capacity to make an informed decision regarding treatment, and this impairment causes the person to be incapable of understanding and expressing an understanding of the advantages and disadvantages of accepting treatment and understanding and expressing an understanding of the alternatives to the particular treatment offered after the advantages, disadvantages and alternatives are explained to that person.

~~(c)~~ (d) Has a reasonable prospect of being treatable by outpatient, inpatient or combined inpatient and outpatient treatment.

Chs. 250  
and 299

~~33.~~ 34. "Prepetition screening" means the review of each application requesting court-ordered evaluation, including an investigation of facts alleged in ~~such~~ THE application, an interview with each applicant and an interview, if possible, with the proposed patient. The purpose of the interview with the proposed patient is to assess the problem, explain the application and, when indicated, attempt to persuade the proposed patient to receive, on a voluntary basis, evaluation or other services.

~~34.~~ 35. "Prescribed form" means a form established by a court or the rules of the administration in accordance with the laws of this state.

~~35.~~ 36. "Professional" means a physician who is licensed pursuant to title 32, chapter 13 or 17, a psychologist who is licensed pursuant to title 32, chapter 19.1 or a psychiatric and mental health nurse practitioner who is certified pursuant to title 32, chapter 15.

~~36.~~ 37. "Proposed patient" means a person for whom an application for evaluation has been made or a petition for court-ordered evaluation has been filed.

~~37.~~ 38. "Prosecuting agency" means the county attorney, attorney general or city attorney who applied or petitioned for an evaluation or treatment pursuant to this chapter.

~~38.~~ 39. "Psychiatric and mental health nurse practitioner" means a registered nurse practitioner as defined in section 32-1601 who has completed an adult or family psychiatric and mental health nurse practitioner program and who is certified as an adult or family psychiatric and mental health nurse practitioner by the state board of nursing.

~~39.~~ 40. "Psychiatrist" means a licensed physician who has completed three years of graduate training in psychiatry in a program approved by the American medical association or the American osteopathic association.

~~40.~~ 41. "Psychologist" means a person who is licensed under title 32, chapter 19.1 and who is experienced in the practice of clinical psychology.

~~41.~~ 42. "Records" means all communications that are recorded in any form or medium and that relate to patient examination, evaluation or behavioral or mental health treatment. Records include medical records that are prepared by a health care provider or other providers. Records do not include:

(a) Materials that are prepared in connection with utilization review, peer review or quality assurance activities, including records that a health care provider prepares pursuant to section 36-441, 36-445, 36-2402 or 36-2917.

(b) Recorded telephone and radio calls to and from a publicly operated emergency dispatch office relating to requests for emergency services or reports of suspected criminal activity.

~~42.~~ 43. "Regional behavioral health authority" has the same meaning prescribed in section 36-3401.

~~43.~~ 44. "Screening agency" means a health care agency that is licensed by the department and that provides those services required of such agency by this chapter.

~~44.~~ 45. "Social worker" means a person who has completed two years of graduate training in social work in a program approved by the council of social work education and who has experience in mental health.

~~45.~~ 46. "State hospital" means the Arizona state hospital.

~~46.~~ 47. "Superintendent" means the superintendent of the state hospital.

EXPLANATION OF BLEND  
SECTION 36-524

Laws 2022, Chapters 250 and 299

Laws 2022, Ch. 250, section 5

Effective September 24, 2022

Laws 2022, Ch. 299, section 3

Effective September 24, 2022

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 250 and Ch. 299 text changes to section 36-524 are blended in the form shown on the following pages.

The Laws 2022, Ch. 250 version of section 36-524 struck "upon" and inserted "ON" in subsection C, paragraph 3. The chapter 299 version struck "upon". Since this would not produce a substantive change, the blend version reflects the Ch. 299 version.

BLEND OF SECTION 36-524  
Laws 2022, Chapters 250 and 299

36-524. Application for emergency admission for evaluation:  
requirements; immunity

A. A written application for emergency admission shall be made to an evaluation agency before a person may be hospitalized in the agency.

B. The application for emergency admission shall be made by a person with knowledge of the facts requiring emergency admission. The applicant may be a relative or friend of the person, a peace officer, the admitting officer or another responsible person.

Chs. 250  
and 299

C. The application shall be ~~upon~~ MADE ON a prescribed form and shall include the following:

1. A statement by the applicant that ~~he~~ THE APPLICANT believes

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~~— on the basis of personal observation that the person~~

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and 299

~~— is, as a result of a mental disorder, IS a danger to self or others~~

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[OR HAS A PERSISTENT OR ACUTE DISABILITY OR A GRAVE DISABILITY, AND IS UNABLE OR UNWILLING TO UNDERGO VOLUNTARY EVALUATION and that during the time necessary to complete the prepetition screening procedures set forth in sections 36-520 and 36-521 the person is likely without immediate hospitalization to suffer serious physical harm or serious illness or is likely to inflict serious physical harm ~~upon~~ ON another person.

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2. The specific nature of the ~~danger~~ HARM OR ILLNESS THE PERSON IS LIKELY TO SUFFER OR INFLICT WITHOUT IMMEDIATE HOSPITALIZATION.

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3. A summary of the FACTS THAT SUPPORT THE STATEMENTS MADE BY THE APPLICANT, INCLUDING THE observations [upon] which the statement of danger is based OF PERSONS WHO WITNESSED THE EVENTS DESCRIBED IN THE STATEMENTS OR THE BEHAVIORS OF THE PERSON WHO IS THE SUBJECT OF THE APPLICATION.

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and 299

4. The signature of the applicant.

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and 299

D. A telephonic application may be made ~~no~~ NOT more than twenty-four hours ~~prior to~~ BEFORE a written application. A telephonic application shall be made by or in the presence of a peace officer unless the application is made by a health care ~~provider~~ PROFESSIONAL who is licensed pursuant to title 32, chapter 13, 15, 17 or 19.1 and who is directly involved with the care of a patient who is in a health care ~~facility~~ INSTITUTION licensed in this state. For an application made by a ~~doctor or a nurse, the original~~ signature of the applicant on a facsimile PEACE OFFICER OR A HEALTH CARE

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PROFESSIONAL WHO IS LICENSED PURSUANT TO TITLE 32, CHAPTER 13, 15, 17 OR 19.1, A copy of the application THAT CONTAINS THE APPLICANT'S ORIGINAL SIGNATURE is acceptable, does not have to be notarized and may be submitted as the written application.

Chs. 250 and 299 — E. If the person to be admitted is not already present at the evaluation agency and if the admitting officer, based ~~upon~~ ON A review of the written or telephonic application and conversation with the applicant and peace officer, has reasonable cause to believe that an emergency examination is necessary, the admitting officer may advise the peace officer, — that sufficient grounds exist to take the person into custody and to transport the person to the evaluation agency. THE PEACE OFFICER, ON THE REQUEST OF THE ADMITTING OFFICER OF THE EVALUATION AGENCY PURSUANT TO THIS SUBSECTION, SHALL APPREHEND AND TRANSPORT THE PERSON TO THE EVALUATION AGENCY. The admitting officer shall not be held civilly liable for any acts committed by a person whom the admitting officer did not advise TO be taken into custody if the admitting officer has in good faith followed the requirements of this section.

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EXPLANATION OF BLEND  
SECTION 36-533

Laws 2022, Chapters 250 and 299

Laws 2022, Ch. 250, section 8

Effective September 24, 2022

Laws 2022, Ch. 299, section 5

Effective September 24, 2022

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 250 and Ch. 299 text changes to section 36-533 are blended in the form shown on the following pages.

BLEND OF SECTION 36-533  
Laws 2022, Chapters 250 and 299

36-533. Petition for treatment

A. The petition for court-ordered treatment shall allege:

1. That the patient is in need of a period of treatment because the patient, as a result of mental disorder, is a danger to self or to others or has a persistent or acute disability or a grave disability.

2. The treatment alternatives that are appropriate or available.

3. That the patient is unwilling to accept or incapable of accepting treatment voluntarily.

B. The petition shall be accompanied by the affidavits of the two physicians who participated in the evaluation and by the affidavit of the applicant for the evaluation, if any. The affidavits of the physicians shall describe in detail the behavior that indicates that the person, as a result of mental disorder, is a danger to self or to others or has a persistent or acute disability or a grave disability and shall be based on the physician's observations of the patient and the physician's study of information about the patient. A summary of the facts that support the allegations of the petition shall be included. The affidavit shall also include any of the results of the physical examination of the patient if relevant to the patient's psychiatric condition.

C. The petition shall request the court to issue an order requiring the person to undergo a period of treatment. If a prosecutor filed a petition pursuant to section 13-4517, the petition must be accompanied by any known criminal history of the person and any previous findings of incompetency.

~~D. In cases of grave disability,~~ The petition shall also include:

1. A statement that in the opinion of the petitioner the person ~~with a grave disability~~ does or does not require guardianship or conservatorship, or both, under title 14 and the reasons on which the statement is based.

2. A request that the court order an independent investigation and report for the court if in the opinion of the petitioner the person does require guardianship or conservatorship, or both.

3. A statement that in the opinion of the petitioner the person ~~with a grave disability~~ does or does not require temporary guardianship or conservatorship, or both, and the reasons on which the statement is based.

4. A request that the court appoint a temporary guardian or conservator, or both, if in the opinion of the petitioner the person does require temporary guardianship or conservatorship, or both.

5. IF THE PERSON HAS AN EXISTING GUARDIAN, A STATEMENT IDENTIFYING THE EXISTING GUARDIAN AND A REQUEST THAT THE COURT CONSIDER IMPOSING ADDITIONAL DUTIES ON THE EXISTING GUARDIAN PURSUANT TO SECTION 14-5312.01.

E. IF THE PETITION CONTAINS A REQUEST FOR COURT ACTION PURSUANT TO SUBSECTION D OF THIS SECTION, a copy of the petition ~~in cases of grave~~

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~~disability shall be mailed to the public fiduciary in the county of the patient's residence or in which the patient was found before evaluation and to any person OR AGENCY THAT IS nominated as guardian or conservator OR THE PERSON WHO IS IDENTIFIED AS AN EXISTING GUARDIAN.~~

F. A copy of all petitions shall be mailed to the superintendent of the Arizona state hospital.

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G. ON THE FILING OF A PETITION FOR COURT-ORDERED TREATMENT, IF THE PATIENT IS NOT DETAINED IN AN EVALUATION AGENCY WHEN THE PETITION IS FILED, THE PETITION SHALL CONTAIN A STATEMENT OF ANY FACTS AND CIRCUMSTANCES THAT LEAD THE PETITIONER TO BELIEVE THAT THE PROPOSED PATIENT MAY BE SAFELY TRANSPORTED TO THE EVALUATION AGENCY PURSUANT TO SECTION 36-535 BY AN AUTHORIZED TRANSPORTER, IF AVAILABLE IN THE JURISDICTION, WITHOUT THE ASSISTANCE OF A PEACE OFFICER.

EXPLANATION OF BLEND  
SECTION 36-1606

Laws 2022, Chapters 18 and 372

Laws 2022, Ch. 18, section 1

Effective September 24, 2022

Laws 2022, Ch. 372, section 1

Effective September 24, 2022

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 18 and Ch. 372 text changes to section 36-1606 are blended in the form shown on the following pages.

BLEND OF SECTION 36-1606  
Laws 2022, Chapters 18 and 372

36-1606. Consumer fireworks regulation; state preemption; further regulation of fireworks by local jurisdiction

A. The sale and use of permissible consumer fireworks are of statewide concern. The regulation of permissible consumer fireworks pursuant to this article and their sale or use is not subject to further regulation by a governing body, except as follows:

1. In a county with a population of more than five hundred thousand persons, a city or town within its corporate limits or the county within the unincorporated areas of the county may do all of the following:

(a) Regulate, consistent with the standards set forth in NFPA 1124, the sale of permissible consumer fireworks within its corporate limits.

(b) Prohibit the sale of permissible consumer fireworks on days other than April 25 through May 6, May 20 through July 6 and December 10 through January 3 of each year AND TWO DAYS BEFORE THE FIRST DAY OF DIWALI THROUGH THE THIRD DAY OF DIWALI EACH YEAR.

(c) Prohibit the use of permissible consumer fireworks on days other than May 4 through May 6, June 24 through July 6 and December 24 through January 3 of each year AND THE SECOND AND THIRD DAYS OF DIWALI OF EACH YEAR.

(d) Prohibit on all days the use of permissible consumer fireworks within a one-mile radius of the border of preservation lands owned by a city or town that has purchased more than fifteen thousand acres of land for preservation purposes.

(e) Prohibit on all days during a stage one or higher fire restriction the use of permissible consumer fireworks within a one-mile radius of the border of any municipal or county mountain preserve, desert park, regional park, designated conservation area, national forest or wilderness area.

(f) PROHIBIT ON ALL DAYS THE USE OF PERMISSIBLE CONSUMER FIREWORKS BETWEEN THE HOURS OF 11:00 P.M. AND 8:00 A.M., EXCEPT:

(i) BETWEEN THE HOURS OF 11:00 P.M. ON DECEMBER 31 OF EACH YEAR THROUGH 1:00 A.M. ON JANUARY 1 OF EACH YEAR.

(ii) BETWEEN THE HOURS OF 11:00 P.M. ON JULY 4 OF EACH YEAR THROUGH 1:00 A.M. ON JULY 5 OF EACH YEAR.

2. In a county with a population of less than five hundred thousand persons, a city or town within its corporate limits or the county within the unincorporated areas of the county may do all of the following:

(a) Regulate, consistent with the standards set forth in NFPA 1124, the sale of permissible consumer fireworks.

(b) Prohibit the sale of permissible consumer fireworks on days other than May 20 through July 6 and December 10 through January 3 of each year. The sale of permissible consumer fireworks may be prohibited on days between May 20 through July 6 and December 10 through January 3 of each year

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if a federal or state agency implements a stage one or higher fire restriction. Any prohibition during those dates is limited to only the dates when the stage one or higher fire restriction is in place.

(c) Prohibit the use of permissible consumer fireworks on days other than June 24 through July 6 and December 24 through January 3 of each year. The use of permissible consumer fireworks may be prohibited during June 24 through July 6 and December 24 through January 3 of each year if a federal or state agency implements a stage one or higher fire restriction. Any prohibition during those dates is limited to only the dates when the stage one or higher fire restriction is in place.

(d) Prohibit on all days the use of permissible consumer fireworks within a one-mile radius of the border of preservation lands owned by a city or town that has purchased more than fifteen thousand acres of land for preservation purposes.

(e) Prohibit on all days the use of permissible consumer fireworks within a one-mile radius of the border of any municipal or county mountain preserve, desert park, regional park, designated conservation area, national forest or wilderness area.

(f) PROHIBIT ON ALL DAYS THE USE OF PERMISSIBLE CONSUMER FIREWORKS BETWEEN THE HOURS OF 11:00 P.M. AND 8:00 A.M., EXCEPT:

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(i) BETWEEN THE HOURS OF 11:00 P.M. ON DECEMBER 31 OF EACH YEAR THROUGH 1:00 A.M. ON JANUARY 1 OF EACH YEAR.

(ii) BETWEEN THE HOURS OF 11:00 P.M. ON JULY 4 OF EACH YEAR THROUGH 1:00 A.M. ON JULY 5 OF EACH YEAR.

B. A governing body that chooses to regulate, consistent with the requirements set forth in NFPA 1124 and subsection A of this section, the sale or use of permissible consumer fireworks may not require any additional signage requirements for the sale or use of permissible consumer fireworks other than those signage requirements stipulated in NFPA 1124, except that additional signage that is eight and one-half inches by eleven inches in size, that is on cardstock paper in landscape orientation, THAT LISTS THE DAYS OF THAT YEAR THAT ARE DESCRIBED IN SUBSECTION A, PARAGRAPHS 1 AND 2 OF THIS SECTION RELATING TO THE TIME FRAME SURROUNDING DIWALI and that contains the following language on a contrasting background may be posted by the retail sales display of permissible consumer fireworks:

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State of Arizona

Consumer Fireworks Regulations

Arizona Revised Statutes section 36-1601, et al.

The use of permissible consumer fireworks

as defined under state law is allowed:

May 4 - May 6, June 24 - July 6 and December 24 - January 3

The sale of permissible consumer fireworks

as defined under state law is allowed:

April 25 - May 6, May 20 - July 6 and December 10 - January 3

All other fireworks are prohibited, except

as authorized by local fire department permit.

The sale and use of novelties known as snappers (pop-its),

party poppers, glow worms, snakes, toy smoke devices and

sparklers are permitted at all times.

Permissible consumer fireworks may not be sold to persons under sixteen years of age. Check with your local fire department for additional regulations and dates before using.

C. This article does not prohibit the imposition by ordinance of further regulations and prohibitions by a governing body on the sale, use and possession of fireworks other than permissible consumer fireworks. A governing body may not allow or authorize the sale, use or possession of any fireworks in violation of this article.

EXPLANATION OF BLEND  
SECTION 36-2907

Laws 2022, Chapters 314 and 328

Laws 2022, Ch. 314, section 3

Effective September 24, 2022

Laws 2022, Ch. 328, section 1

Effective September 24, 2022

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 314 and Ch. 328 text changes to section 36-2907 are blended in the form shown on the following pages.

BLEND OF SECTION 36-2907  
Laws 2022, Chapters 314 and 328

36-2907. Covered health and medical services; modifications;  
related delivery of service requirements; rules;  
definition

Chs. 314  
and 328

A. Subject to the ~~limitations~~ LIMITS and exclusions specified in this section, contractors shall provide the following medically necessary health and medical services:

1. Inpatient hospital services that are ordinarily furnished by a hospital for the TO care and ~~treatment~~ of TREAT inpatients and that are provided under the direction of a physician or a primary care practitioner. For the purposes of this section, inpatient hospital services exclude services in an institution for tuberculosis or mental diseases unless authorized under an approved section 1115 waiver.

2. Outpatient health services that are ordinarily provided in hospitals, clinics, offices and other health care facilities by licensed health care providers. Outpatient health services include services provided by or under the direction of a physician or a primary care practitioner, including occupational therapy.

3. Other laboratory and X-ray services ordered by a physician or a primary care practitioner.

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4. Medications that are ordered on prescription by a physician or a dentist WHO IS licensed pursuant to title 32, chapter 11. Persons who are dually eligible for title XVIII and title XIX services must obtain available medications through a medicare licensed or certified medicare advantage prescription drug plan, a medicare prescription drug plan or any other entity authorized by medicare to provide a medicare part D prescription drug benefit.

5. Medical supplies, durable medical equipment, insulin pumps and prosthetic devices ordered by a physician or a primary care practitioner. Suppliers of durable medical equipment shall provide the administration with complete information about the identity of each person who has an ownership or controlling interest in their business and shall comply with federal bonding requirements in a manner prescribed by the administration.

6. For persons who are at least twenty-one years of age, treatment of medical conditions of the eye, excluding eye examinations for prescriptive lenses and the provision of prescriptive lenses.

7. Early and periodic health screening and diagnostic services as required by section 1905(r) of title XIX of the social security act for members who are under twenty-one years of age.

8. Family planning services that do not include abortion or abortion counseling. If a contractor elects not to provide family planning services, this election does not disqualify the contractor from delivering all other covered health and medical services under this chapter. In that event, the

administration may contract directly with another contractor, including an outpatient surgical center or a noncontracting provider, to deliver family planning services to a member who is enrolled with the contractor that elects not to provide family planning services.

9. Podiatry services that are performed by a podiatrist who is licensed pursuant to title 32, chapter 7 and ordered by a primary care physician or primary care practitioner.

10. Nonexperimental transplants approved for title XIX reimbursement.

11. Dental services as follows:

(a) Except as provided in subdivision (b) of this paragraph, for persons who are at least twenty-one years of age, emergency dental care and extractions in an annual amount of not more than \$1,000 per member.

(b) Subject to approval by the centers for medicare and medicaid services, for persons treated at an Indian health service or tribal facility, adult dental services that are eligible for a federal medical assistance percentage of one hundred percent and that ~~are in excess of~~ EXCEED the limit prescribed in subdivision (a) of this paragraph.

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and 328

12. Ambulance and nonambulance transportation, except as provided in subsection G of this section.

13. Hospice care.

14. Orthotics, if all of the following apply:

(a) The use of the orthotic is medically necessary as the preferred treatment option consistent with medicare guidelines.

(b) The orthotic is less expensive than all other treatment options or surgical procedures to treat the same diagnosed condition.

(c) The orthotic is ordered by a physician or primary care practitioner.

15. SUBJECT TO APPROVAL BY THE CENTERS FOR MEDICARE AND MEDICAID SERVICES, MEDICALLY NECESSARY CHIROPRACTIC SERVICES THAT ARE PERFORMED BY A CHIROPRACTOR WHO IS LICENSED PURSUANT TO TITLE 32, CHAPTER 8 AND THAT ARE ORDERED BY A PRIMARY CARE PHYSICIAN OR PRIMARY CARE PRACTITIONER PURSUANT TO RULES ADOPTED BY THE ADMINISTRATION. THE PRIMARY CARE PHYSICIAN OR PRIMARY CARE PRACTITIONER MAY INITIALLY ORDER UP TO TWENTY VISITS ANNUALLY THAT INCLUDE TREATMENT AND MAY REQUEST AUTHORIZATION FOR ADDITIONAL CHIROPRACTIC SERVICES IN THAT SAME YEAR IF ADDITIONAL CHIROPRACTIC SERVICES ARE MEDICALLY NECESSARY.

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16. FOR UP TO TEN PROGRAM HOURS ANNUALLY, DIABETES OUTPATIENT SELF-MANAGEMENT TRAINING SERVICES, AS DEFINED IN 42 UNITED STATES CODE SECTION 1395x, IF PRESCRIBED BY A PRIMARY CARE PRACTITIONER IN EITHER OF THE FOLLOWING CIRCUMSTANCES:

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(a) THE MEMBER IS INITIALLY DIAGNOSED WITH DIABETES.

(b) FOR A MEMBER WHO HAS PREVIOUSLY BEEN DIAGNOSED WITH DIABETES, EITHER:

(i) A CHANGE OCCURS IN THE MEMBER'S DIAGNOSIS, MEDICAL CONDITION OR TREATMENT REGIMEN.

(ii) THE MEMBER IS NOT MEETING APPROPRIATE CLINICAL OUTCOMES.

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and 328

B. The ~~limitations~~ LIMITS and exclusions for health and medical services provided under this section are as follows:

1. Circumcision of newborn males is not a covered health and medical service.

2. For eligible persons who are at least twenty-one years of age:

(a) Outpatient health services do not include speech therapy.

(b) Prosthetic devices do not include hearing aids, dentures, bone-anchored hearing aids or cochlear implants. Prosthetic devices, except prosthetic implants, may be limited to \$12,500 per contract year.

(c) Percussive vests are not covered health and medical services.

(d) Durable medical equipment is limited to items covered by medicare.

(e) Nonexperimental transplants do not include pancreas-only transplants.

(f) Bariatric surgery procedures, including laparoscopic and open gastric bypass and restrictive procedures, are not covered health and medical services.

C. The system shall pay noncontracting providers only for health and medical services as prescribed in subsection A of this section and as prescribed by rule.

D. The director shall adopt rules necessary to limit, to the extent possible, the scope, duration and amount of services, including maximum ~~limitations~~ LIMITS for inpatient services that are consistent with federal regulations under title XIX of the social security act (P.L. 89-97; 79 Stat. 344; 42 United States Code section 1396 (1980)). To the extent possible and practicable, these rules shall provide for the prior approval of medically necessary services provided pursuant to this chapter.

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and 328

E. The director shall make available home health services in lieu of hospitalization pursuant to contracts awarded under this article. For the purposes of this subsection, "home health services" means the provision of nursing services, home health aide services or medical supplies, equipment and appliances that are provided on a part-time or intermittent basis by a licensed home health agency within a member's residence based on the orders of a physician or a primary care practitioner. Home health agencies shall comply with the federal bonding requirements in a manner prescribed by the administration.

F. The director shall adopt rules for the coverage of behavioral health services for persons who are eligible under section 36-2901, paragraph 6, subdivision (a). The administration acting through the regional behavioral health authorities shall establish a diagnostic and evaluation program to which other state agencies shall refer children who are not already enrolled pursuant to this chapter and who may be in need of behavioral health services. In addition to an evaluation, the administration acting through regional behavioral health authorities shall also identify children who may be eligible under section 36-2901, paragraph 6, subdivision (a) or section 36-2931, paragraph 5 and shall refer the children to the appropriate agency responsible for making the final eligibility determination.

G. The director shall adopt rules providing for transportation services and rules providing for copayment by members for transportation for other than emergency purposes. Subject to approval by the centers for medicare and medicaid services, nonemergency medical transportation shall

not be provided except for stretcher vans and ambulance transportation. Prior authorization is required for transportation by stretcher van and for medically necessary ambulance transportation initiated pursuant to a physician's direction. Prior authorization is not required for medically necessary ambulance transportation services rendered to members or eligible persons initiated by dialing telephone number 911 or other designated emergency response systems.

H. The director may adopt rules to allow the administration, at the director's discretion, to use a second opinion procedure under which surgery may not be eligible for coverage pursuant to this chapter without documentation as to need by at least two physicians or primary care practitioners.

I. If the director does not receive bids within the amounts budgeted or if at any time the amount remaining in the Arizona health care cost containment system fund is insufficient to pay for full contract services for the remainder of the contract term, the administration, on notification to system contractors at least thirty days in advance, may modify the list of services required under subsection A of this section for persons defined as eligible other than those persons defined pursuant to section 36-2901, paragraph 6, subdivision (a). The director may also suspend services or may limit categories of expense for services defined as optional pursuant to title XIX of the social security act (P.L. 89-97; 79 Stat. 344; 42 United States Code section 1396 (1980)) for persons defined pursuant to section 36-2901, paragraph 6, subdivision (a). Such reductions or suspensions do not apply to the continuity of care for persons already receiving these services.

J. All health and medical services provided under this article shall be provided in the geographic service area of the member, except:

1. Emergency services and specialty services provided pursuant to section 36-2908.

2. That the director may allow the delivery of health and medical services in other than the geographic service area in this state or in an adjoining state if the director determines that medical practice patterns justify the delivery of services or a net reduction in transportation costs can reasonably be expected. Notwithstanding the definition of physician as prescribed in section 36-2901, if services are procured from a physician or primary care practitioner in an adjoining state, the physician or primary care practitioner shall be licensed to practice in that state pursuant to licensing statutes in that state that are similar to title 32, chapter 13, 15, 17 or 25 and shall complete a provider agreement for this state.

K. Covered outpatient services shall be subcontracted by a primary care physician or primary care practitioner to other licensed health care providers to the extent practicable for purposes including, but not limited to, making health care services available to underserved areas, reducing costs of providing medical care and reducing transportation costs.

L. The director shall adopt rules that prescribe the coordination of medical care for persons who are eligible for system services. The rules shall include provisions for transferring patients and medical records and initiating medical care.

Ch. 314 { M. NOTWITHSTANDING SECTION 36-2901.08, MONIES FROM THE HOSPITAL ASSESSMENT FUND ESTABLISHED BY SECTION 36-2901.09 MAY NOT BE USED TO PROVIDE CHIROPRACTIC SERVICES AS PRESCRIBED IN SUBSECTION A, PARAGRAPH 15 OF THIS SECTION.

Ch. 328 { N. NOTWITHSTANDING SECTION 36-2901.08, MONIES FROM THE HOSPITAL ASSESSMENT FUND ESTABLISHED BY SECTION 36-2901.09 MAY NOT BE USED TO PROVIDE DIABETES OUTPATIENT SELF-MANAGEMENT TRAINING SERVICES AS PRESCRIBED IN SUBSECTION A, PARAGRAPH 16 OF THIS SECTION.

~~M.~~ O. For the purposes of this section, "ambulance" has the same meaning prescribed in section 36-2201.

EXPLANATION OF BLEND  
SECTION 38-737

Laws 2022, Chapters 145 and 324

Laws 2022, Ch. 145, section 4

Effective September 24, 2022

Laws 2022, Ch. 324, section 1

Effective June 28, 2022

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 145 and Ch. 324 text changes to section 38-737 are blended in the form shown on the following pages.

BLEND OF SECTION 38-737  
Laws 2022, Chapters 145 and 324

38-737. Employer contributions; prepayment; definitions

Ch. 145 { A. Employer contributions shall be a percentage of compensation of all employees of the employers WHO MEET THE ELIGIBILITY REQUIREMENTS CONTAINED IN THIS ARTICLE, excluding the compensation of those employees who are members of the defined contribution program administered by ASRS, as determined by the ASRS actuary pursuant to this section for June 30 of the fiscal year immediately preceding the preceding fiscal year, except that beginning with fiscal year 2001-2002 the contribution rate shall not be less than two percent of compensation of all employees of the employers. Beginning July 1, 2011 through June 29, 2016, the total employer contribution shall be determined on the projected unit credit method. Beginning June 30, 2016, the board shall determine the actuarial cost method pursuant to section 38-714. The total employer contributions shall be equal to the employer normal cost plus the amount required to amortize the past service funding requirement over a period that is determined by the board and

Ch. 145 { ~~consistent with generally accepted actuarial standards. In determining the past service funding period, the board shall seek to improve the funded status whenever the ASRS trust fund is less than one hundred percent funded.~~

B. All contributions made by the employer and allocated to the fund established by section 38-712 are irrevocable and shall be used as benefits under this article or to pay expenses of ASRS.

C. The required employer contributions shall be determined on an annual basis by an actuary who is selected by the board and who is a fellow of the society of actuaries. ASRS shall provide by December 1 of each fiscal year to the governor, the speaker of the house of representatives and the president of the senate the contribution rate for the ensuing fiscal year and the unfunded actuarial accrued liability, the funded status based on the actuarial value of assets and market value of assets and the annualized rate of return and the ten-year rate of return as of June 30 of the prior fiscal year.

D. NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, AN EMPLOYER MAY PREPAY THE EMPLOYER'S 401(a) PENSION CONTRIBUTIONS DIRECTLY TO ASRS ACCORDING TO A WRITTEN AGREEMENT BETWEEN THE EMPLOYER AND ASRS AS FOLLOWS:

Ch. 324 { 1. 401(a) PENSION CONTRIBUTIONS THAT THE EMPLOYER PREPAYS ACCORDING TO THIS SUBSECTION MAY BE DEPOSITED, AS DETERMINED BY THE EMPLOYER AND MANAGED BY ASRS, DIRECTLY IN EITHER THE ASRS TRUST FUND ESTABLISHED BY SECTION 38-712 OR A SECTION 115 TRUST.

2. ASRS SHALL DETERMINE THE FOLLOWING OPTIONS AVAILABLE TO THE EMPLOYER:

- (a) THE AMORTIZATION TIME PERIODS.
- (b) THE FREQUENCY AND DATES THAT PREPAYMENTS CAN BE MADE.

(c) THE MAXIMUM AND MINIMUM AMOUNTS OF 401(a) PENSION CONTRIBUTIONS THAT THE EMPLOYER CAN PREPAY.

(d) ANY OTHER OPTIONS OR OBLIGATIONS THAT THE EMPLOYER MAY HAVE WHEN ENTERING INTO THIS WRITTEN AGREEMENT.

3. THE EARNINGS ACCRUAL RATE SHALL BE THE ASRS TOTAL 401(a) PENSION FUND RATE OF RETURN.

4. THE 401(a) PENSION CONTRIBUTIONS THE EMPLOYER PREPAYS AND THE ACCRUED EARNINGS SHALL BE MANAGED AT THE DISCRETION OF ASRS SUBJECT TO SECTION 38-718.

5. 401(a) PENSION CONTRIBUTIONS THAT THE EMPLOYER PREPAYS AND ACCRUED EARNINGS MAY BE USED SOLELY TO REDUCE THE EMPLOYER'S FUTURE 401(a) PENSION CONTRIBUTIONS AS REQUIRED FROM THE EMPLOYER PURSUANT TO THIS SECTION AND SECTION 38-735.

6. THE EMPLOYER SHALL DETERMINE WHEN TO USE THE 401(a) PENSION CONTRIBUTIONS THE EMPLOYER PREPAYS AND THE ACCRUED EARNINGS FROM THOSE 401(a) PENSION CONTRIBUTIONS.

7. ASRS SHALL PROVIDE THE EMPLOYER AN ANNUAL STATEMENT OF 401(a) PENSION CONTRIBUTIONS THE EMPLOYER PREPAID AND THE ACCRUED EARNINGS.

8. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUBSECTION, AN EMPLOYER MAY NOT PREPAY 401(a) PENSION CONTRIBUTIONS ACCORDING TO THIS SUBSECTION EITHER:

(a) IN AN AMOUNT GREATER THAN THE EMPLOYER'S NET PENSION LIABILITY AS REFLECTED BY ASRS IN ITS MOST RECENT APPLICABLE GOVERNMENTAL ACCOUNTING STANDARDS REPORT.

(b) AFTER THE TOTAL OF THE UNAMORTIZED PREPAID 401(a) PENSION CONTRIBUTIONS AND THE ACCRUED EARNINGS IS EQUAL TO OR GREATER THAN THE EMPLOYER'S NET PENSION LIABILITY AS REFLECTED BY ASRS IN ITS MOST RECENT APPLICABLE GOVERNMENTAL ACCOUNTING STANDARDS REPORT.

9. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUBSECTION, THE EMPLOYER SHALL ELECT AN AMORTIZATION SCHEDULE BY WRITTEN AGREEMENT WITH ASRS, AND THE AMORTIZATION PERIOD SHALL BEGIN IN THE FISCAL YEAR FOLLOWING THE OCCURRENCE OF THE EARLIER OF:

(a) THE EMPLOYER'S NET PENSION LIABILITY IS ZERO OR LESS AS REFLECTED BY ASRS IN ITS MOST RECENT APPLICABLE GOVERNMENTAL ACCOUNTING STANDARDS REPORT.

(b) THE TOTAL OF THE UNAMORTIZED PREPAID 401(a) PENSION CONTRIBUTIONS AND THE ACCRUED EARNINGS IS EQUAL TO OR GREATER THAN THE EMPLOYER'S NET PENSION LIABILITY AS REFLECTED BY ASRS IN ITS MOST RECENT APPLICABLE GOVERNMENTAL ACCOUNTING STANDARDS REPORT.

10. AFTER AN EMPLOYER ELECTS AMORTIZATION TERMS, ASRS SHALL PROVIDE THE EMPLOYER AN AMORTIZATION SCHEDULE ANNUALLY THAT IS CURRENT AND BASED ON THE EMPLOYER'S ELECTION.

11. IF ASRS DETERMINES TO NO LONGER OFFER THE OPTION OF PREPAYING THE EMPLOYER'S 401(a) PENSION CONTRIBUTIONS DIRECTLY TO ASRS, ANY 401(a) PENSION CONTRIBUTIONS THE EMPLOYER PREPAYS AND THE ACCRUED EARNINGS REMAINING ON ACCOUNT SHALL BE USED FOR FUTURE OBLIGATIONS ACCORDING TO THE WRITTEN AGREEMENT BETWEEN THE EMPLOYER AND ASRS.

12. ASSETS TRANSFERRED IN OR OUT OF OR HELD IN THE ASRS TRUST FUND ESTABLISHED BY SECTION 38-712, OR A SECTION 115 TRUST, AND THE ACCRUED EARNINGS ARE EXEMPT FROM STATE, COUNTY AND MUNICIPAL TAXES.

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13. THE LEGISLATURE INTENDS THAT THE ACCRUED EARNINGS NOT BE SUBJECT TO FEDERAL INCOME TAX. ASRS MAY ADOPT ADDITIONAL RULES, POLICIES AND PROCEDURES AS ASRS DEEMS NECESSARY OR APPROPRIATE TO FULFILL THE LEGISLATURE'S INTENT THAT THE ACCRUED EARNINGS NOT BE SUBJECT TO FEDERAL INCOME TAX.

14. IF ASRS RECEIVES NOTIFICATION FROM THE UNITED STATES INTERNAL REVENUE SERVICE THAT THIS SUBSECTION OR ANY PORTION OF THIS SUBSECTION WILL JEOPARDIZE THE TAX-EXEMPT STATUS OF THE 401(a) PENSION CONTRIBUTIONS THE EMPLOYER PREPAYS ACCORDING TO THIS SUBSECTION AND THE ACCRUED EARNINGS, THE PORTION OF THIS SUBSECTION THAT WILL CAUSE THE DISQUALIFICATION DOES NOT APPLY.

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E. FOR THE PURPOSES OF THIS SECTION:

1. "401(a) PENSION CONTRIBUTIONS" MEANS THE PORTION OF AN EMPLOYER'S PENSION CONTRIBUTION THAT IS SPECIFIC TO THE RETIREMENT PROGRAM ESTABLISHED UNDER THIS ARTICLE AND QUALIFIED UNDER SECTION 401(a) OF THE INTERNAL REVENUE CODE.

2. "SECTION 115 TRUST" MEANS A TRUST WHOSE INCOME IS EXEMPT FROM GROSS INCOME PURSUANT TO SECTION 115 OF THE INTERNAL REVENUE CODE FOR ESSENTIAL GOVERNMENT FUNCTIONS INTEGRAL TO THIS STATE AND ITS POLITICAL SUBDIVISIONS.

EXPLANATION OF BLEND

SECTION 38-848 (as amended by Laws 2021, Ch. 34, section 4 and Ch. 251, section 2)

Laws 2022, Chapters 72 and 73

Laws 2022, Ch. 72, section 2

Effective September 24, 2022

Laws 2022, Ch. 73, section 11

Effective September 24, 2022

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 72 and Ch. 73 text changes to section 38-848, as amended by Laws 2021, Ch. 34, section 4 and Ch. 251, section 2, are blended in the form shown on the following pages.

BLEND OF SECTION 38-848 (as amended by Laws 2021, Ch. 34, section 4 and Ch. 251, section 2)  
Laws 2022, Chapters 72 and 73

38-848. Board of trustees; powers and duties; reporting requirements; independent trust fund; administrator; agents and employees; advisory committee

A. The board of trustees shall consist of nine members and shall have the rights, powers and duties that are set forth in this section. The term of office of members shall be five years to expire on the third Monday in January of the appropriate year. The board shall select a chairperson from among its members each calendar year. Members are eligible to receive compensation in an amount of \$50 a day, but not to exceed \$1,000 in any one fiscal year, and are eligible for reimbursement of expenses pursuant to chapter 4, article 2 of this title. The board consists of the following members appointed as follows:

1. Two members representing law enforcement, one of whom is appointed by the president of the senate and one of whom is appointed by the governor. A statewide association representing law enforcement in this state shall forward nominations to the appointing elected officials, providing at least three nominees for each position. At least one of the members appointed under this paragraph shall be an elected local board member.

2. Two members representing firefighters, one of whom is appointed by the speaker of the house of representatives and one of whom is appointed by the governor. A statewide association representing firefighters in this state shall forward nominations to the appointing elected officials, providing at least three nominees for each position. At least one of the members appointed under this paragraph shall be an elected local board member.

3. Three members representing cities and towns in this state, one of whom is appointed by the president of the senate, one of whom is appointed by the speaker of the house of representatives and one of whom is appointed by the governor. An association representing cities and towns in this state shall forward nominations to the appointing elected officials, providing at least three nominees for each position. These nominees shall represent taxpayers or employers and may not be members of the system.

4. One member who represents counties in this state and who is appointed by the governor. An association representing county supervisors in this state shall forward nominations to the governor, providing at least three nominees for the position. These nominees shall represent taxpayers or employers and may not be members of the system.

5. One member who is appointed by the governor from a list of three nominees forwarded by the board. The board shall select the nominees to

forward to the governor from a list of at least five nominees received from the advisory committee.

B. Each appointment made pursuant to subsection A of this section shall be chosen from the list of nominees provided to the appointing elected official. For any appointment made by the governor pursuant to subsection A of this section, before appointment by the governor, a prospective member of the board shall submit a full set of fingerprints to the governor to obtain 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. A board member may be reappointed. Notwithstanding section 38-295, a board member may be removed from office only for cause by the appointing power or because the board member has vacated the member's seat on the board. A board member who is removed for cause shall be provided written notice and an opportunity for a response. The appointing power may remove a board member based on written findings that specify the reason for removal. Any vacancy that occurs other than by expiration of a term shall be filled for the balance of the term. All vacancies shall be filled in the same manner as the initial appointment. A board member vacates the office if the member either:

1. Is absent without excuse from three consecutive regular meetings of the board.

2. Resigns, dies or becomes unable to perform board member duties.

C. The members of the board who are appointed pursuant to subsection A of this section and who are not members of the system shall be independent, qualified professionals who are responsible for the performance of fiduciary duties and other responsibilities required to preserve and protect the fund and shall have at least ten years' substantial experience as any one or a combination of the following:

1. A portfolio manager acting in a fiduciary capacity.

2. A securities analyst.

3. A senior executive or principal of a trust institution, investment organization or endowment fund acting either in a management or an investment-related capacity.

4. A chartered financial analyst in good standing as determined by the chartered financial analyst institute.

5. A current or former professor or instructor at the college or university level in the field of economics, finance, actuarial science, accounting or pension-related subjects.

6. An economist.

7. Any other senior executive engaged in the field of public or private finances or with experience with public pension systems.

8. A senior executive in insurance, banking, underwriting, auditing, human resources or risk management.

D. All monies in the fund shall be deposited and held in a public safety personnel retirement system depository. Monies in the fund shall be disbursed from the depository separate and apart from all monies or funds of this state and the agencies, instrumentalities and subdivisions of this state, except that the board may commingle the assets of the fund and the assets of all other plans entrusted to its management in one or more group trusts, subject to the crediting of receipts and earnings and charging of

payments to the appropriate employer, system or plan. The monies shall be secured by the depository in which they are deposited and held to the same extent and in the same manner as required by the general depository law of this state. For purposes of making the decision to invest in securities owned by the fund or any plan or trust administered by the board, the fund and assets of the plans and the plans' trusts are subject to the sole management of the board for the purpose of this article except that, on the board's election to invest in a particular security or make a particular investment, the assets comprising the security or investment may be chosen and managed by third parties approved by the board. The board may invest in portfolios of securities chosen and managed by a third party. The board's decision to invest in securities such as mutual funds, commingled investment funds, exchange traded funds, private equity or venture capital limited partnerships, real estate limited partnerships or limited liability companies and real estate investment trusts whose assets are chosen and managed by third parties is not an improper delegation of the board's investment authority.

E. All contributions under this system and other retirement plans that the board administers shall be forwarded to the board and shall be held, invested and reinvested by the board as provided in this article. All property and monies of the fund and other retirement plans that the board administers, including income from investments and from all other sources, shall be retained for the exclusive benefit of members, as provided in the system and other retirement plans that the board administers, and shall be used to pay benefits to members or their beneficiaries or to pay expenses of operation and administration of the system and fund and other retirement plans that the board administers.

F. The board shall have the full power in its sole discretion to invest and reinvest, alter and change the monies accumulated under the system and other retirement plans and trusts that the board administers as provided in this article. In addition to its power to make investments managed by others, the board may delegate the authority the board deems necessary and prudent to investment management pursuant to section 38-848.03, as well as to the administrator, employed by the board pursuant to subsection M, paragraph 6 of this section, and any deputy or assistant administrators to invest the monies of the system and other retirement plans and trusts that the board administers if the administrator, investment management and any deputy or assistant administrators follow the investment policies that are adopted by the board. The board may commingle securities and monies of the fund, the elected officials' retirement plan, the corrections officer retirement plan and other plans or monies entrusted to its care, subject to the crediting of receipts and earnings and charging of payments to the account of the appropriate employer, system or plan. In making every investment, the board shall exercise the judgment and care under the circumstances then prevailing that persons of ordinary prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income from their funds as well as the probable safety of their capital, if:

1. Not more than eighty percent of the combined assets of the system or other plans that the board manages is invested at any given time in corporate stocks, based on the cost value of the stocks irrespective of capital appreciation.

2. Not more than five percent of the combined assets of the system or other plans that the board manages is invested in corporate stock issued by any one corporation, other than corporate stock issued by corporations chartered by the United States government or corporate stock issued by a bank or insurance company.

3. Not more than five percent of the voting stock of any one corporation is owned by the system and other plans that the board administers, except that this limitation does not apply to membership interests in limited liability companies.

4. Corporate stocks and exchange traded funds eligible for direct purchase are restricted to stocks and exchange traded funds that, except for bank stocks, insurance stocks, stocks acquired for coinvestment in connection with the system's or the plans' or trusts' commingled investments and interests in limited liability companies and mutual funds, are any of the following:

(a) Listed or approved on issuance for listing on an exchange registered under the securities exchange act of 1934, as amended (15 United States Code sections 78a through 78pp).

(b) Designated or approved on notice of issuance for designation on the national market system of a national securities association registered under the securities exchange act of 1934, as amended (15 United States Code sections 78a through 78pp).

(c) Listed or approved on issuance for listing on an exchange registered under the laws of this state or any other state.

(d) Listed or approved on issuance for listing on an exchange of a foreign country with which the United States is maintaining diplomatic relations at the time of purchase, except that not more than twenty percent of the combined assets of the system and other plans that the board manages is invested in foreign securities, based on the cost value of the stocks irrespective of capital appreciation.

(e) An exchange traded fund that is recommended by the chief investment officer of the system, that is registered under the investment company act of 1940 (15 United States Code sections 80a-1 through 80a-64) and that is both traded on a public exchange and based on a publicly recognized index.

G. Notwithstanding any other law, the board is not required to invest in any type of investment that is dictated or required by any entity of the federal government and that is intended to fund economic development projects, public works or social programs, but may consider such economically targeted investments pursuant to its fiduciary responsibility. The board, on behalf of the system and all other plans or trusts the board administers, may invest in, lend monies to or guarantee the repayment of monies by a limited liability company, limited partnership, joint venture, partnership, limited liability partnership or trust in which the system and plans or trusts have a financial interest, whether the entity is closely held or publicly traded and that, in turn, may be engaged in any lawful

activity, including venture capital, private equity, the ownership, development, management, improvement or operation of real property and any improvements or businesses on real property or the lending of monies.

H. Conference call meetings of the board that are held for investment purposes only are not subject to chapter 3, article 3.1 of this title, except that the board shall maintain minutes of these conference call meetings and make them available for public inspection within twenty-four hours after the meeting. The board shall review the minutes of each conference call meeting and shall ratify all legal actions taken during each conference call meeting at the next scheduled meeting of the board.

I. The board is not liable for the exercise of more than ordinary care and prudence in the selection of investments and performance of its duties under the system and is not limited to so-called "legal investments for trustees", but all monies of the system and other plans that the board administers shall be invested subject to all of the conditions, limitations and restrictions imposed by law.

J. Except as provided in subsection F of this section, the board may:

1. Invest and reinvest the principal and income of all assets that the board manages without distinction between principal and income.

2. Sell, exchange, convey, transfer or otherwise dispose of any investments made on behalf of the system or other plans the board administers in the name of the system or plans by private contract or at public auction.

3. Also:

(a) Vote on any stocks, bonds or other securities.

(b) Give general or special proxies or powers of attorney with or without power of substitution.

(c) Exercise any conversion privileges, subscription rights or other options and make any payments incidental to the exercise of the conversion privileges, subscription rights or other options.

(d) Consent to or otherwise participate in corporate reorganizations or other changes affecting corporate securities, delegate discretionary powers and pay any assessments or charges in connection therewith.

(e) Generally exercise any of the powers of an owner with respect to stocks, bonds, securities or other investments held in or owned by the system or other plans whose assets the board administers.

4. Make, execute, acknowledge and deliver any other instruments that may be necessary or appropriate to carry out the powers granted in this section.

5. Register any investment held by the system or other plans whose assets the board administers in the name of the system or plan or in the name of a nominee or trust.

6. At the expense of the system or other plans that the board administers, enter into an agreement with any bank or banks for the safekeeping and handling of securities and other investments coming into the possession of the board. The agreement shall be entered into under terms and conditions that secure the proper safeguarding, inventory, withdrawal and handling of the securities and other investments. Access to and deposit or withdrawal of the securities from any place of deposit selected by the board is not allowed and may not be made except as the terms of the agreement provide.

7. Appear before local boards and the courts of this state and political subdivisions of this state through counsel or an appointed representative to protect the fund or the assets of other plans that the board administers. The board is not responsible for the actions or omissions of the local boards under this system but may require a review or rehearing of actions or omissions of local boards. A limitation period does not prohibit the board or administrator from contesting or require the board or administrator to implement or comply with a local board decision that violates the internal revenue code or that threatens to impair the tax-qualified status of the system or any plan administered by the board or administrator.

8. Empower the fund administrator to take actions on behalf of the board that are necessary for the protection and administration of the fund or the assets of other plans that the board administers pursuant to the guidelines of the board.

9. Do all acts, whether or not expressly authorized, that may be deemed necessary or proper for the protection of the investments held in the fund or owned by other plans or trusts that the board administers.

10. Settle threatened or actual litigation against any system or plan that the board administers.

K. Investment expenses and operation and administrative expenses of the board shall be accounted for separately and allocated against investment income.

L. The board, as soon as possible within a period of six months following the close of any fiscal year, shall transmit to the governor and the legislature a comprehensive annual financial report on the operation of the system and other plans that the board administers that contains, among other things:

1. A balance sheet.
2. A statement of income and expenditures for the year.
3. A report on an actuarial valuation of its assets and liabilities.
4. A list of investments owned.

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5. The total rate of return, yield on cost, and ~~percent~~ PERCENTAGE of cost to market value of the fund and the assets of other plans that the board administers.

6. Any other statistical and financial data that may be necessary for the proper understanding of the financial condition of the system and other plans that the board administers and the results of their operations. A synopsis of the annual report shall be published for the information of members of the system, the elected officials' retirement plan or the corrections officer retirement plan.

7. An analysis of the long-term level percent of employer contributions and compensation structure and whether the funding methodology is sufficient to pay one hundred percent of the unfunded accrued liability under the elected officials' retirement plan.

8. An estimate of the aggregate employer contribution rate for the public safety personnel retirement system for the next ten fiscal years and an estimate of the aggregate employer contribution rate for the corrections officer retirement plan for the next ten fiscal years.

9. An estimate of the employer contribution rates for the next ten fiscal years for each of the following employers within the public safety personnel retirement system:

- (a) Department of liquor licenses and control.
- (b) Department of public safety.
- (c) Northern Arizona university.
- (d) University of Arizona.
- (e) Arizona state university.
- (f) Arizona game and fish department.
- (g) Department of law.
- (h) Department of emergency and military affairs.
- (i) Arizona state parks board.

10. An estimate of the employer contribution rates for the next ten fiscal years for each of the following employers within the corrections officer retirement plan:

- (a) State department of corrections.
- (b) Department of public safety.
- (c) The judiciary.
- (d) Department of juvenile corrections.

11. An estimate of the aggregate fees paid for private equity investments and other alternative investments, including management fees and performance fees and carried interest.

M. The board shall:

1. Maintain the accounts of the system and other plans that the board administers and issue statements to each employer annually and to each member who requests a statement.

2. Report the results of the actuarial valuations to the local boards and employers.

3. Contract on a fee basis with an independent investment counsel to advise the board in the investment management of the fund and assets of other plans that the board administers and with an independent auditing firm to audit the board's accounting.

4. Allow the auditor general to make an annual audit and transmit the results to the governor and the legislature.

5. Contract on a fee basis with an actuary who shall make actuarial valuations of the system and other plans that the board administers, be the technical adviser of the board on matters regarding the operation of the funds created by the provisions of the system, the elected officials' retirement plan, the corrections officer retirement plan and the public safety cancer insurance policy program and perform other duties required in connection therewith. The actuary must be a member of a nationally recognized association or society of actuaries.

6. Employ, as administrator, a person, state department or other body to serve at the pleasure of the board.

7. Establish procedures and guidelines for contracts with actuaries, auditors, investment counsel and legal counsel and for safeguarding of securities.

8. Issue a request for proposals every five years for an external auditor. The board is not required to change its auditor after issuing the request for proposals.

9. Develop a policy regarding routine stress testing of the retirement systems and plans administered by the board at the employer level and system level. The stress test shall use industry standards, such as the inclusion of assumptions regarding investment returns, inflation, population growth, payroll growth and employer contributions. For the purposes of this paragraph, "stress test" means an assessment of the risk exposure of the retirement system or plan, including scenario analysis, simulation analysis and sensitivity analysis.

N. The administrator, under the direction of the board, shall:

1. Administer this article.

2. Be responsible for the recruitment, hiring and day-to-day management of employees.

3. Invest the monies of the system and other plans that the board administers as the board deems necessary and prudent as provided in subsections F and J of this section and subject to the investment policies and fund objectives adopted by the board.

4. Establish and maintain an adequate system of accounts and records for the system and other plans that the board administers, which shall be integrated with the accounts, records and procedures of the employers so that the system and other plans that the board administers operate most effectively and at minimum expense and that duplication of records and accounts is avoided.

5. In accordance with the board's governance policy and procedures and the budget adopted by the board, hire employees and services the administrator deems necessary and prescribe their duties, including the hiring of one or more deputy or assistant administrators to manage the system's operations, investments and legal affairs.

6. Be responsible for income, the collection of the income and the accuracy of all expenditures.

7. Recommend to the board annual contracts for the system's actuary, auditor, investment counsel, legal counsel and safeguarding of securities.

8. Perform additional duties and powers prescribed by the board and delegated to the administrator.

0. The system is an independent trust fund and the board is not subject to title 41, chapter 6. Contracts for goods and services approved by the board are not subject to title 41, chapter 23. As an independent trust fund whose assets are separate and apart from all other funds of this state, the system and the board are not subject to the restrictions prescribed in section 35-154 or article IX, sections 5 and 8, Constitution of Arizona. Loans, guarantees, investment management agreements and investment contracts that are entered into by the board are contracts memorializing obligations or interests in securities that the board has concluded, after thorough due diligence, do not involve investments in Sudan or Iran or otherwise provide support to terrorists or in any way facilitate illegal immigration into the United States. These contracts do not involve the procurement, supply or provision of goods, equipment, labor, materials or services that would require the warranties required by section 41-4401.

P. The board, the administrator, the deputy or assistant administrators and all persons employed by them are subject to title 41, chapter 4, article 4. The administrator, deputy or assistant administrators

and other employees of the board are entitled to receive compensation pursuant to section 38-611.

Q. In consultation with the director of the department of administration, the board may enter into employment agreements and establish the terms of those agreements with persons holding any of the following system positions:

1. Administrator.
2. Deputy or assistant administrator.
3. Chief investment officer.
4. Deputy chief investment officer.
5. Fiduciary or investment counsel.

R. The attorney general or an attorney approved by the attorney general and paid by the fund is the attorney for the board and shall represent the board in any legal proceeding or forum that the board deems appropriate. The board, administrator, deputy or assistant administrators and employees of the board are not personally liable for any acts done in their official capacity in good faith reliance on the written opinions of the board's attorney.

S. At least once in each five-year period after the effective date, the actuary shall make an actuarial investigation into the mortality, service and compensation experience of the members and beneficiaries of the system and other plans that the board administers and shall make a special valuation of the assets and liabilities of the monies of the system and plans. Taking into account the results of the investigation and special valuation, the board shall adopt for the system and other plans that the board administers those mortality, service and other tables deemed necessary.

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T. On the basis of the tables the board adopts, the actuary shall make a valuation of the assets and liabilities of the funds of the system and other plans that the board administers at least every year. By November 1 of each year the board shall provide a preliminary report and by December 31 of each year provide a final report to the governor, the speaker of the house of representatives and the president of the senate on the contribution rate for the ensuing fiscal year.

U. Neither the board nor any member or employee of the board shall directly or indirectly, for the board, the member or the employee or as an agent, in any manner use the monies or deposits of the fund except to make current and necessary payments, nor shall the board or any member or employee become an endorser or surety or in any manner an obligor for monies loaned by or borrowed from the fund or the assets of any other plans that the board administers.

V. Financial or commercial information that is provided to the board, employees of the board and attorneys of the board in connection with investments in which the board has invested or investments the board has considered for investment is confidential, proprietary and not a public record if the information is information that would customarily not be released to the public by the person or entity from whom the information was obtained.

W. A person who is a dealer as defined in section 44-1801 and who is involved in securities or investments related to the board's investments is not eligible to serve on the board.

Ch. 72 — X. The public safety personnel retirement system advisory committee is established and shall serve as a liaison between the board and the members and employers of the system. The president of the senate and the speaker of the house of representatives shall each appoint to the committee one member who is either a legislator or a legislative staff member. The remaining members of the committee shall be appointed by the chairperson of the board from names submitted to the chairperson by associations representing law enforcement, firefighters, state government, counties, cities and towns and tribal governments. The committee shall select a chairperson from among its members each calendar year. The committee members appointed by the chairperson of the board shall consist of the following ten members:

1. A member who is a law enforcement officer.
2. A member who is a firefighter.
3. A member of the elected officials' retirement plan.
4. A member of the corrections officer retirement plan.
5. A retiree from the public safety personnel retirement system.
6. A representative from a city or town in this state.
7. A representative from a county in this state.
8. A representative from a fire district in this state.
9. A representative from a state employer.
10. A representative from a tribal government located in this state.

EXPLANATION OF BLEND  
SECTION 38-1106

Laws 2022, Chapters 139 and 175

Laws 2022, Ch. 139, section 1

Effective September 24, 2022

Laws 2022, Ch. 175, section 4

Effective September 24, 2022

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 139 and Ch. 175 text changes to section 38-1106 are blended in the form shown on the following pages.

BLEND OF SECTION 38-1106  
Laws 2022, Chapters 139 and 175

38-1106. Appeal of disciplinary actions; transcripts; change of hearing officer or administrative law judge; burden of proof; final disposition report; exception

A. In any appeal of a disciplinary action by a law enforcement officer, the parties shall cooperate with each other, act in good faith and exchange copies of all relevant documents and a list of all witnesses pursuant to the following time periods and requirements:

1. Within fourteen calendar days after the employer's receipt of a written request from the law enforcement officer for a copy of the investigative file that is accompanied by a copy of the filed notice of appeal, the employer shall provide a complete copy of the investigative file as well as the names and contact information for all persons interviewed during the course of the investigation.

2. Not later than fourteen calendar days before the appeal hearing, the parties shall produce and serve on every party the following information:

(a) The name of each witness whom the disclosing party expects to call at the appeal hearing, with a designation of the subject matter on which each witness might be called to testify. A witness may decline an interview. The parties shall not interfere with any decision of a witness regarding whether to be interviewed. An employer shall not discipline, retaliate against or threaten to retaliate against any witness for agreeing to be interviewed or for testifying or providing evidence in the appeal.

(b) The name and contact information of each person who has given statements, whether written or recorded or signed or unsigned, regarding matters relevant to the notice of discipline and the custodian of the copies of those statements.

(c) Copies of any documents that may be introduced at the hearing and that have not previously been disclosed.

3. The duty to disclose information continues to exist throughout the process and up to the end of the appeal process.

B. It is unlawful for a person to disseminate information that is disclosed pursuant to subsection A of this section to any person other than the parties to the appeal and their lawful representatives for purposes of the appeal of the disciplinary action. This subsection does not prohibit the use of the information in the hearing or disclosure pursuant to title 39, chapter 1, article 2.

C. If a transcript is required in an administrative hearing, the employer shall obtain the transcript and provide a copy to the law enforcement officer within ten calendar days after the employer's receipt of the transcript.

D. Failure to comply with the requirements of subsection A or B of this section shall result in the exclusion of the witness, evidence or testimony, unless the failure to comply is because of excusable neglect.

E. The employer or the law enforcement officer may seek a determination by the hearing officer, administrative law judge or appeals board hearing the appeal regarding any evidence that the employer or the law enforcement officer believes should not be disclosed pursuant to subsection A of this section because the risk of harm involved in disclosure outweighs any usefulness of the disclosure in the hearing. In determining whether evidence will be disclosed, the hearing officer, administrative law judge or appeals board may perform an in camera review of the evidence and may disclose the material subject to any restriction on the disclosure, including the closing of the hearing or the sealing of the records, that the hearing officer, administrative law judge or appeals board finds necessary under the circumstances.

F. In any appeal of a disciplinary action by a law enforcement officer in which a single hearing officer or administrative law judge has been appointed to conduct the appeal hearing, the law enforcement officer or the employer, within ten calendar days after the appointment of the hearing officer or administrative law judge, may request a change of hearing officer or administrative law judge. In cases before the office of administrative hearings or if the employer is a county, city or town, on the first request of a party, the request shall be granted. A city or town with a population of less than sixty-five thousand persons or a county with a population of less than two hundred fifty thousand persons must provide, if necessary to comply with this subsection, for an alternate hearing officer by means of an interagency agreement with another city, town or county. If the law enforcement officer is the party who requested the alternate hearing officer, the law enforcement officer shall reimburse the city, town or county for one-half of any additional expenses incurred by the city, town or county in procuring the alternate hearing officer under the interagency agreement. If an alternate hearing officer is requested by means of an interagency agreement, the hearing officer shall provide to the law enforcement officer or employer the option of continuing the hearing for an additional ten calendar days. Any subsequent requests may be granted only on a showing that a fair and impartial hearing cannot be obtained due to the prejudice of the assigned hearing officer or administrative law judge. The supervisor or supervising body of the hearing officer or administrative law judge shall decide whether a showing of prejudice has been made.

G. The employer has the burden of proof in an appeal of a disciplinary action by a law enforcement officer.

Ch. 175 { H. THE HEARING OFFICER, ADMINISTRATIVE LAW JUDGE OR APPEALS BOARD MAY TAKE INTO CONSIDERATION VIOLATIONS OF THIS ARTICLE AS MITIGATION IN DETERMINING DISCIPLINE.

~~H.~~ I. Except where a statute, rule or ordinance makes the administrative evidentiary hearing the final administrative determination and after a hearing where the law enforcement officer and the employer have been equally allowed to call and examine witnesses, cross-examine witnesses, provide documentary evidence and otherwise fully participate in the hearing,

an employer or a person acting on behalf of an employer may amend, modify, reject or reverse the portion of a decision made by a hearing officer, administrative law judge or appeals board that was arbitrary or without reasonable justification. The employer or person acting on behalf of the employer shall state the reason for the amendment, modification, rejection or reversal.

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~~I.~~ J. Notwithstanding chapter 3, article 3.1 of this title, all hearings pursuant to this section shall be open to the public. Executive sessions ~~permitted~~ ALLOWED pursuant to section 38-431.03 shall be limited to legal advice to a personnel appeals board or for deliberations.

~~J.~~ K. A law enforcement officer who prevails in an appeal where a termination has been reversed shall be awarded retroactive compensation from the date of the officer's separation to the date of reinstatement. The hearing officer, administrative law judge or appeals board hearing the appeal shall determine the amount of retroactive compensation awarded and any reduction to that amount. Retroactive compensation may be reduced:

1. If there is undue delay in setting a hearing date caused by the law enforcement officer or the law enforcement officer's representative.

2. If the law enforcement officer requests a continuance.

3. If there exists a period between separation and reinstatement that the law enforcement officer would have been unable to perform the duties of a law enforcement officer.

4. By any amount earned by the law enforcement officer in alternative employment.

5. If the hearing officer, administrative law judge or appeals board finds that the law enforcement officer's action or misconduct warrants suspension or demotion.

~~K.~~ L. The hearing officer, administrative law judge or appeals board shall state in every finding of disciplinary action whether or not just cause existed for the disciplinary action.

~~L.~~ M. The hearing officer, administrative law judge or appeals board shall document in the record those circumstances where the hearing officer, administrative law judge or appeals board determines that a party has clearly violated a party's obligation under this section.

N. IMMEDIATELY AFTER A LAW ENFORCEMENT OFFICER RECEIVES THE FINAL DISPOSITION OF AN APPEAL OF A DISCIPLINARY ACTION, THE ADMINISTRATIVE LAW JUDGE, HEARING OFFICER OR PRESIDING AUTHORITY SHALL PROVIDE A FINAL DISPOSITION REPORT THAT INCLUDES THE FINAL DECISION AND ANY AMENDED FINDINGS OF FACT TO THE LAW ENFORCEMENT AGENCY THAT INITIATED OR IMPOSED THE DISCIPLINE.

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O. A LAW ENFORCEMENT AGENCY THAT RECEIVES A FINAL DISPOSITION REPORT SHALL INCLUDE THE FINAL DISPOSITION REPORT IN THE AGENCY'S ORIGINAL INVESTIGATION RECORD. IF THE LAW ENFORCEMENT AGENCY PROVIDED A PROSECUTING AGENCY WITH INFORMATION THAT WAS OBTAINED DURING THE INVESTIGATION OF THE LAW ENFORCEMENT OFFICER FOR THE PROSECUTING AGENCY'S RULE 15.1 DATABASE, THE LAW ENFORCEMENT AGENCY SHALL FORWARD THE FINAL DISPOSITION REPORT TO THE PROSECUTING AGENCY.

~~M.~~ P. This section does not apply to a law enforcement officer who is employed by an agency of this state as an at will employee.

EXPLANATION OF BLEND  
SECTION 38-1110

Laws 2022, Chapters 175 and 378

Laws 2022, Ch. 175, section 6

Effective September 24, 2022

Laws 2022, Ch. 378, section 1

Effective September 24, 2022

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 175 and Ch. 378 text changes to section 38-1110 are blended in the form shown on the following pages.

The Laws 2022, Ch. 175 version of section 38-1110 made a technical change in subsection A. The Ch. 378 version struck that sentence in subsection A. Since this would not produce a substantive change, the blend version reflects the Ch. 378 version.

BLEND OF SECTION 38-1110  
Laws 2022, Chapters 175 and 378

38-1110. Time limitation on disciplinary action against law enforcement officer; notice of findings; exceptions

A. An employer shall make a good faith effort to complete any investigation of employee misconduct within one hundred eighty calendar days after the employer receives notice of the allegation by a person authorized by the employer to initiate an investigation of the misconduct. The investigation is considered complete on the date the employee is served with the notice of discipline or the notice of findings. ~~Before the employer exceeds the one hundred [eighty calendar day limit];~~ the employer shall provide the employee with a written explanation containing the reasons the investigation continued beyond one hundred eighty calendar days. THE EMPLOYER MAY CONTINUE THE INVESTIGATION BEYOND THE ONE HUNDRED EIGHTY-CALENDAR-DAY PERIOD ONLY IF IT IS DEMONSTRATED THAT ADDITIONAL TIME IS NECESSARY TO OBTAIN OR REVIEW EVIDENCE. BEFORE THE EMPLOYER EXCEEDS THE ONE HUNDRED EIGHTY-CALENDAR-DAY LIMIT, THE EMPLOYER SHALL PROVIDE THE EMPLOYEE WITH A WRITTEN EXPLANATION OF THE REASONS THE INVESTIGATION CONTINUED BEYOND ONE HUNDRED EIGHTY CALENDAR DAYS. EXCEPT AS PROVIDED IN SUBSECTION D, PARAGRAPH 6 OF THIS SECTION, ANY EXTENSION MAY NOT EXCEED ONE HUNDRED EIGHTY CALENDAR DAYS. SUBJECT TO THE CONDITIONS IN SUBSECTION B OF THIS SECTION, IF THE INVESTIGATION IS NOT COMPLETE AT THE CONCLUSION OF THE EXTENSION PERIOD, THE MATTER SHALL BE DISMISSED.

B. THE TIME LIMITATION SET FORTH IN SUBSECTION A DOES NOT PRECLUDE THE EMPLOYER FROM INITIATING A NEW INVESTIGATION OF THE EMPLOYEE FOR MISCONDUCT UPON NEWLY DISCOVERED MATERIAL EVIDENCE THAT COULD NOT WITH REASONABLE DILIGENCE HAVE BEEN DISCOVERED DURING THE INITIAL ONE HUNDRED EIGHTY-CALENDAR-DAY LIMITATION OR ANY EXTENSION.

C. IF, IN THE COURSE OF AN INVESTIGATION INVOLVING MULTIPLE LAW ENFORCEMENT OFFICERS, EVIDENCE IS DISCOVERED THAT EXONERATES THE LAW ENFORCEMENT OFFICER OR FAILS TO SUSTAIN ANY WRONGDOING, THE EMPLOYER SHALL ISSUE THE INDIVIDUAL LAW ENFORCEMENT OFFICER A NOTICE OF FINDINGS. THE EMPLOYER MAY CONTINUE TO ORDER THE LAW ENFORCEMENT OFFICER NOT TO DISCUSS OR DISCLOSE ANY INFORMATION REGARDING THE INVESTIGATION EXCEPT TO THE LAW ENFORCEMENT OFFICER'S LEGAL COUNSEL, SPOUSE, REPRESENTATIVE OR MEDICAL PROVIDER.

~~B.~~ D. The limitation period established by subsection A of this section:

1. Is suspended during the time that any criminal investigation or prosecution is pending in connection with the act, omission or other allegation of misconduct.

2. Is suspended during the period of time in which a law enforcement officer who is involved in the investigation is incapacitated or otherwise unavailable.

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3. May be suspended for a period prescribed in a written waiver of the limitation by the law enforcement officer.

4. May be suspended for emergencies or natural disasters during the time period in which the governor has declared a state of emergency within the jurisdictional boundaries of the concerned employer.

5. In a multijurisdictional investigation, may be extended for a period of time reasonably necessary to facilitate the coordination of the employers involved.

6. FOR ANY EMPLOYER SUBJECT TO SUPERVISION BY A COURT-ORDERED MONITOR, THE ONETIME EXTENSION PROVIDED IN SUBSECTION A OF THIS SECTION SHALL BE THREE HUNDRED SIXTY DAYS.

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~~E.~~ E. On an appeal of discipline by the employee, a hearing officer, administrative law judge or appeals board ~~may~~ SHALL dismiss the discipline if it is determined that the employer did not make a good faith effort to complete the investigation within one hundred eighty calendar days OR ANY EXTENSION. The allegation regarding any act, omission or other misconduct may be sustained, and the employee's record shall reflect that the allegation was sustained but no discipline was administered due to the finding of the hearing officer, administrative law judge or appeals board that the employer did not make a good faith effort to complete the investigation in one hundred eighty calendar days OR ANY EXTENSION. The sustained discipline may be considered when determining discipline in any future sustained misconduct allegation. If the employer determines that disciplinary action is appropriate, the employer shall complete the employer's investigation and give notice in writing to the law enforcement officer of the employer's intent to proceed with disciplinary action, along with a proposal of the specific action sought, including length of suspension, if applicable.

~~F.~~ F. This section does not apply to a law enforcement officer who is employed by an agency of this state as an at will employee.

EXPLANATION OF BLEND  
SECTION 41-619.51

Laws 2022, Chapters 23, 55 and 281

Laws 2022, Ch. 23, section 5

Effective January 1, 2023

Laws 2022, Ch. 55, section 1

Effective September 24, 2022

Laws 2022, Ch. 281, section 3

Effective September 24, 2022

Explanation

Since these three enactments are compatible, the Laws 2022, Ch. 23, Ch. 55 and Ch. 281 text changes to section 41-619.51 are blended effective from and after December 31, 2022 in the form shown on the following pages.

BLEND OF SECTION 41-619.51  
Laws 2022, Chapters 23, 55 and 281

41-619.51. Definitions

In this article, unless the context otherwise requires:

1. "Agency" means the supreme court, the department of economic security, the department of child safety, the department of education, the department of health services, the department of juvenile corrections, the department of emergency and military affairs, the department of public safety, the department of transportation, the state real estate department, the department of insurance and financial institutions, the Arizona game and fish department, the Arizona department of agriculture, the board of examiners of nursing care institution administrators and assisted living facility managers, the state board of dental examiners, the Arizona state board of pharmacy, the board of physical therapy, the state board of psychologist examiners, the board of athletic training, the board of occupational therapy examiners, the state board of podiatry examiners[,]

Chs. 23, 55  
and 281  
Ch. 23

— THE ACUPUNCTURE BOARD OF EXAMINERS

Chs. 55  
and 281

— or the state board of technical registration

Ch. 281

— OR THE BOARD OF MASSAGE THERAPY

Ch. 55

— OR THE ARIZONA DEPARTMENT OF HOUSING.

2. "Board" means the board of fingerprinting.

3. "Central registry exception" means notification to the department of economic security, the department of child safety or the department of health services, as appropriate, pursuant to section 41-619.57 that the person is not disqualified because of a central registry check conducted pursuant to section 8-804.

4. "Expedited review" means an examination, in accordance with board rule, of the documents an applicant submits by the board or its hearing officer without the applicant being present.

5. "Good cause exception" means the issuance of a fingerprint clearance card to an employee pursuant to section 41-619.55.

6. "Person" means a person who is required to be fingerprinted pursuant to this article or who is subject to a central registry check and any of the following:

- (a) Section 3-314.
- (b) Section 8-105.
- (c) Section 8-322.
- (d) Section 8-463.
- (e) Section 8-509.
- (f) Section 8-802.
- (g) Section 8-804.
- (h) Section 15-183.
- (i) Section 15-503.
- (j) Section 15-512.
- (k) Section 15-534.
- (l) Section 15-763.01.
- (m) Section 15-782.02.
- (n) Section 15-1330.
- (o) Section 15-1881.

- (p) Section 17-215.
- (q) Section 28-3228.
- (r) Section 28-3413.
- (s) Section 32-122.02.
- (t) Section 32-122.05.
- (u) Section 32-122.06.
- (v) Section 32-823.
- (w) Section 32-1232.
- (x) Section 32-1276.01.
- (y) Section 32-1284.
- (z) Section 32-1297.01.
- (aa) Section 32-1904.
- (bb) Section 32-1941.
- (cc) Section 32-1982.
- (dd) Section 32-2022.
- (ee) Section 32-2063.
- (ff) Section 32-2108.01.
- (gg) Section 32-2123.
- (hh) Section 32-2371.
- (ii) Section 32-3430.
- (jj) Section 32-3620.
- (kk) Section 32-3668.
- (ll) Section 32-3669.
- Ch. 23 — (mm) SECTION 32-3922.
- Ch. 281 — (nn) SECTION 32-3924.
- (oo) SECTION 32-4222.
- ~~(mm)~~ (pp) Section 32-4128.
- ~~(mm)~~ (qq) Section 36-113.
- ~~(oo)~~ (rr) Section 36-207.
- ~~(pp)~~ (ss) Section 36-411.
- ~~(qq)~~ (tt) Section 36-425.03.
- ~~(rr)~~ (uu) Section 36-446.04.
- ~~(ss)~~ (vv) Section 36-594.01.
- ~~(tt)~~ (ww) Section 36-594.02.
- ~~(uu)~~ (xx) Section 36-766.01.
- ~~(vv)~~ (yy) Section 36-882.
- ~~(ww)~~ (zz) Section 36-883.02.
- ~~(xx)~~ (aaa) Section 36-897.01.
- ~~(yy)~~ (bbb) Section 36-897.03.
- ~~(zz)~~ (ccc) Section 36-3008.
- ~~(aaa)~~ (ddd) Section 41-619.53.
- ~~(bbb)~~ (eee) Section 41-1964.
- ~~(ccc)~~ (fff) Section 41-1967.01.
- ~~(ddd)~~ (ggg) Section 41-1968.
- ~~(eee)~~ (hhh) Section 41-1969.
- ~~(fff)~~ (iii) Section 41-2814.
- Ch. 55 — (jjj) SECTION 41-4025.
- ~~(ggg)~~ (kkk) Section 46-141, subsection A or B.
- ~~(hhh)~~ (lll) Section 46-321.

EXPLANATION OF BLEND  
SECTION 41-621

Laws 2022, Chapters 239 and 308

Laws 2022, Ch. 239, section 2

Effective September 24, 2022

Laws 2022, Ch. 308, section 1

Effective September 24, 2022

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 239 and Ch. 308 text changes to section 41-621 are blended in the form shown on the following pages.

BLEND OF SECTION 41-621  
Laws 2022, Chapters 239 and 308

41-621. Purchase of insurance; coverage; limitations;  
exclusions; definitions

Ch. 239 — A. The department of administration shall obtain insurance against loss, to the extent it is determined necessary and in the best interests of this state as provided in subsection F- G of this section, on the following:

1. All state-owned buildings, including those of the universities, excluding buildings of community colleges, whether financed in whole or in part by state monies or buildings in which the state has an insurable interest as determined by the department of administration.

2. Contents in any buildings owned, leased or rented, in whole or in part, by or to this state, excluding buildings of community colleges, and reported to the department of administration.

Ch. 239 — 3. This state and its departments, agencies, boards and commissions and all officers, ~~agents~~ and employees thereof and such others as may be necessary to accomplish the functions or business of the state and its departments, agencies, boards and commissions against liability for acts or omissions of any nature while acting in authorized governmental or proprietary capacities and in the course and scope of employment or authorization except as prescribed by this chapter.

4. All personal property reported to the department of administration, including vehicles and aircraft owned by the state and its departments, agencies, boards and commissions and all nonowned personal property that is under the clear responsibility of this state because of written leases or other written agreements.

5. This state and its departments, agencies, boards and commissions against casualty, use and occupancy and liability losses of every nature except as prescribed by this chapter.

6. Workers' compensation and employers' liability insurance.

7. Design and construction of buildings, roads, environmental remediations and other construction projects.

Ch. 239 — 8. Other exposures to loss where insurance may be required to protect this state and its departments, agencies, boards and commissions and all officers, ~~agents~~ and employees acting in the course and scope of employment or authorization except as prescribed by this chapter.

Ch. 308 . { 9. ACTUAL OR SUSPECTED DATA BREACHES, SECURITY SYSTEM BREACHES OR SECURITY INCIDENTS FOR SELECT AGENCIES, BOARDS AND COMMISSIONS.

B. To the extent it is determined necessary and in the best interests of this state, the department of administration shall obtain insurance or provide for state self-insurance against property damage caused by clients and liability coverage resulting from the direct or incidental care of clients participating in programs of this state and its departments, agencies, boards or commissions relating to custodial care. The insurable

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programs shall include foster care, programs for persons with developmental disabilities, an independent living program pursuant to section 8-521, A TRANSITIONAL INDEPENDENT LIVING PROGRAM PURSUANT TO SECTION 8-521.01, AN EXTENDED FOSTER CARE PROGRAM PURSUANT TO SECTION 8-521.02 and respite-sitter service programs. The department shall obtain insurance or provide for state self-insurance pursuant to this subsection to protect the clients participating in these programs and individual providers of these program services on behalf of this state and its departments, agencies, boards or commissions. THE STATE SELF-INSURANCE CLAIMS OR OTHER INSURANCE THAT IS PROVIDED OR OBTAINED PURSUANT TO THIS SUBSECTION MAY NOT BE MORE THAN \$1,000,000 PER CLAIM, INCLUDING RELATED CLAIMS, AND \$2,000,000 IN THE AGGREGATE PER YEAR. THE LIMITS MAY BE ADJUSTED PURSUANT TO RULES ADOPTED BY THE DEPARTMENT OF ADMINISTRATION. INSURANCE AND STATE SELF-INSURANCE AS PRESCRIBED IN THIS SECTION DO NOT APPLY TO PROVIDERS WHO ARE CONTRACTUALLY REQUIRED TO INDEMNIFY THIS STATE OR A STATE DEPARTMENT OR AGENCY FOR SOME OR ALL OF THE LIABILITY OF THIS STATE OR A DEPARTMENT OR AGENCY OF THIS STATE. The insurance provided under this subsection does not include medical or workers' compensation coverage for providers. The department may include in its annual budget request pursuant to section 41-622, subsection D a charge for the insurance or self-insurance provided in this subsection. To assist in carrying out this subsection, the department shall establish a seven-member advisory board in accordance with the following provisions:

1. The board shall consist of three members appointed by the director of the department of administration, at least one of whom shall be a foster parent, one member appointed by the director of the department of economic security, one member appointed by the director of the department of child safety, one member appointed by the director of the state department of corrections, and one member appointed by the administrative director of the courts.
2. The board shall elect a chairman from among its members.
3. The board shall hold at least two meetings a year or shall meet at the call of the chairman.
4. Board members shall serve for three-year terms.
5. Board members are not eligible to receive compensation but are eligible for reimbursement of expenses pursuant to title 38, chapter 4, article 2.
6. The board shall provide advice to the department regarding coverage and administration of this subsection and shall assist the department in coordinating its activities pursuant to this subsection with state departments, agencies, boards and commissions.

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C. TO THE EXTENT IT IS DETERMINED NECESSARY AND IN THE BEST INTERESTS OF THIS STATE, THE DEPARTMENT OF ADMINISTRATION MAY OBTAIN INSURANCE OR PROVIDE FOR STATE SELF-INSURANCE AGAINST LOSSES FOR ANY AGENTS OF THIS STATE OR ITS DEPARTMENTS, AGENCIES, BOARDS OR COMMISSIONS THAT ARE NOT INSURED PURSUANT TO SUBSECTION A OF THIS SECTION. THE COVERAGE SHALL BE LIMITED TO LIABILITY FOR ACTS OR OMISSIONS WHILE ACTING IN THE COURSE AND SCOPE OF EMPLOYMENT OR AUTHORIZATION BY THIS STATE OR ITS DEPARTMENTS, AGENCIES, BOARDS OR COMMISSIONS AND SUBJECT TO ANY OTHER TERMS AND CONDITIONS THAT THE DEPARTMENT OF ADMINISTRATION DETERMINES ARE IN THE BEST INTERESTS OF THIS STATE.

Ch. 239 — ~~Ⓒ~~ D. The department of administration may obtain insurance against loss, to the extent it is determined necessary and in the best interests of this state as provided in subsection ~~F~~ G of this section for the professional liability of individual physicians and psychiatrists who provide services under a contract with the state department of corrections. Coverage is limited to acts and omissions committed inside a state department of corrections facility while in the performance of the contract and to individual physicians and psychiatrists who demonstrate to the satisfaction of the state department of corrections that they cannot otherwise obtain professional liability coverage for the services required by the contract. The director of the department of administration may impose on the state department of corrections a deductible for each loss that arises out of a professional liability claim pursuant to this subsection. Any changes in deductible amounts established by the director shall be subject to review by the joint legislative budget committee.

~~Ⓓ~~ E. The department of administration may obtain property, liability, disability or workers' compensation insurance, self-insure or develop risk retention pools to provide for payment of property loss or casualty claims or disability insurance claims against contractors of this state with the approval of the joint legislative budget committee. With respect to insurance, self-insurance or risk retention pools for contractors licensed and contracted to do work for this state, the coverage afforded applies with respect to the conduct of the business entity of that contractor. The pool is available to all contractors regardless of the amount that the state-contracted work bears in relation to the amount of nonstate contracted work. The contractor shall be terminated from the pool if the contractor ceases to be a state contractor.

Ch. 308 — ~~Ⓔ~~ F. The department of administration may determine, in the best interests of this state, that state self-insurance is necessary or desirable and, if that decision is made, shall provide for state self-insurance for losses arising out of state property, liability or workers' compensation claims OR FOR LOSSES ARISING OUT OF ACTUAL OR SUSPECTED DATA BREACHES, SECURITY SYSTEM BREACHES OR SECURITY INCIDENTS prescribed by subsection SUBSECTIONS A, C, D AND E of this section. If the department of administration provides state self-insurance AS PRESCRIBED IN THIS SECTION, such coverage shall be excess over any other valid and collectible insurance, NOTWITHSTANDING ANY OTHER INSURANCE CLAUSE PROVIDED IN THE POLICY OF THE OTHER VALID AND COLLECTIBLE INSURANCE. IF STATE SELF-INSURANCE AND ANY OTHER VALID AND COLLECTIBLE INSURANCE ARE DETERMINED TO BE PRIMARY INSURANCE, THE DEPARTMENT OF ADMINISTRATION AND OTHER INSURERS SHALL CONTRIBUTE EQUAL AMOUNTS UNTIL THE APPLICABLE LIMIT OF INSURANCE HAS BEEN PAID OR NONE OF THE LOSS REMAINS, WHICHEVER OCCURS SOONER. The director of the department of administration may impose on state departments, agencies, boards and commissions a deductible for each loss that arises out of a property, liability or workers' compensation ~~loss~~ CLAIM, ACTUAL OR SUSPECTED DATA BREACH, SECURITY SYSTEM BREACH OR SECURITY INCIDENT pursuant to this subsection. Any changes in deductible amounts established by the director shall be subject to review by the joint legislative budget committee.

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~~F.~~ G. In carrying out this chapter, the department of administration shall establish and provide the state with some or all of the necessary risk management services, or shall contract for risk management services pursuant to chapter 23 of this title, as the director of the department of administration deems necessary in the best interest of the state, and in addition to other specifications of such coverage as deemed necessary, may determine self-insurance to be established. Chapter 23 of this title does not apply to the department of administration's procurement of insurance to cover losses arising out of state property or liability claims prescribed in subsections A and D of this section or excess loss insurance for the state's workers' compensation liability for individual or aggregate claims, or both, in such amounts and at such primary retention levels as the department of administration deems in the best interest of this state. In purchasing insurance to cover losses arising out of state property or liability claims prescribed by subsection A of this section, the department of administration is not subject to title 20, chapter 2, article 5.

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~~G.~~ H. A successful bidder for risk management services pursuant to this section is not entitled to receive directly or indirectly any sales commission, contingent commission, excess profit commission, or other commissions, or anything of value, as payment for the risk management services except those amounts received directly from this state as payment for the risk management services.

~~H.~~ I. The department of administration shall pay for purchased risk management services, premiums for insurance on state property and state liability and workers' compensation pursuant to this chapter.

~~I.~~ J. A state officer, agent or employee acting in good faith, without wanton disregard of statutory duties and under the authority of an enactment that is subsequently declared to be unconstitutional, invalid or inapplicable, is not personally liable for an injury or damage caused thereby except to the extent that the officer, agent or employee would have been personally liable had the enactment been constitutional, valid and applicable.

~~J.~~ K. A state officer, agent or employee, except as otherwise provided by statute, is not personally liable for an injury or damage resulting from an act or omission in a public official capacity where the act or omission was the result of the exercise of the discretion vested in the officer, agent or employee and if the exercise of the discretion was done in good faith without wanton disregard of statutory duties.

~~K.~~ L. This state and its departments, agencies, boards and commissions are immune from liability for losses arising out of a judgment for wilful and wanton conduct resulting in punitive or exemplary damages.

~~L.~~ M. The following exclusions shall apply to subsections A, B and ~~E~~ F of this section:

1. ~~Losses against this state and its departments, agencies, boards and commissions that arise out of and are directly attributable to an act or omission determined by a court to be a felony by AND LIABILITIES OF a person who is provided INSURANCE coverage pursuant to this article unless the state knew of the person's propensity for that action, except those acts arising out of the operation or use of a motor vehicle CHAPTER THAT ARISE~~

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OUT OF AND ARE DIRECTLY ATTRIBUTABLE TO AN ACT OR OMISSION BY THE PERSON THAT A COURT DETERMINES TO BE A FELONY.

2. Losses AND LIABILITIES arising out of contractual breaches.

3. INJURY OR DAMAGES EXPECTED OR INTENDED FROM THE STANDPOINT OF THE PERSON INSURED PURSUANT TO THIS CHAPTER. THIS EXCLUSION DOES NOT APPLY TO LAW ENFORCEMENT ACTIVITIES OR OPERATIONS, CORRECTIONAL ACTIVITIES OR OPERATIONS OR INJURY OR DAMAGES RESULTING FROM THE USE OF REASONABLE FORCE TO PROTECT AN INDIVIDUAL OR PROPERTY.

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M. N. If self-insurance coverage is determined to exist, the attorney general, with funds provided by the department of administration, shall provide for the defense, either through the attorney general's office or by appointment of outside legal counsel, of this state and its departments, agencies, boards and commissions and all officers, agents and employees thereof and such others as are insured by the department of administration for or on account of their acts or omissions covered pursuant to this chapter. All state departments, agencies, boards and commissions, all officers, agents and employees thereof and such others as are insured by the department of administration shall cooperate fully with the attorney general and department of administration in the defense of claims arising pursuant to this chapter.

N. O. A claim for liability damages made pursuant to this chapter may be settled and payment made up to the amount of ~~\$25,000~~ \$100,000 or such higher limit as may be established by the joint legislative budget committee with the approval of the director of the department of administration. A claim MAY BE SETTLED AND PAYMENT MADE over the amount of ~~\$25,000~~ \$100,000 up to ~~\$50,000~~ \$250,000 or such higher limit as may be established by the joint legislative budget committee ~~may be settled and payment made~~ with the approval of the director of the department of administration and the attorney general. Any claim MAY BE SETTLED AND PAYMENT MADE over the amount of ~~\$50,000~~ \$250,000 or such higher limit as may be established by the joint legislative budget committee ~~may be settled and payment made~~ with the approval of the director of the department of administration, the attorney general and the joint legislative budget committee. If it is in the best interest of this state, the joint legislative budget committee may establish higher settlement limits. Any settlements involving amounts in excess of ~~\$50,000~~ \$250,000 or such higher limit as may be established by the joint legislative budget committee shall be approved by the department of administration, the attorney general and the joint legislative budget committee pursuant to the authority granted. The settlement of liability claims shall be solely the authority of the department of administration, the attorney general and the joint legislative budget committee. No state department, agency, board or commission or any officer, agent or employee of this state may voluntarily make any payment, assume any obligation, incur any expense or maintain the individual right of consent for liability claims made pursuant to this chapter except as provided by this section.

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O. P. Neither the authority provided by this section to insure, nor the exercise of such authority, shall:

1. Impose any liability on this state or the departments, agencies, boards and commissions or any officers, agents and employees of this state unless such liability otherwise exists.

2. Impair any defense this state or the departments, agencies, boards and commissions or any officers, agents and employees of this state otherwise may have.

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~~P.~~ Q. EXCEPT AS OTHERWISE PRESCRIBED BY THIS CHAPTER AND SUBJECT TO ANY LIMIT OF STATE SELF-INSURANCE AND THE TERMS OF ANY INSURANCE OBTAINED BY THE DEPARTMENT OF ADMINISTRATION, the department of administration shall pay, on behalf of any state officer, ~~agent or employee~~ OR PERSON WHO IS PROVIDED STATE SELF-INSURANCE PURSUANT TO THIS SECTION, any damages, excluding punitive damages, for which the ~~officer, agent or employee~~ INDIVIDUAL becomes legally responsible if the acts or omissions resulting in liability were within the ~~officer's, agent's or employee's~~ INDIVIDUAL'S course and scope of employment. The department of administration may pay for all damages however designated that the officer, agent or employee becomes legally responsible for if the acts or omissions resulting in liability are determined by the director of the department of administration to be within the person's course and scope of employment.

~~Q.~~ R. The department of administration shall adopt such rules as are deemed necessary to carry out, implement and limit this chapter.

~~R.~~ S. For the purposes of determining whether a state officer, agent or employee is entitled to coverage under this chapter, "within the course and scope of employment or authorization" means:

1. The acts or omissions that the state officer, agent or employee is employed or authorized to perform.

2. The acts or omissions of the state officer, agent or employee occur substantially within the authorized time and space limit.

3. The acts or omissions are activated at least in part by a purpose to serve this state or its departments, agencies, boards or commissions.

~~S.~~ T. To the extent it is determined necessary and in the best interest of this state, the department of administration may obtain design and construction insurance or provide for self-insurance against property damage caused by this state, its departments, agencies, boards and commissions and all officers and employees of this state in connection with the construction of public works projects. Workers' compensation liability insurance may be purchased to cover both general contractors and subcontractors doing work on a specific contracted worksite. The department may include in its annual budget request, pursuant to section 41-622, subsection D, the cost of the insurance purchased or provided. In connection with the construction of public works projects, the department of administration may also use an owner-controlled or wrap-up insurance program if all of the following conditions are met:

1. The total cost of the project is over \$50,000,000.

2. The program maintains completed operations coverage for a term during which coverage is reasonably commercially available as determined by the director of the department of insurance and financial institutions, but in no event for less than three years.

3. Bid specifications clearly specify for all bidders the insurance coverage provided under the program and the minimum safety requirements that shall be met.

4. The program does not prohibit a contractor or subcontractor from purchasing any additional insurance coverage that a contractor believes is

necessary for protection from any liability arising out of the contract. The cost of the additional insurance shall not be passed through to this state on a contract bid.

5. The program does not include surety insurance.

~~T~~ U. The state may purchase an owner-controlled or wrap-up policy that has a deductible or self-insured retention as long as the deductible or self-insured retention does not exceed \$1,000,000.

V. Notwithstanding any other statute the department of administration may:

1. Limit the liability of a person who contracts to provide goods, software or other services to this state.

2. Allow the person to disclaim incidental or consequential damages.

3. Indemnify or hold harmless any party to the contract.

Ch. 239 { W. THE DEPARTMENT OF ADMINISTRATION MAY INTERVENE IN A LAWSUIT AGAINST A PERSON INSURED PURSUANT TO THIS SECTION TO ASSERT A DEFENSE ON BEHALF OF THE PERSON THAT THE CLAIMANT FAILED TO COMPLY WITH SECTION 12-821.01 OR THAT A PORTION OR ALL OF THE ACTION IS BARRED BY SECTION 12-821. THE DEPARTMENT IS NOT REQUIRED TO EXERCISE ITS RIGHT TO INTERVENE TO CLAIM THAT A PORTION OR ALL OF AN INSURED PERSON'S LIABILITY IS NOT FOR ACTS OR OMISSIONS FOR WHICH THE PERSON IS AFFORDED COVERAGE PURSUANT TO THIS SECTION.

~~U~~ X. For the purposes of subsections ~~S~~ T and ~~T~~ U of this section:

1. "Owner-controlled or wrap-up insurance" means a series of insurance policies issued to cover this state and all of the contractors, subcontractors, architects and engineers on a specified contracted worksite for purposes of general liability, property damage and workers' compensation.

2. "Specific contracted worksite" means construction being performed at one site or a series of contiguous sites separated only by a street, roadway, waterway or railroad right-of-way, or along a continuous system for the provision of water and power.

Ch. 308 { Y. FOR THE PURPOSES OF THIS SECTION, "BREACH", "SECURITY SYSTEM BREACH" AND "SECURITY INCIDENT" HAVE THE SAME MEANINGS PRESCRIBED IN SECTION 18-551.

EXPLANATION OF BLEND  
SECTION 41-622

Laws 2022, Chapters 239 and 308

Laws 2022, Ch. 239, section 4

Effective September 24, 2022

Laws 2022, Ch. 308, section 2

Effective September 24, 2022

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 239 and Ch. 308 text changes to section 41-622 are blended in the form shown on the following pages.

BLEND OF SECTION 41-622  
Laws 2022, Chapters 239 and 308

41-622. Risk management revolving fund; construction insurance fund; cyber risk insurance fund; self-insured losses and administrative costs; budget requests

- Chs. 239 and 308 — A. ~~A~~ THE risk management revolving fund, ~~[and]~~ ~~a~~ THE construction insurance fund AND THE CYBER RISK INSURANCE FUND are established in the department of administration for the purchase of insurance, risk management services including loss prevention services, payment of self-insured losses pursuant to section 41-621, subsections A, B, C, D, ~~and~~ E AND F and administrative costs necessary to carry out risk management services prescribed by section 41-621. The department of administration shall pay for claims processing costs, including adjusting costs, legal defense costs and attorney fees, for any portion of claims falling within state self-insurance coverage pursuant to ~~the provisions of this chapter.~~
- Ch. 308 — B. The risk management revolving fund in the department of administration shall exclude any property loss arising from damage due to mechanical or electrical breakdown, ordinary wear and tear or obsolescence, nonserviceability, mysterious disappearance or inventory shortage. Mysterious disappearance ~~shall~~ DOES not be construed to include a loss if there is a reasonable presumption of theft. The department of administration, subject to chapter 23 of this title, may advance or disburse monies to contractors who rebuild state property as a result of self-insured losses or to persons who supply goods or services in replacing self-insured losses. The department of administration shall pay for claims processing costs, including adjusting costs, legal defense costs and attorney fees, for any portion of claims falling within state self-insurance coverage pursuant to ~~the provisions of this chapter.~~
- Chs. 239 and 308 — C. To qualify for payment for loss by theft or burglary of state-owned personal property, an agency, department, board or commission must show evidence of forcible entry or that threat of violence was used in the taking of the property or there must be a reasonable presumption of theft.
- Chs. 239 and 308 — D. The department of administration shall present to the legislature not later than September 1 of each year, in accordance with ~~the provisions of section 35-113, a budget request based on the actuarial needs for liability losses, workers' compensation liability losses, property losses[,] REPLENISHMENT OF THE CYBER RISK INSURANCE FUND and risk management administrative costs.~~ The budget request shall be broken down to reflect the amount of monies to be charged to each of the state departments, agencies, boards and commissions and any others insured under this chapter. Any state department, agency, board or commission that has an amount for insurance included in its appropriation, whether specifically stated or not, and any state department, agency, board or commission or others insured under this chapter that receive funds other than those appropriated shall be billed for the proportionate share of the charges for insurance or self-insurance by the department of administration. In collecting the agency billings for risk management charges, the director of
- Ch. 308

the department of administration may transfer the entire amount of the billing for appropriated insurance from the agency account into the fund designated in subsection A of this section at the start of the fiscal year or in periodic payments during the fiscal year if necessitated by cash flow

Chs. 239  
and 308

— restrictions. Those entities or persons insured under ~~the provisions of~~ this chapter that are not state agencies, departments, boards, commissions or employees or that do not receive funding from state sources shall pay annually the amount required by risk management to the risk management revolving fund or construction insurance fund before the coverage continues for existing claims or begins for new claims made. The construction insurance fund shall receive monies necessary to pay the cost of purchasing insurance, providing self-insurance or administering the fund as authorized by section 41-621, subsection ~~S~~ T from each capital construction project budget at rates established by the department of administration and reviewed by the joint committee on capital review. These amounts shall be included in the budget request. All monies received from all billings shall be deposited in the funds as identified in subsection A of this section.

Ch. 239

E. All monies recovered by the state pursuant to litigation, recovery, salvage value of damaged property, proportionate share monies from any other existing state funds, or otherwise, for damages relating to either a liability, property or workers' compensation loss for which monies from the risk management revolving fund or construction insurance fund have been or will be paid shall be deposited in the respective fund.

F. If a revolving fund is projected to be exhausted while the legislature is in session, a special appropriation may be requested by the department of administration for monies to meet the needs of the funds. If the funds are exhausted at a time when the legislature is not in session, any final judgment shall accrue interest and shall be payable ~~upon~~ ON appropriation in the next succeeding regular session of the legislature. Interest on any judgment against this state paid for out of the risk management revolving fund OR THE CYBER RISK INSURANCE FUND, REGARDLESS OF WHETHER THE FUNDS ARE SELF-INSURED OR FUNDED BY EXCESS INSURANCE, shall accrue at the average yield offered by United States treasury bills during the course of the appeal and shall be paid in accordance with this section. If the appeal is lost by this state, the judgment amount plus interest at the rate prescribed in this subsection shall be paid.

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and 308

Ch. 308

G. All monies deposited in the risk management revolving fund AND THE CYBER RISK INSURANCE FUND are subject to annual legislative appropriation to the department of administration for use pursuant to this section. Monies in the construction insurance fund are continuously appropriated for the fund purposes. The funds established by subsection A of this section are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

Ch. 308

H. A ~~ten thousand dollar~~ \$10,000 death benefit shall be paid from the risk management revolving fund to the estate of a deceased volunteer, who is registered as a volunteer by the agency, board or commission, or to an employee who is not subject to ~~the provisions of~~ section 38-651.02, ~~upon~~ ON proof of death while in the course and scope of duties as prescribed in section 41-621, subsection ~~P~~ Q for any state agency, board or commission.

Chs. 239  
and 308

Ch. 239

EXPLANATION OF BLEND  
SECTION 41-1005

Laws 2022, Chapters 276 and 292

Laws 2022, Ch. 276, section 4

Effective September 24, 2022

Laws 2022, Ch. 292, section 2

Effective June 13, 2022

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 276 and Ch. 292 text changes to section 41-1005 are blended in the form shown on the following pages.

BLEND OF SECTION 41-1005  
Laws 2022, Chapters 276 and 292

41-1005. Exemptions

A. This chapter does not apply to any:

1. Rule that relates to the use of public works, including streets and highways, under the jurisdiction of an agency if the effect of the order is indicated to the public by means of signs or signals.

2. Order or rule of the Arizona game and fish commission that does the following:

(a) Opens, closes or alters seasons or establishes bag or possession limits for wildlife.

(b) Establishes a fee pursuant to section 5-321, 5-322 or 5-327.

(c) Establishes a license classification, fee or application fee pursuant to title 17, chapter 3, article 2.

Ch. 276

(d) LIMITS THE NUMBER OR USE OF LICENSES OR PERMITS THAT ARE ISSUED TO NONRESIDENTS PURSUANT TO SECTION 17-332.

3. Rule relating to section 28-641 or to any rule regulating motor vehicle operation that relates to speed, parking, standing, stopping or passing enacted pursuant to title 28, chapter 3.

4. Rule concerning only the internal management of an agency that does not directly and substantially affect the procedural or substantive rights or duties of any segment of the public.

5. Rule that only establishes specific prices to be charged for particular goods or services sold by an agency.

6. Rule concerning only the physical servicing, maintenance or care of agency owned or operated facilities or property.

Ch. 292

7. Rule or substantive policy statement concerning inmates or committed youths of a correctional or detention facility in secure custody or patients admitted to a hospital, if made by the state department of corrections, the department of juvenile corrections, the board of executive clemency or the department of health services or a facility or hospital under the jurisdiction of the state department of corrections, the department of juvenile corrections or the department of health services.

Ch. 292

8. Form whose contents or substantive requirements are prescribed by rule or statute, and instructions for the execution or use of the form.

9. Capped fee-for-service schedule adopted by the Arizona health care cost containment system administration pursuant to title 36, chapter 29.

10. Fees prescribed by section 6-125.

11. Order of the director of water resources adopting or modifying a management plan pursuant to title 45, chapter 2, article 9.

12. Fees established under section 3-1086.

13. Fees established under sections 41-4010 and 41-4042.

14. Rule or other matter relating to agency contracts.

15. Fees established under section 32-2067 or 32-2132.

16. Rules made pursuant to section 5-111, subsection A.

17. Rules made by the Arizona state parks board concerning the operation of the Tonto natural bridge state park, the facilities located in the Tonto natural bridge state park and the entrance fees to the Tonto natural bridge state park.

18. Fees or charges established under section 41-511.05.

19. Emergency medical services protocols except as provided in section 36-2205, subsection B.

20. Fee schedules established pursuant to section 36-3409.

21. Procedures of the state transportation board as prescribed in section 28-7048.

22. Rules made by the state department of corrections.

23. Fees prescribed pursuant to section 32-1527.

24. Rules made by the department of economic security pursuant to section 46-805.

25. Schedule of fees prescribed by section 23-908.

26. Procedure that is established pursuant to title 23, chapter 6, article 6.

27. Rules, administrative policies, procedures and guidelines adopted for any purpose by the Arizona commerce authority pursuant to chapter 10 of this title if the authority provides, as appropriate under the circumstances, for notice of an opportunity for comment on the proposed rules, administrative policies, procedures and guidelines.

28. Rules made by a marketing commission or marketing committee pursuant to section 3-414.

29. Administration of public assistance program monies authorized for liabilities that are incurred for disasters declared pursuant to sections 26-303 and 35-192.

30. User charges, tolls, fares, rents, advertising and sponsorship charges, services charges or similar charges established pursuant to section 28-7705.

31. Administration and implementation of the hospital assessment pursuant to section 36-2901.08, except that the Arizona health care cost containment system administration must provide notice and an opportunity for public comment at least thirty days before establishing or implementing the administration of the assessment.

32. Rules made by the Arizona department of agriculture to adopt and implement the provisions of the federal milk ordinance as prescribed by section 3-605.

33. Rules made by the Arizona department of agriculture to adopt, implement and administer the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) and any other federal produce safety regulation, order or guideline or other requirement adopted pursuant to the FDA food safety modernization act (P.L. 111-353; 21 United States Code sections 2201 through 2252) as provided by title 3, chapter 3, article 4.1.

Ch. 276 { 34. Calculations THAT ARE performed by the department of economic security AND THAT ARE associated with the adjustment of the sliding fee scale and formula for determining child care assistance pursuant to section 46-805.

Ch. 292 — 35. RULES MADE BY THE ARIZONA DEPARTMENT OF AGRICULTURE TO IMPLEMENT AND ADMINISTER THE LIVESTOCK OPERATOR FIRE AND FLOOD ASSISTANCE GRANT PROGRAM ESTABLISHED BY SECTION 3-109.03.

Chs. 276 and 292 — B. Notwithstanding subsection A, paragraph 21 of this section, ~~at such time as~~ IF the federal highway administration authorizes the privatization of rest areas, the state transportation board shall make rules governing the lease or license by the department of transportation to a private entity for the purposes of privatization of a rest area.

C. Coincident with the making of a final rule pursuant to an exemption from the applicability of this chapter under this section, another statute or session law, the agency shall:

1. Prepare a notice and follow formatting guidelines prescribed by the secretary of state.

2. Prepare the rulemaking exemption notices pursuant to chapter 6.2 of this title.

3. File a copy of the rule with the secretary of state for publication pursuant to section 41-1012 and provide a copy to the council.

D. Unless otherwise required by law, articles 2, 3, 4 and 5 of this chapter do not apply to the Arizona board of regents and the institutions under its jurisdiction, except that the Arizona board of regents shall make policies or rules for the board and the institutions under its jurisdiction that provide, as appropriate under the circumstances, for notice of and opportunity for comment on the policies or rules proposed.

E. Unless otherwise required by law, articles 2, 3, 4 and 5 of this chapter do not apply to the Arizona state schools for the deaf and the blind, except that the board of directors of all the state schools for the deaf and the blind shall adopt policies for the board and the schools under its jurisdiction that provide, as appropriate under the circumstances, for notice of and opportunity for comment on the policies proposed for adoption.

F. Unless otherwise required by law, articles 2, 3, 4 and 5 of this chapter do not apply to the state board of education, except that the state board of education shall adopt policies or rules for the board and the institutions under its jurisdiction that provide, as appropriate under the circumstances, for notice of and opportunity for comment on the policies or rules proposed for adoption. In order to implement or change any rule, the state board of education shall provide at least two opportunities for public comment. The state board of education shall consider the fiscal impact of any proposed rule pursuant to this subsection.

G. Unless otherwise required by law, articles 2, 3, 4 and 5 of this chapter do not apply to the state board for charter schools, except that the board shall adopt policies or rules for the board and the charter schools sponsored by the board that provide, as appropriate under the circumstances, for notice of and opportunity for comment on the policies or rules proposed for adoption. In order to implement or change any policy or rule, the board shall provide at least two opportunities for public comment. The state board for charter schools shall consider the fiscal impact of any proposed rule pursuant to this subsection.

EXPLANATION OF BLEND  
SECTION 41-1304.05

Laws 2022, Chapters 345 and 357

Laws 2022, Ch. 345, section 1

Effective September 24, 2022

Laws 2022, Ch. 357, section 1

Effective September 24, 2022

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 345 and Ch. 357 text changes to section 41-1304.05 are blended in the form shown on the following pages.

BLEND OF SECTION 41-1304.05  
Laws 2022, Chapters 345 and 357

41-1304.05. Architect of the capitol; state capitol building areas and other facilities; jurisdiction; maintenance; definition

Ch. 345 — A. THE OFFICE OF THE ARCHITECT OF THE CAPITOL IS ESTABLISHED IN THE ARIZONA LEGISLATIVE COUNCIL. THE DIRECTOR OF THE ARIZONA LEGISLATIVE COUNCIL SHALL SELECT AN ARCHITECT OF THE CAPITOL AND OTHER PERSONNEL NECESSARY TO DEVELOP AND MAINTAIN A MASTER PLAN FOR THE STATE CAPITOL COMPLEX. THE ARCHITECT OF THE CAPITOL APPOINTED BY THE DIRECTOR OF THE ARIZONA LEGISLATIVE COUNCIL MUST HAVE MASTER PLANNING EXPERIENCE AND EXPERIENCE WORKING WITH THE STATE HISTORIC PRESERVATION OFFICE AND HISTORIC GOVERNMENT BUILDINGS. THE ARCHITECT OF THE CAPITOL SHALL SUBMIT THE MASTER PLAN TO THE MEMBERS OF THE ARIZONA LEGISLATIVE COUNCIL FOR APPROVAL AT LEAST ONCE DURING EACH REGULAR SESSION OF THE LEGISLATURE.

~~A.~~ B. The ARIZONA legislative council is responsible for the allocation of space, operation, alteration, renovation and control of the following:

1. The original 1898 statehouse area of the state capitol building known as the state capitol museum.

2. The 1919 wing and the 1938 justice addition of the state capitol building known jointly as the legislative services wing.

3. Any other facility acquired for legislative use and placed under legislative council jurisdiction and the grounds adjacent to it.

Ch. 357 — 4. EXCEPT AS PROVIDED IN SUBSECTION D, PARAGRAPH 2 OF THIS SECTION, THE WESLEY BOLIN MEMORIAL PLAZA EAST OF THE STATE CAPITOL BUILDING.

Ch. 345 — ~~4.~~ 5. Except as provided in subsections ~~B~~ and C AND D of this section, the grounds adjacent to the state capitol museum, the legislative services wing, the house of representatives wing and the senate wing and comprising the area east of the state capitol executive tower with a northern boundary of west Adams street, an eastern boundary of Seventeenth avenue and a southern boundary of west Jefferson street in Phoenix, Arizona.

Ch. 345 — ~~B.~~ C. The speaker of the ~~state~~ house of representatives is responsible for the following:

1. The allocation of space, operation, alteration, renovation and control of the house of representatives wing of the state capitol building.

2. The allocation of space and control of the parking lot area adjacent to the house of representatives wing, the parking lot area with a southern boundary of west Adams street, an eastern boundary of Seventeenth avenue and a northern boundary of west Monroe street in Phoenix, Arizona and comprised of one hundred five parking spaces and the southeast portion of the parking lot area with a southern boundary of west Monroe street and an eastern boundary of Seventeenth avenue in Phoenix, Arizona and comprised of fifty parking spaces.

Ch. 345 — ~~C.~~ D. The president of the ~~state~~ senate is responsible for the following:

1. The allocation of space, operation, alteration, renovation and control of the senate wing of the state capitol building.

2. The allocation of space and control of the parking lot area adjacent to the senate wing and the southwest portion of the parking lot area of the Wesley Bolin memorial plaza east of the state capitol building and comprised of one hundred twenty parking spaces.

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and 357

~~D.~~ E. The joint legislative budget committee is responsible for the allocation of space, operation, alteration, renovation and control of the building located at 1716 ~~W.~~ WEST Adams [STREET] in Phoenix.

Ch. 345

~~E.~~ F. The director of the department of administration is responsible for the maintenance of the entire state capitol building.

~~F.~~ G. For the purposes of this section, "control" includes security services.

EXPLANATION OF BLEND  
SECTION 41 -1604.11

Laws 2022, Chapters 197 and 245

Laws 2022, Ch. 197, section 11

Effective September 24, 2022

Laws 2022, Ch. 245, section 5

Effective September 24, 2022

Explanation

Since these two enactments are identical, the Laws 2022, Ch. 197 and Ch. 245 text changes to section 41 -1604.11 are blended in the form shown on the following pages.

BLEND OF SECTION 41-1604.11  
Laws 2022, Chapters 197 and 245

41-1604.11. Order for removal; purposes; duration; work furlough; notice; failure to return; classification; applicability; definition

A. The director of the state department of corrections may authorize the temporary removal under custody from prison or any other institution for the detention of adults under the jurisdiction of the state department of corrections of any inmate for the purpose of employing that inmate in any work directly connected with the administration, management or maintenance of the prison or institution in which the inmate is confined, for purposes of cooperating voluntarily in medical research that cannot be performed at the prison or institution, or for participating in community action activities directed toward delinquency prevention and community betterment programs. The removal shall not be for a period longer than one day.

B. Under specific rules established by the director for the selection of inmates, the director may also authorize furlough, temporary removal or temporary release of any inmate for compassionate leave, for the purpose of furnishing to the inmate medical treatment not available at the prison or institution, for purposes preparatory to a return to the community within ninety days of the inmate's release date or for disaster aid, including local mutual aid and state emergencies. When an inmate is temporarily removed or temporarily released for a purpose preparatory to return to the community or for compassionate leave, the director may require the inmate to reimburse the state, in whole or part, for expenses incurred by the state in connection with the temporary removal or release.

C. The board of executive clemency, under specific rules established for the selection of inmates, if it appears to the board, in its sole discretion, that there is a substantial probability that the inmate will remain at liberty without violating the law and that the release is in the best interests of the state, may authorize the release of an inmate on work furlough if the inmate has served not less than six months of the sentence imposed by the court, is within twelve months of the inmate's parole eligibility date and has not been convicted of a sexual offense. The director shall provide information as the board requests concerning any inmate eligible for release on work furlough. The inmate shall not be released on work furlough unless the release is approved by the board.

D. An inmate who is otherwise eligible for work furlough pursuant to subsection C of this section, who is not on home arrest and who is currently serving a sentence for a conviction of a serious offense or conspiracy to commit or attempt to commit a serious offense shall not be granted work furlough except by one of the following votes:

1. A majority affirmative vote if four or more members of the board of executive clemency consider the action.

2. A unanimous affirmative vote if three members of the board of executive clemency consider the action.

3. A unanimous affirmative vote if two members of the board of executive clemency consider the action pursuant to section 31-401, subsection I and the chairman of the board concurs after reviewing the information considered by the two members.

E. Before holding a hearing on the work furlough under consideration, the board, on request, shall notify and afford an opportunity to be heard to the presiding judge of the superior court in the county in which the inmate requesting a work furlough was sentenced, the prosecuting attorney, the director of the arresting law enforcement agency and the victim of the offense for which the inmate is incarcerated. The notice shall state the name of the inmate requesting the work furlough, the offense for which the inmate was sentenced, the length of the sentence and the date of admission to the custody of the state department of corrections. The notice to the victim shall also inform the victim of the victim's right to be present and submit a written report to the board expressing the victim's opinion concerning the inmate's release. ~~No~~ A hearing concerning work furlough shall NOT be held until fifteen days after the date of giving the notice. On mailing the notice, the board shall file a hard copy of the notice as evidence that notification was sent.

Chs. 197  
and 245

F. The board shall require that every inmate released on work furlough comply with the terms and conditions of release as the board may impose, including that the inmate be gainfully employed while on work furlough and that the inmate make restitution to the victim of the offense for which the inmate was incarcerated.

G. If the board finds that an inmate has failed to comply with the terms and conditions of release or that the best interests of this state would be served by revocation of an inmate's work furlough, the board may issue a warrant for retaking the inmate before the expiration of the inmate's maximum sentence. After return of the inmate, the board may revoke the inmate's work furlough after the inmate has been given an opportunity to be heard.

H. If the board denies the release of an inmate on work furlough or home arrest, ~~††~~ THE BOARD may prescribe that the inmate not be recommended again for release on work furlough or home arrest for a period of up to one year.

Chs. 197  
and 245

I. The director shall transmit a monthly report containing the name, date of birth, offense for which the inmate was sentenced, length of the sentence and date of admission to the state department of corrections of each inmate on work furlough or home arrest to the chairperson of the house of representatives judiciary committee or its successor committee and the chairperson of the senate judiciary committee or its successor committee. The director shall also submit a report containing this information for any inmate released on work furlough or home arrest within a jurisdiction to the county attorney, sheriff and chief of police for the jurisdiction in which the inmate is released on work furlough or home arrest.

J. Any inmate who knowingly fails to return from furlough, home arrest, work furlough or temporary removal or temporary release granted under this section is guilty of a class 5 felony.

K. At any given time if the director declares there is a shortage of beds available for inmates within the state department of corrections, the parole eligibility as set forth in sections 31-411 and 41-1604.09 may be suspended for any inmate who has served not less than six months of the sentence imposed by the court, who has not been previously convicted of a felony and who has been sentenced for a class 4, 5 or 6 felony, not involving a sexual offense, the use or exhibition of a deadly weapon or dangerous instrument or the infliction of serious physical injury pursuant to section 13-704, and the inmate shall be continuously eligible for parole, home arrest or work furlough.

L. Prisoners who have served at least one calendar year and who are serving a sentence for conviction of a crime committed on or after October 1, 1978, under section 13-604, 13-1406, 13-1410, 13-3406, 36-1002.01, 36-1002.02 or 36-1002.03, and who are sentenced to the custody of the state department of corrections, may be temporarily released, according to the rules of the department, at the discretion of the director, one hundred ~~eighty~~ calendar days ~~prior to~~ BEFORE expiration of the term imposed and shall remain under the control of the state department of corrections until expiration of the maximum sentence specified. If an offender released under this section or pursuant to section 31-411, subsection B violates the rules, the offender may be returned to custody and shall be classified to a parole class as provided by the rules of the department.

Chs. 197  
and 245

M. This section applies only to persons who commit felony offenses before January 1, 1994.

N. For the purposes of this section, "serious offense" means any of the following:

1. A serious offense as defined in section 13-706, subsection F, paragraph 1, subdivision (a), (b), (c), (d), (e), (g), (h), (i), (j) or (k).

2. A dangerous crime against children as defined in section 13-705. The citation of section 13-705 is not a necessary element for a serious offense designation.

3. A conviction under a prior criminal code for any offense that possesses reasonably equivalent offense elements as the offense elements that are listed under section 13-705, subsection ~~R~~ T, paragraph 1 or section 13-706, subsection F, paragraph 1.

Chs. 197  
and 245

EXPLANATION OF BLEND  
SECTION 41-1604.13

Laws 2022, Chapters 197 and 245

Laws 2022, Ch. 197, section 12

Effective September 24, 2022

Laws 2022, Ch. 245, section 6

Effective September 24, 2022

Explanation

Since these two enactments are identical, the Laws 2022, Ch. 197 and Ch. 245 text changes to section 41-1604.13 are blended in the form shown on the following pages.

BLEND OF SECTION 41-1604.13  
Laws 2022, Chapters 197 and 245

41-1604.13. Home arrest; eligibility; victim notification;  
conditions; applicability; definitions

A. An inmate who has served not less than six months of the sentence imposed by the court is eligible for the home arrest program if the inmate:

1. Meets the following criteria:

(a) Was convicted of committing a class 4, 5 or 6 felony not involving a dangerous offense.

(b) Was not convicted of a sexual offense.

(c) Has not previously been convicted of any felony.

2. Violated parole by the commission of a technical violation that was not chargeable or indictable as a criminal offense.

3. Is eligible for work furlough.

4. Is eligible for parole pursuant to section 31-412, subsection A.

B. The board of executive clemency shall determine which inmates are released to the home arrest program based on the criteria in subsection A of this section and based on a determination that there is a substantial probability that the inmate will remain at liberty without violating the law and that the release is in the best interests of the state after considering the offense for which the inmate is presently incarcerated, the prior record of the inmate, the conduct of the inmate while incarcerated and any other information concerning the inmate that is in the possession of the state department of corrections, including any presentence report. The board maintains the responsibility of revocation as applicable to all parolees.

C. An inmate who is otherwise eligible for home arrest, who is not on work furlough and who is currently serving a sentence for a conviction of a serious offense or conspiracy to commit or attempt to commit a serious offense shall not be granted home arrest except by one of the following votes:

1. A majority affirmative vote if four or more members of the board of executive clemency consider the action.

2. A unanimous affirmative vote if three members of the board of executive clemency consider the action.

3. A unanimous affirmative vote if two members of the board of executive clemency consider the action pursuant to section 31-401, subsection I and the chairman of the board concurs after reviewing the information considered by the two members.

D. Home arrest is conditioned on the following:

1. Active electronic monitoring surveillance for a minimum term of one year or until eligible for general parole.

2. Participation in gainful employment or other beneficial activities.

3. Submission to alcohol and drug tests as mandated.

Chs. 197  
and 245

— 4. Payment of the electronic monitoring fee in an amount determined by the board of not less than ~~one dollar~~ \$1 per day and not more than the total cost of the electronic monitoring unless, after determining the inability of the inmate to pay the fee, the board requires payment of a lesser amount. The fees collected shall be returned to the department's home arrest program to offset operational costs of the program.

5. Remaining at the inmate's place of residence at all times except for movement out of the residence according to mandated conditions.

6. Adherence to any other conditions imposed by the court, board of executive clemency or supervising corrections officers.

7. Compliance with all other conditions of supervision.

Chs. 197  
and 245

— 8. Payment of a monthly home arrest supervision fee of at least ~~sixty-five dollars~~ \$65 unless, after determining the inability of the inmate to pay the fee, the department requires payment of a lesser amount. The supervising corrections officer shall monitor the collection of the fee. Monies collected shall be deposited, pursuant to sections 35-146 and 35-147, in the community corrections enhancement fund established by section 31-418.

9. Payment of a drug testing fee in an amount to be determined by the board and not to exceed the costs of the drug testing program. The fees collected pursuant to this paragraph by the department may only be used to offset the costs of the drug testing program.

E. Before holding a hearing on home arrest, the board on request shall notify and afford an opportunity to be heard to the presiding judge of the superior court in the county in which the inmate requesting home arrest was sentenced, the prosecuting attorney and the director of the arresting law enforcement agency. The board shall notify the victim of the offense for which the inmate is incarcerated. The notice shall state the name of the inmate requesting home arrest, the offense for which the inmate was sentenced, the length of the sentence and the date of admission to the custody of the state department of corrections. The notice to the victim shall also inform the victim of the victim's right to be present and to submit a written report to the board expressing the victim's opinion concerning the inmate's release. ~~No~~ A hearing concerning home arrest may NOT be held until fifteen days after the date of giving the notice. On mailing the notice, the board shall file a hard copy of the notice as evidence that notification was sent.

Chs. 197  
and 245

F. An inmate who is placed on home arrest is on inmate status, is subject to all the limitations of rights and movement and is entitled only to due process rights of return.

G. If an inmate violates a condition of home arrest that poses any threat or danger to the community, or commits an additional felony offense, the board shall revoke the home arrest and return the inmate to the custody of the state department of corrections to complete the term of imprisonment as authorized by law.

Chs. 197  
and 245

— H. The ratio of supervising corrections officers to supervisees in the home arrest program shall NOT be ~~no~~ greater than one officer for every twenty-five supervisees.

I. The board shall determine when the supervisee is eligible for transfer to the regular parole program pursuant to section 31-411.

J. This section applies only to persons who commit felony offenses before January 1, 1994.

K. For the purposes of this section:

1. "Dangerous offense" has the same meaning prescribed in section 13-105.

2. "Serious offense" includes any of the following:

(a) A serious offense as defined in section 13-706, subsection F, paragraph 1, subdivision (a), (b), (c), (d), (e), (g), (h), (i), (j) or (k).

(b) A dangerous crime against children as defined in section 13-705. The citation of section 13-705 is not a necessary element for a serious offense designation.

(c) A conviction under a prior criminal code for any offense that possesses reasonably equivalent offense elements as the offense elements that are listed under section 13-705, subsection ~~R~~ T, paragraph 1 or section 13-706, subsection F, paragraph 1.

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and 245

EXPLANATION OF BLEND  
SECTION 41-1750

Laws 2022, Chapters 163 and 186

Laws 2022, Ch. 163, section 1

Effective January 1, 2023

Laws 2022, Ch. 186, section 1

Effective September 24, 2022

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 163 and Ch. 186 text changes to section 41-1750 are blended effective from and after December 31, 2022 in the form shown on the following pages.

BLEND OF SECTION 41-1750  
Laws 2022, Chapters 163 and 186

41-1750. Central state repository; department of public safety; duties; funds; accounts; definitions

A. The department is responsible for the effective operation of the central state repository in order to collect, store and disseminate complete and accurate Arizona criminal history records and related criminal justice information. THE DEPARTMENT MAY PROCURE CRIMINAL HISTORY RECORDS AND RELATED CRIMINAL JUSTICE INFORMATION FOR VIOLATIONS THAT ARE NOT LISTED IN THIS SECTION. The department shall:

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1. Procure from all criminal justice agencies in this state accurate and complete personal identification data, fingerprints, charges, process control numbers and dispositions and such other information as may be pertinent to all persons who have been charged with, arrested for, convicted

of or summoned to court as a criminal defendant for ANY OF THE FOLLOWING:

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- (a) A felony offense or an offense involving domestic violence as defined in section 13-3601. or
- (b) A violation of title 13, chapter 14 or title 28, chapter 4.
- (c) AN OFFENSE LISTED IN:
  - (i) SECTION 32-2422, SUBSECTION A, PARAGRAPH 4.
  - (ii) SECTION 32-2441, SUBSECTION A, PARAGRAPH 4.
  - (iii) SECTION 32-2612, SUBSECTION A, PARAGRAPH 4.
  - (iv) SECTION 32-2622, SUBSECTION A, PARAGRAPH 4.
  - (v) SECTION 41-1758.03, SUBSECTIONS B AND C.
  - (vi) SECTION 41-1758.07, SUBSECTIONS B AND C.

2. Collect information concerning the number and nature of offenses known to have been committed in this state and of the legal steps taken in connection with these offenses, such other information that is useful in the study of crime and in the administration of criminal justice and all other information deemed necessary to operate the statewide uniform crime reporting program and to cooperate with the federal government uniform crime reporting program.

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3. Collect information concerning criminal offenses that manifest evidence of prejudice based on race, color, religion, national origin, sexual orientation, gender, ANTISEMITISM or disability.

4. Cooperate with the central state repositories in other states and with the appropriate agency of the federal government in the exchange of information pertinent to violators of the law.

5. Ensure the rapid exchange of information concerning the commission of crime and the detection of violators of the law among the criminal justice agencies of other states and of the federal government.

6. Furnish assistance to peace officers throughout this state in crime scene investigation for the detection of latent fingerprints and in the comparison of latent fingerprints.

7. Conduct periodic operational audits of the central state repository and of a representative sample of other agencies that contribute

records to or receive criminal justice information from the central state repository or through the Arizona criminal justice information system.

8. Establish and enforce the necessary physical and system safeguards to ensure that the criminal justice information maintained and disseminated by the central state repository or through the Arizona criminal justice information system is appropriately protected from unauthorized inquiry, modification, destruction or dissemination as required by this section.

9. Aid and encourage coordination and cooperation among criminal justice agencies through the statewide and interstate exchange of criminal justice information.

10. Provide training and proficiency testing on the use of criminal justice information to agencies receiving information from the central state repository or through the Arizona criminal justice information system.

11. Operate and maintain the Arizona automated fingerprint identification system established by section 41-2411.

12. Provide criminal history record information to the fingerprinting division for the purpose of screening applicants for fingerprint clearance cards.

B. The director may establish guidelines for the submission and retention of criminal justice information as deemed useful for the study or prevention of crime and for the administration of criminal justice.

Ch. 163 { C. CRIMINAL JUSTICE AGENCIES MAY PROVIDE CRIMINAL HISTORY RECORDS AND RELATED CRIMINAL JUSTICE INFORMATION FOR VIOLATIONS THAT ARE NOT LISTED IN THIS SECTION. The chief officers of criminal justice agencies of this state or its political subdivisions shall provide to the central state repository fingerprints and information concerning personal identification data, descriptions, crimes for which persons are arrested, process control numbers and dispositions and such other information as may be pertinent to all persons who have been charged with, arrested for, convicted of or summoned to court as criminal defendants for ANY OF THE FOLLOWING:

1. Felony offenses or offenses involving domestic violence as defined in section 13-3601. or

2. Violations of title 13, chapter 14 or title 28, chapter 4 that have occurred in this state.

3. AN OFFENSE LISTED IN:

(a) SECTION 32-2422, SUBSECTION A, PARAGRAPH 4.

(b) SECTION 32-2441, SUBSECTION A, PARAGRAPH 4.

(c) SECTION 32-2612, SUBSECTION A, PARAGRAPH 4.

(d) SECTION 32-2622, SUBSECTION A, PARAGRAPH 4.

(e) SECTION 41-1758.03, SUBSECTIONS B AND C.

(f) SECTION 41-1758.07, SUBSECTIONS B AND C.

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D. The chief officers of law enforcement agencies of this state or its political subdivisions shall provide to the department such information as necessary to operate the statewide uniform crime reporting program and to cooperate with the federal government uniform crime reporting program.

E. The chief officers of criminal justice agencies of this state or its political subdivisions shall comply with the training and proficiency testing guidelines as required by the department to comply with the federal national crime information center mandates.

F. The chief officers of criminal justice agencies of this state or its political subdivisions also shall provide to the department information concerning crimes that manifest evidence of prejudice based on race, color, religion, national origin, sexual orientation, gender, ANTISEMITISM or disability.

G. The director shall authorize the exchange of criminal justice information between the central state repository, or through the Arizona criminal justice information system, whether directly or through any intermediary, only as follows:

1. With criminal justice agencies of the federal government, Indian tribes, this state or its political subdivisions and other states, on request by the chief officers of such agencies or their designated representatives, specifically for the purposes of the administration of criminal justice and for evaluating the fitness of current and prospective criminal justice employees. The department may conduct periodic state and federal criminal history records checks for the purpose of updating the status of current criminal justice employees or volunteers and may notify the criminal justice agency of the results of the records check. The department is authorized to submit fingerprints to the federal bureau of investigation to be retained for the purpose of being searched by future submissions to the federal bureau of investigation including latent fingerprint searches.

2. With any noncriminal justice agency pursuant to a statute, ordinance or executive order that specifically authorizes the noncriminal justice agency to receive criminal history record information for the purpose of evaluating the fitness of current or prospective licensees, employees, contract employees or volunteers, on submission of the subject's fingerprints and the prescribed fee. Each statute, ordinance, or executive order that authorizes noncriminal justice agencies to receive criminal history record information for these purposes shall identify the specific categories of licensees, employees, contract employees or volunteers, and shall require that fingerprints of the specified individuals be submitted in conjunction with such requests for criminal history record information. The department may conduct periodic state and federal criminal history records checks for the purpose of updating the status of current licensees, employees, contract employees or volunteers and may notify the noncriminal justice agency of the results of the records check. The department is authorized to submit fingerprints to the federal bureau of investigation to be retained for the purpose of being searched by future submissions to the federal bureau of investigation including latent fingerprint searches.

3. With the board of fingerprinting for the purpose of conducting good cause exceptions pursuant to section 41-619.55 and central registry exceptions pursuant to section 41-619.57.

4. With any individual for any lawful purpose on submission of the subject of record's fingerprints and the prescribed fee.

5. With the governor, if the governor elects to become actively involved in the investigation of criminal activity or the administration of criminal justice in accordance with the governor's constitutional duty to ensure that the laws are faithfully executed or as needed to carry out the other responsibilities of the governor's office.

6. With regional computer centers that maintain authorized computer-to-computer interfaces with the department, that are criminal justice agencies or under the management control of a criminal justice agency and that are established by a statute, ordinance or executive order to provide automated data processing services to criminal justice agencies specifically for the purposes of the administration of criminal justice or evaluating the fitness of regional computer center employees who have access to the Arizona criminal justice information system and the national crime information center system.

7. With an individual who asserts a belief that criminal history record information relating to the individual is maintained by an agency or in an information system in this state that is subject to this section. On submission of fingerprints, the individual may review this information for the purpose of determining its accuracy and completeness by making application to the agency operating the system. Rules adopted under this section shall include provisions for administrative review and necessary correction of any inaccurate or incomplete information. The review and challenge process authorized by this paragraph is limited to criminal history record information.

8. With individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement if the agreement specifically authorizes access to data, limits the use of data to purposes for which given and ensures the security and confidentiality of the data consistent with this section.

9. With individuals and agencies for the express purpose of research, evaluative or statistical activities pursuant to an agreement with a criminal justice agency if the agreement specifically authorizes access to data, limits the use of data to research, evaluative or statistical purposes and ensures the confidentiality and security of the data consistent with this section.

10. With the auditor general for audit purposes.

11. With central state repositories of other states for noncriminal justice purposes for dissemination in accordance with the laws of those states.

12. On submission of the fingerprint card, with the department of child safety and a tribal social services agency to provide criminal history record information on prospective adoptive parents for the purpose of conducting the preadoption certification investigation under title 8, chapter 1, article 1 if the department of economic security is conducting the investigation, or with an agency or a person appointed by the court, if the agency or person is conducting the investigation. Information received under this paragraph shall only be used for the purposes of the preadoption certification investigation.

13. With the department of child safety, a tribal social services agency and the superior court for the purpose of evaluating the fitness of custodians or prospective custodians of juveniles, including parents, relatives and prospective guardians. Information received under this paragraph shall only be used for the purposes of that evaluation. The information shall be provided on submission of either:

(a) The fingerprint card.

(b) The name, date of birth and social security number of the person.

14. On submission of a fingerprint card, provide criminal history record information to the superior court for the purpose of evaluating the fitness of investigators appointed under section 14-5303 or 14-5407, guardians appointed under section 14-5206 or 14-5304 or conservators appointed under section 14-5401.

15. With the supreme court to provide criminal history record information on prospective fiduciaries pursuant to section 14-5651.

16. With the department of juvenile corrections to provide criminal history record information pursuant to section 41-2814.

17. On submission of the fingerprint card, provide criminal history record information to the Arizona peace officer standards and training board or a board certified law enforcement academy to evaluate the fitness of prospective cadets.

18. With the internet sex offender website database established pursuant to section 13-3827.

19. With licensees of the United States nuclear regulatory commission for the purpose of determining whether an individual should be granted unescorted access to the protected area of a commercial nuclear generating station on submission of the subject of record's fingerprints and the prescribed fee.

20. With the state board of education for the purpose of evaluating the fitness of a certificated educator, an applicant for a teaching or administrative certificate or a noncertificated person as defined in section 15-505 if the state board of education or its employees or agents have reasonable suspicion that the educator or person engaged in conduct that would be a criminal violation of the laws of this state or was involved in immoral or unprofessional conduct or that the applicant engaged in conduct that would warrant disciplinary action if the applicant were certificated at the time of the alleged conduct. The information shall be provided on the submission of either:

(a) The fingerprint card.

(b) The name, date of birth and social security number of the person.

21. With each school district and charter school in this state. The department of education and the state board for charter schools shall provide the department of public safety with a current list of email addresses for each school district and charter school in this state and shall periodically provide the department of public safety with updated email addresses. If the department of public safety is notified that a person who is required to have a fingerprint clearance card to be employed by or to engage in volunteer activities at a school district or charter school has been arrested for or convicted of an offense listed in section 41-1758.03, subsection B or has been arrested for or convicted of an offense that amounts to unprofessional conduct under section 15-550, the department of public safety shall notify each school district and charter school in this state that the person's fingerprint clearance card has been suspended or revoked.

22. With a tribal social services agency and the department of child safety as provided by law, which currently is the Adam Walsh child protection and safety act of 2006 (42 United States Code section 16961), for the

purposes of investigating or responding to reports of child abuse, neglect or exploitation. Information received pursuant to this paragraph from the national crime information center, the interstate identification index and the Arizona criminal justice information system network shall only be used for the purposes of investigating or responding as prescribed in this paragraph. The information shall be provided on submission to the department of public safety of either:

(a) The fingerprints of the person being investigated.

(b) The name, date of birth and social security number of the person.

23. With a nonprofit organization that interacts with children or vulnerable adults for the lawful purpose of evaluating the fitness of all current and prospective employees, contractors and volunteers of the organization. The criminal history record information shall be provided on submission of the applicant fingerprint card and the prescribed fee.

24. With the superior court for the purpose of determining an individual's eligibility for substance abuse and treatment courts in a family or juvenile case.

25. With the governor to provide criminal history record information on prospective gubernatorial nominees, appointees and employees as provided by law.

H. The director shall adopt rules necessary to execute this section.

I. The director, in the manner prescribed by law, shall remove and destroy records that the director determines are no longer of value in the detection or prevention of crime.

J. The director shall establish a fee in an amount necessary to cover the cost of federal noncriminal justice fingerprint processing for criminal history record information checks that are authorized by law for noncriminal justice employment, licensing or other lawful purposes. An additional fee may be charged by the department for state noncriminal justice fingerprint processing. Fees submitted to the department for state noncriminal justice fingerprint processing are not refundable.

K. The director shall establish a fee in an amount necessary to cover the cost of processing copies of department reports, eight by ten inch black and white photographs or eight by ten inch color photographs of traffic accident scenes.

L. Except as provided in subsection O of this section, each agency authorized by this section may charge a fee, in addition to any other fees prescribed by law, in an amount necessary to cover the cost of state and federal noncriminal justice fingerprint processing for criminal history record information checks that are authorized by law for noncriminal justice employment, licensing or other lawful purposes.

M. A fingerprint account within the records processing fund is established for the purpose of separately accounting for the collection and payment of fees for noncriminal justice fingerprint processing by the department. Monies collected for this purpose shall be credited to the account, and payments by the department to the United States for federal noncriminal justice fingerprint processing shall be charged against the account. Monies in the account not required for payment to the United States shall be used by the department in support of the department's noncriminal justice fingerprint processing duties. At the end of each

fiscal year, any balance in the account not required for payment to the United States or to support the department's noncriminal justice fingerprint processing duties reverts to the state general fund.

N. A records processing fund is established for the purpose of separately accounting for the collection and payment of fees for department reports and photographs of traffic accident scenes processed by the department. Monies collected for this purpose shall be credited to the fund and shall be used by the department in support of functions related to providing copies of department reports and photographs. At the end of each fiscal year, any balance in the fund not required for support of the functions related to providing copies of department reports and photographs reverts to the state general fund.

O. The department of child safety may pay from appropriated monies the cost of federal fingerprint processing or federal criminal history record information checks that are authorized by law for employees and volunteers of the department, guardians pursuant to section 8-453, subsection A, paragraph 6, the licensing of foster parents or the certification of adoptive parents.

P. The director shall adopt rules that provide for:

1. The collection and disposition of fees pursuant to this section.
2. The refusal of service to those agencies that are delinquent in paying these fees.

Q. The director shall ensure that the following limitations are observed regarding dissemination of criminal justice information obtained from the central state repository or through the Arizona criminal justice information system:

1. Any criminal justice agency that obtains criminal justice information from the central state repository or through the Arizona criminal justice information system assumes responsibility for the security of the information and shall not secondarily disseminate this information to any individual or agency not authorized to receive this information directly from the central state repository or originating agency.

2. Dissemination to an authorized agency or individual may be accomplished by a criminal justice agency only if the dissemination is for criminal justice purposes in connection with the prescribed duties of the agency and not in violation of this section.

3. Criminal history record information disseminated to noncriminal justice agencies or to individuals shall be used only for the purposes for which it was given. Secondary dissemination is prohibited unless otherwise authorized by law.

4. The existence or nonexistence of criminal history record information shall not be confirmed to any individual or agency not authorized to receive the information itself.

5. Criminal history record information to be released for noncriminal justice purposes to agencies of other states shall only be released to the central state repositories of those states for dissemination in accordance with the laws of those states.

6. Criminal history record information shall be released to noncriminal justice agencies of the federal government pursuant to the terms of the federal security clearance information act (P.L. 99-169).

R. This section and the rules adopted under this section apply to all agencies and individuals collecting, storing or disseminating criminal justice information processed by manual or automated operations if the collection, storage or dissemination is funded in whole or in part with monies made available by the law enforcement assistance administration after July 1, 1973, pursuant to title I of the crime control act of 1973, and to all agencies that interact with or receive criminal justice information from or through the central state repository and through the Arizona criminal justice information system.

S. This section does not apply to criminal history record information contained in:

1. Posters, arrest warrants, announcements or lists for identifying or apprehending fugitives or wanted persons.

2. Original records of entry such as police blotters maintained by criminal justice agencies, compiled chronologically and required by law or long-standing custom to be made public if these records are organized on a chronological basis.

3. Transcripts or records of judicial proceedings if released by a court or legislative or administrative proceedings.

4. Announcements of executive clemency or pardon.

5. Computer databases, other than the Arizona criminal justice information system, that are specifically designed for community notification of an offender's presence in the community pursuant to section 13-3825 or for public informational purposes authorized by section 13-3827.

T. Nothing in this section prevents a criminal justice agency from disclosing to the public criminal history record information that is reasonably contemporaneous to the event for which an individual is currently within the criminal justice system, including information noted on traffic accident reports concerning citations, blood alcohol tests or arrests made in connection with the traffic accident being investigated.

U. In order to ensure that complete and accurate criminal history record information is maintained and disseminated by the central state repository:

1. The booking agency shall take legible ten-print fingerprints of all persons who are arrested for offenses listed in subsection C of this section. The booking agency shall obtain a process control number and provide to the person fingerprinted a document that indicates proof of the fingerprinting and that informs the person that the document must be presented to the court.

2. Except as provided in paragraph 3 of this subsection, if a person is summoned to court as a result of an indictment or complaint for an offense listed in subsection C of this section, the court shall order the person to appear before the county sheriff and provide legible ten-print fingerprints. The county sheriff shall obtain a process control number and provide a document to the person fingerprinted that indicates proof of the fingerprinting and that informs the person that the document must be presented to the court. For the purposes of this paragraph, "summoned" includes a written promise to appear by the defendant on a uniform traffic ticket and complaint.

3. If a person is arrested for a misdemeanor offense listed in subsection C of this section by a city or town law enforcement agency, the person shall appear before the law enforcement agency that arrested the defendant and provide legible ten-print fingerprints. The law enforcement agency shall obtain a process control number and provide a document to the person fingerprinted that indicates proof of the fingerprinting and that informs the person that the document must be presented to the court.

4. The mandatory fingerprint compliance form shall contain the following information:

(a) Whether ten-print fingerprints have been obtained from the person.

(b) Whether a process control number was obtained.

(c) The offense or offenses for which the process control number was obtained.

(d) Any report number of the arresting authority.

(e) Instructions on reporting for ten-print fingerprinting, including available times and locations for reporting for ten-print fingerprinting.

(f) Instructions that direct the person to provide the form to the court at the person's next court appearance.

5. Within ten days after a person is fingerprinted, the arresting authority or agency that took the fingerprints shall forward the fingerprints to the department in the manner or form required by the department.

6. On the issuance of a summons for a defendant who is charged with an offense listed in subsection C of this section, the summons shall direct the defendant to provide ten-print fingerprints to the appropriate law enforcement agency.

7. At the initial appearance or on the arraignment of a summoned defendant who is charged with an offense listed in subsection C of this section, if the person does not present a completed mandatory fingerprint compliance form to the court or if the court has not received the process control number, the court shall order that within twenty calendar days the defendant be ten-print fingerprinted at a designated time and place by the appropriate law enforcement agency.

8. If the defendant fails to present a completed mandatory fingerprint compliance form or if the court has not received the process control number, the court, on its own motion, may remand the defendant into custody for ten-print fingerprinting. If otherwise eligible for release, the defendant shall be released from custody after being ten-print fingerprinted.

9. In every criminal case in which the defendant is incarcerated or fingerprinted as a result of the charge, an originating law enforcement agency or prosecutor, within forty days of the disposition, shall advise the central state repository of all dispositions concerning the termination of criminal proceedings against an individual arrested for an offense specified in subsection C of this section. This information shall be submitted on a form or in a manner required by the department.

10. Dispositions resulting from formal proceedings in a court having jurisdiction in a criminal action against an individual who is arrested for

an offense specified in subsection C of this section or section 8-341, subsection V, paragraph 3 shall be reported to the central state repository within forty days of the date of the disposition. This information shall be submitted on a form or in a manner specified by rules approved by the supreme court.

11. The state department of corrections or the department of juvenile corrections, within forty days, shall advise the central state repository that it has assumed supervision of a person convicted of an offense specified in subsection C of this section or section 8-341, subsection V, paragraph 3. The state department of corrections or the department of juvenile corrections shall also report dispositions that occur thereafter to the central state repository within forty days of the date of the dispositions. This information shall be submitted on a form or in a manner required by the department of public safety.

12. Each criminal justice agency shall query the central state repository before dissemination of any criminal history record information to ensure the completeness of the information. Inquiries shall be made before any dissemination except in those cases in which time is of the essence and the repository is technically incapable of responding within the necessary time period. If time is of the essence, the inquiry shall still be made and the response shall be provided as soon as possible.

V. The director shall adopt rules specifying that any agency that collects, stores or disseminates criminal justice information that is subject to this section shall establish effective security measures to protect the information from unauthorized access, disclosure, modification or dissemination. The rules shall include reasonable safeguards to protect the affected information systems from fire, flood, wind, theft, sabotage or other natural or man-made hazards or disasters.

W. The department shall make available to agencies that contribute to, or receive criminal justice information from, the central state repository or through the Arizona criminal justice information system a continuing training program in the proper methods for collecting, storing and disseminating information in compliance with this section.

X. Nothing in this section creates a cause of action or a right to bring an action including an action based on discrimination due to sexual orientation.

Y. THE DEFINITION PRESCRIBED IN SUBSECTION Z, PARAGRAPH 3 OF THIS SECTION DOES NOT DIMINISH OR INFRINGE ON ANY RIGHTS PROTECTED UNDER THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION OR THE ARIZONA CONSTITUTION.

~~Y.~~ Z. For the purposes of this section:

1. "Administration of criminal justice" means performance of the detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correctional supervision or rehabilitation of criminal offenders. Administration of criminal justice includes enforcement of criminal traffic offenses and civil traffic violations, including parking violations, when performed by a criminal justice agency. Administration of criminal justice also includes criminal identification activities and the collection, storage and dissemination of criminal history record information.

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2. "Administrative records" means records that contain adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency and that are designed to furnish information to protect the rights of this state and of persons directly affected by the agency's activities.

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3. "ANTISEMITISM" INCLUDES THE DEFINITION OF ANTISEMITISM THAT WAS ADOPTED BY THE INTERNATIONAL HOLOCAUST REMEMBRANCE ALLIANCE ON MAY 26, 2016 AND THAT HAS BEEN ADOPTED BY THE UNITED STATES DEPARTMENT OF STATE, INCLUDING THE CONTEMPORARY EXAMPLES OF ANTISEMITISM IDENTIFIED IN THE ADOPTED DEFINITION.

~~3.~~ 4. "Arizona criminal justice information system" or "system" means the statewide information system managed by the director for the collection, processing, preservation, dissemination and exchange of criminal justice information and includes the electronic equipment, facilities, procedures and agreements necessary to exchange this information.

~~4.~~ 5. "Booking agency" means the county sheriff or, if a person is booked into a municipal jail, the municipal law enforcement agency.

~~5.~~ 6. "Central state repository" means the central location within the department for the collection, storage and dissemination of Arizona criminal history records and related criminal justice information.

~~6.~~ 7. "Criminal history record information" and "criminal history record" means information that is collected by criminal justice agencies on individuals and that consists of identifiable descriptions and notations of arrests, detentions, indictments and other formal criminal charges, and any disposition arising from those actions, sentencing, formal correctional supervisory action and release. Criminal history record information and criminal history record do not include identification information to the extent that the information does not indicate involvement of the individual in the criminal justice system or information relating to juveniles unless they have been adjudicated as adults.

~~7.~~ 8. "Criminal justice agency" means either:

(a) A court at any governmental level with criminal or equivalent jurisdiction, including courts of any foreign sovereignty duly recognized by the federal government.

(b) A government agency or subunit of a government agency that is specifically authorized to perform as its principal function the administration of criminal justice pursuant to a statute, ordinance or executive order and that allocates more than fifty percent of its annual budget to the administration of criminal justice. This subdivision includes agencies of any foreign sovereignty duly recognized by the federal government.

~~8.~~ 9. "Criminal justice information" means information that is collected by criminal justice agencies and that is needed for the performance of their legally authorized and required functions, such as criminal history record information, citation information, stolen property information, traffic accident reports, wanted persons information and system network log searches. Criminal justice information does not include the administrative records of a criminal justice agency.

~~9.~~ 10. "Disposition" means information disclosing that a decision has been made not to bring criminal charges or that criminal proceedings

have been concluded or information relating to sentencing, correctional supervision, release from correctional supervision, the outcome of an appellate review of criminal proceedings or executive clemency.

~~10-~~ 11. "Dissemination" means the written, oral or electronic communication or transfer of criminal justice information to individuals and agencies other than the criminal justice agency that maintains the information. Dissemination includes the act of confirming the existence or nonexistence of criminal justice information.

~~11-~~ 12. "Management control":

(a) Means the authority to set and enforce:

(i) Priorities regarding development and operation of criminal justice information systems and programs.

(ii) Standards for the selection, supervision and termination of personnel involved in the development of criminal justice information systems and programs and in the collection, maintenance, analysis and dissemination of criminal justice information.

(iii) Policies governing the operation of computers, circuits and telecommunications terminals used to process criminal justice information to the extent that the equipment is used to process, store or transmit criminal justice information.

(b) Includes the supervision of equipment, systems design, programming and operating procedures necessary for the development and implementation of automated criminal justice information systems.

~~12-~~ 13. "Process control number" means the Arizona automated fingerprint identification system number that attaches to each arrest event at the time of fingerprinting and that is assigned to the arrest fingerprint card, disposition form and other pertinent documents.

~~13-~~ 14. "Secondary dissemination" means the dissemination of criminal justice information from an individual or agency that originally obtained the information from the central state repository or through the Arizona criminal justice information system to another individual or agency.

~~14-~~ 15. "Sexual orientation" means consensual homosexuality or heterosexuality.

~~15-~~ 16. "Subject of record" means the person who is the primary subject of a criminal justice record.

EXPLANATION OF BLEND  
SECTION 41-1758

Laws 2022, Chapters 23, 55 and 281

Laws 2022, Ch. 23, section 6

Effective January 1, 2023

Laws 2022, Ch. 55, section 2

Effective September 24, 2022

Laws 2022, Ch. 281, section 4

Effective September 24, 2022

Explanation

Since these three enactments are compatible, the Laws 2022, Ch. 23, Ch. 55 and Ch. 281 text changes to section 41-1758 are blended effective from and after December 31, 2022 in the form shown on the following pages.

BLEND OF SECTION 41-1758  
Laws 2022, Chapters 23, 55 and 281

41-1758. Definitions

In this article, unless the context otherwise requires:

1. "Agency" means the supreme court, the department of economic security, the department of child safety, the department of education, the department of health services, the department of juvenile corrections, the department of emergency and military affairs, the department of public safety, the department of transportation, the state real estate department, the department of insurance and financial institutions, the board of fingerprinting, the Arizona game and fish department, the Arizona department of agriculture, the board of examiners of nursing care institution administrators and assisted living facility managers, the state board of dental examiners, the Arizona state board of pharmacy, the board of physical therapy, the state board of psychologist examiners, the board of athletic training, the board of occupational therapy examiners, the state board of

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Ch. 23

—podiatry examiners[,]

—THE ACUPUNCTURE BOARD OF EXAMINERS

Chs. 55  
and 281

—~~OR~~ the state board of technical registration

Ch. 281

—OR THE BOARD OF MASSAGE THERAPY

Ch. 55

—OR THE ARIZONA DEPARTMENT OF HOUSING.

2. "Division" means the fingerprinting division in the department of public safety.

3. "Electronic or internet-based fingerprinting services" means a secure system for digitizing applicant fingerprints and transmitting the applicant data and fingerprints of a person or entity submitting fingerprints to the department of public safety for any authorized purpose under this title. For the purposes of this paragraph, "secure system" means a system that complies with the information technology security policy approved by the department of public safety.

4. "Good cause exception" means the issuance of a fingerprint clearance card to an applicant pursuant to section 41-619.55.

5. "Person" means a person who is required to be fingerprinted pursuant to any of the following:

- (a) Section 3-314.
- (b) Section 8-105.
- (c) Section 8-322.
- (d) Section 8-463.
- (e) Section 8-509.
- (f) Section 8-802.
- (g) Section 15-183.
- (h) Section 15-503.
- (i) Section 15-512.
- (j) Section 15-534.
- (k) Section 15-763.01.
- (l) Section 15-782.02.
- (m) Section 15-1330.
- (n) Section 15-1881.
- (o) Section 17-215.
- (p) Section 28-3228.

- (q) Section 28-3413.
- (r) Section 32-122.02.
- (s) Section 32-122.05.
- (t) Section 32-122.06.
- (u) Section 32-823.
- (v) Section 32-1232.
- (w) Section 32-1276.01.
- (x) Section 32-1284.
- (y) Section 32-1297.01.
- (z) Section 32-1904.
- (aa) Section 32-1941.
- (bb) Section 32-1982.
- (cc) Section 32-2022.
- (dd) Section 32-2063.
- (ee) Section 32-2108.01.
- (ff) Section 32-2123.
- (gg) Section 32-2371.
- (hh) Section 32-3430.
- (ii) Section 32-3620.
- (jj) Section 32-3668.
- (kk) Section 32-3669.

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- (ll) SECTION 32-3922.
- (mm) SECTION 32-3924.

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- ~~(nn)~~ (nn) Section 32-4128.
- ~~(oo)~~ (oo) SECTION 32-4222.
- ~~(pp)~~ (pp) Section 36-113.
- ~~(qq)~~ (qq) Section 36-207.
- ~~(rr)~~ (rr) Section 36-411.
- ~~(ss)~~ (ss) Section 36-425.03.
- ~~(tt)~~ (tt) Section 36-446.04.
- ~~(uu)~~ (uu) Section 36-594.01.
- ~~(vv)~~ (vv) Section 36-594.02.
- ~~(ww)~~ (ww) Section 36-766.01.
- ~~(xx)~~ (xx) Section 36-882.
- ~~(yy)~~ (yy) Section 36-883.02.
- ~~(zz)~~ (zz) Section 36-897.01.
- ~~(aaa)~~ (aaa) Section 36-897.03.
- ~~(bbb)~~ (bbb) Section 36-3008.
- ~~(ccc)~~ (ccc) Section 41-619.52.
- ~~(ddd)~~ (ddd) Section 41-619.53.
- ~~(eee)~~ (eee) Section 41-1964.
- ~~(fff)~~ (fff) Section 41-1967.01.
- ~~(ggg)~~ (ggg) Section 41-1968.
- ~~(hhh)~~ (hhh) Section 41-1969.
- ~~(iii)~~ (iii) Section 41-2814.

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- (jjj) SECTION 41-4025.
- ~~(kkk)~~ (kkk) Section 46-141, subsection A or B.
- ~~(lll)~~ (lll) Section 46-321.

6. "Vulnerable adult" has the same meaning prescribed in section 13-3623.

EXPLANATION OF BLEND  
SECTION 41-1758.01

Laws 2022, Chapters 23, 55 and 281

Laws 2022, Ch. 23, section 7

Effective January 1, 2023

Laws 2022, Ch. 55, section 3

Effective September 24, 2022

Laws 2022, Ch. 281, section 5

Effective September 24, 2022

Explanation

Since these three enactments are compatible, the Laws 2022, Ch. 23, Ch. 55 and Ch. 281 text changes to section 41-1758.01 are blended effective from and after December 31, 2022 in the form shown on the following pages.

BLEND OF SECTION 41-1758.01  
Laws 2022, Chapters 23, 55 and 281

41-1758.01. Fingerprinting division; powers and duties

A. The fingerprinting division is established in the department of public safety and shall:

1. Conduct fingerprint background checks for persons and applicants who are seeking licenses from state agencies, employment with licensees, contract providers and state agencies or employment or educational opportunities with agencies that require fingerprint background checks pursuant to sections 3-314, 8-105, 8-322, 8-463, 8-509, 8-802, 15-183, 15-503, 15-512, 15-534, 15-763.01, 15-782.02, 15-1330, 15-1881, 17-215, 28-3228, 28-3413, 32-122.02, 32-122.05, 32-122.06, 32-823, 32-1232, 32-1276.01, 32-1284, 32-1297.01, 32-1904, 32-1941, 32-1982, 32-2022, 32-2063, 32-2108.01, 32-2123, 32-2371, 32-3430, 32-3620, 32-3668, 32-3669,

Ch. 23 — [32-3922, 32-3924,] 32-4128,

Ch. 281 — [32-4222,] 36-113, 36-207, 36-411, 36-425.03, 36-446.04, 36-594.01, 36-594.02, 36-766.01, 36-882, 36-883.02, 36-897.01, 36-897.03, 36-3008,

Ch. 55 — {41-619.52, 41-619.53, 41-1964, 41-1967.01, 41-1968, 41-1969[, and 41-2814,]  
41-4025, section 46-141, subsection A or B and section 46-321.

2. Issue fingerprint clearance cards. On issuance, a fingerprint clearance card becomes the personal property of the cardholder and the cardholder shall retain possession of the fingerprint clearance card.

3. On submission of an application for a fingerprint clearance card, collect the fees established by the board of fingerprinting pursuant to section 41-619.53 and deposit, pursuant to sections 35-146 and 35-147, the monies collected in the board of fingerprinting fund.

4. Inform in writing each person who submits fingerprints for a fingerprint background check of the right to petition the board of fingerprinting for a good cause exception pursuant to section 41-1758.03, 41-1758.04 or 41-1758.07.

5. If after conducting a state and federal criminal history records check the division determines that it is not authorized to issue a fingerprint clearance card to a person, inform the person in writing that the division is not authorized to issue a fingerprint clearance card. The notice shall include the criminal history information on which the denial was based. This criminal history information is subject to dissemination restrictions pursuant to section 41-1750 and Public Law 92-544.

6. Notify the person in writing if the division suspends, revokes or places a driving restriction notation on a fingerprint clearance card pursuant to section 41-1758.04. The notice shall include the criminal history information on which the suspension, revocation or placement of the driving restriction notation was based. This criminal history information is subject to dissemination restrictions pursuant to section 41-1750 and Public Law 92-544.

7. Administer and enforce this article.

B. The fingerprinting division may contract for electronic or internet-based fingerprinting services through an entity or entities for the acquisition and transmission of applicant fingerprint and data submissions to the department, including identity verified fingerprints pursuant to section 15-106. The entity or entities contracted by the department of public safety may charge the applicant a fee for services provided pursuant to this article. The entity or entities contracted by the department of public safety shall comply with:

1. All information privacy and security measures and submission standards established by the department of public safety.

2. The information technology security policy approved by the department of public safety.

EXPLANATION OF BLEND  
SECTION 41-2501

Laws 2022, Chapters 31 and 238

Laws 2022, Ch. 31, section 6

Effective September 24, 2022

Laws 2022, Ch. 238, section 2

Effective September 24, 2022

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 31 and Ch. 238 text changes to section 41-2501 are blended in the form shown on the following pages.

BLEND OF SECTION 41-2501  
Laws 2022, Chapters 31 and 238

41-2501. Applicability

A. This chapter applies only to procurements initiated after January 1, 1985 unless the parties agree to its application to procurements initiated before that date.

Ch. 238 { B. This chapter applies to every expenditure of public monies, including federal assistance monies except as otherwise specified in section 41-2637, by this state, acting through a state governmental unit ~~as defined in this chapter~~, under any contract, except that this chapter does not apply to either grants ~~as defined in this chapter~~, or contracts between this state and its political subdivisions or other governments, except as provided in chapter 24 of this title and in article 10 of this chapter. This chapter also applies to the disposal of state materials. This chapter and rules adopted under this chapter do not prevent any state governmental unit or political subdivision from complying with the terms of any grant, gift, bequest or cooperative agreement.

C. All political subdivisions and other local public agencies of this state may adopt all or any part of this chapter and the rules adopted pursuant to this chapter.

D. Notwithstanding any other law, sections 41-2517 and 41-2546 apply to any agency as defined in section 41-1001, including the office of the governor.

E. The Arizona board of regents and the legislative and judicial branches of state government are not subject to this chapter except as prescribed in ~~subsection~~ SUBSECTIONS F AND G of this section.

Ch. 31 { F. The Arizona board of regents ~~and the judicial branch~~ shall adopt rules prescribing procurement policies and procedures for ~~themselves~~ ITSELF and institutions under ~~their~~ ITS jurisdiction. The rules must be substantially equivalent to the OTHER policies and procedures prescribed in this chapter, INCLUDING SECTIONS 41-2576 AND 41-2577.

G. THE JUDICIAL BRANCH SHALL ADOPT RULES PRESCRIBING PROCUREMENT POLICIES AND PROCEDURES FOR ITSELF AND INSTITUTIONS UNDER ITS JURISDICTION. THE RULES MUST BE SUBSTANTIALLY EQUIVALENT TO THE POLICIES AND PROCEDURES PRESCRIBED IN THIS CHAPTER.

~~G.~~ H. The Arizona state lottery commission is exempt from this chapter for procurement relating to the design and operation of the lottery or purchase of lottery equipment, tickets and related materials. The executive director of the Arizona state lottery commission shall adopt rules substantially equivalent to the policies and procedures in this chapter for procurement relating to the design and operation of the lottery or purchase of lottery equipment, tickets or related materials. All other procurement shall be as prescribed by this chapter.

~~H.~~ I. The Arizona health care cost containment system administration is exempt from this chapter for provider contracts pursuant to section 36-2904, subsection A and contracts for goods and services, including program contractor contracts pursuant to title 36, chapter 29, articles 2 and 3 and contracts with regional behavioral health authorities pursuant to title 36, chapter 34. All other procurement, including contracts for the statewide administrator of the program pursuant to section 36-2903, subsection B, shall be as prescribed by this chapter.

~~I.~~ J. Arizona correctional industries is exempt from this chapter for purchases of raw materials, components and supplies that are used in the manufacture or production of goods or services for sale entered into pursuant to section 41-1622. All other procurement shall be as prescribed by this chapter.

~~J.~~ K. The state transportation board and the director of the department of transportation are exempt from this chapter other than sections 41-2517 and 41-2586 and are subject to title 28, chapter 20 and 2 Code of Federal Regulations section 200.317 for the procurement of the following:

1. All items of construction, reconstruction, rehabilitation, preservation or improvement undertaken on highway infrastructure.
2. Engineering services and any other work or activity to carry out engineering services related to highway infrastructure.
3. Right-of-way services related to land titles, appraisals, real property acquisitions, relocation services, property management and facility design.
4. Any other construction, reconstruction, rehabilitation, preservation or improvement work or activity that is required pursuant to title 28, chapter 20.

~~K.~~ L. The Arizona highways magazine is exempt from this chapter for contracts for the production, promotion, distribution and sale of the magazine and related products and for contracts for sole source creative works entered into pursuant to section 28-7314, subsection A, paragraph 5. All other procurement shall be as prescribed by this chapter.

~~L.~~ M. The secretary of state is exempt from this chapter for contracts entered into pursuant to section 41-1012 to publish and sell the administrative code. All other procurement shall be as prescribed by this chapter.

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~~M.~~ N. This chapter ~~is not applicable~~ DOES NOT APPLY to contracts for professional witnesses if the purpose of such contracts is to provide for professional services or testimony relating to an existing or probable judicial proceeding in which this state is or may become a party or to contract for special investigative services for law enforcement purposes.

~~N.~~ O. The head of any state governmental unit, in relation to any contract exempted by this section from this chapter, has the same authority to adopt rules, procedures or policies as is delegated to the director pursuant to this chapter.

~~O.~~ P. Agreements negotiated by legal counsel representing this state in settlement of litigation or threatened litigation are exempt from this chapter.

~~P.~~ Q. This chapter is not applicable to contracts entered into by the department of economic security:

1. With a provider licensed or certified by an agency of this state to provide child day care services.

2. With area agencies on aging created pursuant to the older Americans act of 1965 (P.L. 89-73; 79 Stat. 218; 42 United States Code sections 3001 through 3058ff).

3. For services pursuant to title 36, chapter 29, article 2.

4. With an eligible entity as defined by Public Law 105-285, section 673(1)(A)(i), as amended, for designated community services block grant program monies and any other monies given to the eligible entity that accomplishes the purpose of Public Law 105-285, section 672.

~~Q.~~ R. The Arizona health care cost containment system may not require that persons with whom it contracts follow this chapter for the purposes of subcontracts entered into for the provision of the following:

1. Mental health services pursuant to section 36-189, subsection B.

2. Services for the seriously mentally ill pursuant to title 36, chapter 5, article 10.

3. Drug and alcohol services pursuant to section 36-141.

~~R.~~ S. The department of health services may not require that persons with whom it contracts follow this chapter for the purpose of subcontracts entered into for the provision of domestic violence services pursuant to title 36, chapter 30, article 1.

~~S.~~ T. The department of health services is exempt from this chapter for contracts for services of physicians at the Arizona state hospital AND CONTRACTS TO PROVIDE MEDICALLY NECESSARY PHYSICAL HEALTH CARE TO INDIVIDUALS UNDER THE CARE OF THE ARIZONA STATE HOSPITAL.

Ch. 238

~~T.~~ U. Contracts for goods and services approved by the board of trustees of the public safety personnel retirement system are exempt from this chapter.

~~U.~~ V. The Arizona department of agriculture is exempt from this chapter with respect to contracts for private labor and equipment to effect cotton or cotton stubble plow-up pursuant to rules adopted under title 3, chapter 2, article 1.

~~V.~~ W. The Arizona state parks board is exempt from this chapter for purchases of guest supplies and items for resale such as food, linens, gift items, sundries, furniture, china, glassware and utensils for the facilities located in the Tonto natural bridge state park.

~~W.~~ X. The Arizona state parks board is exempt from this chapter for the purchase, production, promotion, distribution and sale of publications, souvenirs and sundry items obtained and produced for resale.

~~X.~~ Y. The Arizona state schools for the deaf and the blind are exempt from this chapter for the purchase of textbooks and when purchasing products through a cooperative that is organized and operates in accordance with state law if such products are not available on a statewide contract and are related to the operation of the schools or are products for which special discounts are offered for educational institutions.

~~Y.~~ Z. Expenditures of monies in the morale, welfare and recreational fund established by section 26-153 are exempt from this chapter.

~~Z.~~ AA. Notwithstanding section 41-2534, the director of the state department of corrections may contract with local medical providers in counties with a population of less than four hundred thousand persons for the following purposes:

1. To acquire hospital and professional medical services for inmates who are incarcerated in state department of corrections facilities that are located in those counties.

2. To ensure the availability of emergency medical services to inmates in all counties by contracting with the closest medical facility that offers emergency treatment and stabilization.

~~AA.~~ BB. The department of environmental quality is exempt from this chapter for contracting for procurements relating to the water quality assurance revolving fund program established pursuant to title 49, chapter 2, article 5. The department shall engage in a source selection process that is similar to the procedures prescribed by this chapter. The department may contract for remedial actions with a single selection process. The exclusive remedy for disputes or claims relating to contracting pursuant to this subsection is as prescribed by article 9 of this chapter and the rules adopted pursuant to that article. All other procurement by the department shall be as prescribed by this chapter.

~~BB.~~ CC. The motor vehicle division of the department of transportation is exempt from this chapter for third-party authorizations pursuant to title 28, chapter 13, only if all of the following conditions exist:

1. The division does not pay any public monies to an authorized third party.

2. Exclusivity is not granted to an authorized third party.

3. The director has complied with the requirements prescribed in title 28, chapter 13 in selecting an authorized third party.

~~CC.~~ DD. This section does not exempt third-party authorizations pursuant to title 28, chapter 13 from any other applicable law.

~~DD.~~ EE. The state forester is exempt from this chapter for purchases and contracts relating to wildland fire suppression and pre-positioning equipment resources and for other activities related to combating wildland fires and other unplanned risk activities, including fire, flood, earthquake, wind and hazardous material responses. All other procurement by the state forester shall be as prescribed by this chapter.

~~EE.~~ FF. The cotton research and protection council is exempt from this chapter for procurements.

~~FF.~~ GG. The Arizona commerce authority is exempt from this chapter, except article 10 for the purpose of cooperative purchases. The authority shall adopt policies, procedures and practices, in consultation with the department of administration, that are similar to and based on the policies and procedures prescribed by this chapter for the purpose of increased public confidence, fair and equitable treatment of all persons engaged in the process and fostering broad competition while accomplishing flexibility to achieve the authority's statutory requirements. The authority shall make its policies, procedures and practices available to the public. The authority may exempt specific expenditures from the policies, procedures and practices.

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~~GG.~~ HH. The Arizona exposition and state fair board is exempt from this chapter for contracts for professional entertainment.

~~HH.~~ II. This chapter does not apply to ~~the purchase~~ PURCHASES of water, gas or electric utilities.

~~II.~~ JJ. This chapter does not apply to professional certifications, professional memberships and conference registrations.

~~JJ.~~ KK. The department of gaming is exempt from this chapter for problem gambling treatment services contracts with licensed behavioral health professionals.

~~KK.~~ LL. This chapter does not apply to contracts for credit reporting services.

~~LL.~~ MM. This chapter does not apply to contracts entered into by the department of child safety:

1. With a provider of family foster care pursuant to section 8-503.

2. With an eligible entity as defined by Public Law 105-285, section 673(1)(A)(i), as amended, for designated community services block grant program monies and any other monies given to the eligible entity that accomplishes the purpose of Public Law 105-285, section 672.

3. For services pursuant to title 36, chapter 29, article 1 and as set forth in the approved medicaid state plan.

~~MM.~~ NN. This chapter does not apply to contracts entered into by the department of economic security with a financial institution to serve as a program manager and depository under section 46-903.

EXPLANATION OF BLEND  
SECTION 41-4025

Laws 2022, Chapters 55 and 59

Laws 2022, Ch. 55, section 6

Effective September 24, 2022

Laws 2022, Ch. 59, section 105

Effective September 24, 2022

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 55 and Ch. 59 text changes to section 41-4025 are blended in the form shown on the following pages.

The Laws 2022, Ch. 59 version of section 41-4025, subsection F (now G) added a new comma before the first stricken "nor". The Ch. 55 version added the new comma after the first stricken "nor". Since this would not produce a substantive change, the blend version reflects the Ch. 55 version.

BLEND OF SECTION 41-4025  
Laws 2022, Chapters 55 and 59

41-4025. Qualifications and requirements for licensure

A. A manufacturer, dealer, broker, salesperson or installer license shall be issued by the director.

B. The director shall:

1. Qualify applicants for a license.
2. Conduct ~~such~~ investigations as the director deems necessary.
3. Establish and administer written examinations for the applicable license classifications.

Ch. 55

C. The director may establish experience requirements for installers of manufactured homes, mobile homes, ~~residential~~ factory-built buildings and accessory structures.

D. To obtain a license pursuant to this article, the applicant shall submit to the director a notarized application on forms prescribed by the department together with the required license fee. ~~Such~~ THE application shall contain the following information:

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and 59

1. A designation of the classification of license sought by the applicant.

2. The name, birth date and address of an individual applicant.

3. If the applicant is a partnership, the name, birth date and address of all partners with a designation of any limited partners.

4. If the applicant is a corporation, association or other organization, the names, birth dates and addresses of the president, vice president, secretary and treasurer.

5. For all licenses, except those for salespersons, the name, birth date and address of the qualifying party. The qualifying party must reside within the state of the principal place of the licensee's business and shall not act in the capacity of a qualifying party for more than one license in the same classification.

6. If the applicant is a corporation, association or other organization, evidence that the corporation, association or other organization is in good standing with the Arizona corporation commission.

7. Whether the owner, if the applicant is a sole proprietorship, all partners, if the applicant is a partnership, all officers, if the applicant is a corporation or other type of association, the managers or managing members, if the applicant is a limited liability company, the general partner, if the applicant is a limited partnership, or the individual, if the applicant is a salesperson, has ever been charged or convicted of a felony, or has ever received an adverse final decision in a civil action alleging fraud or misrepresentation; and, if so, the nature of the action and the final disposition of the case.

8. For corporations, the name and address of a statutory agent WHO IS appointed by the licensee on whom legal notices, summonses or other processes may be served, which service shall be deemed personal service on the licensee.

Ch. 55

9. If it is an application for a salesperson's license, the applicant shall designate an employing dealer or broker and ~~the application~~ shall

include the signature of the qualifying party or the qualifying party's designee.

10. Other information as the director may deem necessary.

Ch. 55 — E. Before ~~the issuance of any~~ RECEIVING AND HOLDING A license ISSUED pursuant to this article, the owner, if the applicant is a sole proprietorship, all partners, if the applicant is a partnership, the general partner, if the applicant is a limited partnership, the president, vice president, secretary, and treasurer, if the applicant is a corporation or other type of association, the manager or managing members, if the applicant is a limited liability company, the individual, if the applicant is a

Ch. 59 { salesperson, and the qualifying party shall be of good character and reputation and shall submit a

Ch. 55 — fingerprint card for background analysis.

Ch. 55 and 59 { ~~Lack of good character and reputation may be established by showing that such person has committed any act that, if committed by any licensee, would be grounds for suspension or revocation of such license[.]~~

Ch. 59

VALID FINGERPRINT CLEARANCE CARD ISSUED PURSUANT TO SECTION 41-1758.03. THE APPLICANT IS RESPONSIBLE FOR PROVIDING THE DEPARTMENT WITH A VALID FINGERPRINT CLEARANCE CARD.

Ch. 55 { F. THE DEPARTMENT SHALL NOT ISSUE A LICENSE TO AN APPLICANT BEFORE RECEIVING A VALID FINGERPRINT CLEARANCE CARD PURSUANT TO THIS SECTION. THE DEPARTMENT SHALL SUSPEND THE LICENSE IF THE FINGERPRINT CLEARANCE CARD IS DETERMINED TO BE INVALID AND AN APPLICANT WHO WAS ISSUED A LICENSE FAILS TO SUBMIT A NEW FINGERPRINT CLEARANCE CARD WITHIN TEN DAYS AFTER BEING NOTIFIED BY THE DEPARTMENT. THIS SECTION DOES NOT AFFECT THE DEPARTMENT'S ABILITY TO OTHERWISE ISSUE, DENY, CANCEL, TERMINATE, SUSPEND OR REVOKE A LICENSE.

Ch. 55 and 59 { ~~F.~~ G. To obtain a license pursuant to this article, a person shall not have had a license refused or revoked within one year before the date of the application ~~nor~~, SHALL NOT have engaged in the business without first having been licensed ~~nor~~ AND shall a person NOT act as a licensee between the filing of the application and actual issuance of the license. For the purposes of this subsection, "person" means an applicant, an individual, a qualifying party, any partner of a partnership, any manager or managing member of a limited liability company, or any officer, director, qualifying party or owner of forty percent or more of the stock or beneficial interest of a corporation.

~~G.~~ H. Before issuance of a dealer, broker or installer license, the qualifying party, in addition to meeting the requirements provided in subsection D of this section, shall successfully show, by written examination within three attempts, qualification in the kind of work or business in which the applicant proposes to engage. Before the issuance of an installer license, the qualifying party shall also provide the department with evidence of successful completion of the online installer course that is administered by the manufactured housing educational institute and proof of three years of practical or field experience or training that is deemed acceptable by the department.

~~H.~~ I. A license shall not be issued to a minor or to any partnership in which one of the partners is a minor.

~~I.~~ J. Every salesperson who holds an active license shall maintain on file with the department a current residence address and shall notify

the department within five working days of any change of address, of any discontinued employment, and where, if anywhere, the salesperson is currently working.

† K. The license of a salesperson who is no longer employed by the dealer of record is deemed inactive. The salesperson shall turn the license into the department until the salesperson is employed by another dealer and a written notification of the change has been received by the department. On notification, the department shall return the license to the salesperson.

EXPLANATION OF BLEND  
SECTION 41-4254

Laws 2022, Chapters 44 and 50

Laws 2022, Ch. 44, section 23

Effective September 24, 2022

Laws 2022, Ch. 50, section 6

Effective September 24, 2022

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 44 and Ch. 50 text changes to section 41-4254 are blended in the form shown on the following page.

The Laws 2022, Ch. 44 version of section 41-4254 made a technical change in paragraph 9. The Ch. 50 version struck paragraph 9. Since this would not produce a substantive change, the blend version reflects the Ch. 50 version.

BLEND OF SECTION 41-4254  
Laws 2022, Chapters 44 and 50

41-4254. Department duties

The department shall:

- Ch. 50 { 1. Formulate policies, plans and programs to enhance the ability of this state to prevent and respond to acts of terrorism, CYBERSECURITY THREATS and other critical hazards.
- Ch. 50 { ~~2. Develop a statewide homeland security strategy.~~
- Ch. 50 { 2. ADHERE TO ALL FEDERAL GRANT TERMS AND CONDITIONS.
- Ch. 50 { 3. Request appropriations or grants of monies for homeland security purposes.
- Chs. 44 and 50 { ~~4. Provide to the senior advisory committee members a summary of the amount of federal homeland security monies requested by this state for each grant program.~~
- Chs. 44 and 50 { ~~5. 4. Receive all awards granted to this state by the federal government for homeland security purposes and provide to the senior advisory committee members a list of the allocations of federal homeland security grants to this state along with the project title and the amount of each subgrantee award.~~
- Chs. 44 and 50 { ~~6. 5. Distribute monies to local jurisdictions and other organizations eligible under federal regulations based on criteria in the statewide homeland security strategy and federal grant guidelines.~~
- Ch. 50 { ~~7. Coordinate with other state and federal agencies to publish a guide for grantees that receive homeland security monies. The guide shall ensure that monies distributed by the department:~~
  - ~~(a) Are coordinated across all levels of government.~~
  - ~~(b) Avoid duplication of grant awards.~~
  - ~~(c) Eliminate security gaps in every level of government.~~
- Ch. 50 { ~~8. Conduct preparedness training exercises to put state disaster plans into practice and identify shortcomings in the plans.~~
- Ch. 50 { ~~9. Assist in [the development of] regional response plans, including collaborative efforts with other states.~~
- Ch. 50 { ~~10. Partner with and involve the private sector in preparedness efforts.~~

Chs. 44  
and 50

EXPLANATION OF BLEND  
SECTION 41-5605

Laws 2022, Chapters 187 and 236

Laws 2022, Ch. 187, section 4

Effective September 24, 2022

Laws 2022, Ch. 236, section 11

Effective September 24, 2022

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 187 and Ch. 236 text changes to section 41-5605 are blended in the form shown on the following pages.

BLEND OF SECTION 41-5605  
Laws 2022, Chapters 187 and 236

41-5605. Scope

A. If the attorney general approves an application for entry into the regulatory sandbox, the applicant is deemed a sandbox participant and both of the following apply:

1. The sandbox participant has twenty-four months after the date of approval to test the innovation described in the sandbox participant's application.

2. The attorney general must issue the sandbox participant a registration number.

B. Innovations tested within the regulatory sandbox are subject to the following restrictions:

1. Consumers must be residents of this state, except for transactions that involve an innovation provided by a sandbox participant testing financial products or services as a money transmitter as defined in section 6-1201 6-1241 or [A] related innovation, in which case only physical presence of the consumer in this state at the time of the transaction may be required.

Ch. 236 —

Chs. 187  
and 236

2. Except as provided in subsection C of this section or section 41-5608, an innovation may not be tested with more than ten thousand consumers.

3. For a sandbox participant testing consumer lender loans as defined in section 6-601, an individual consumer lender loan may be issued for up to \$15,000, except that aggregate loans per consumer may not exceed \$50,000. All consumer lender loans issued in the regulatory sandbox, including loans in excess of \$10,000, are subject to all of the following:

- (a) Section 6-114.
- (b) Section 6-632.
- (c) Section 6-635, subsections A, B and C.
- (d) Section 6-637.

4. Except as provided in subsection C of this section, for a sandbox participant testing financial products or services as a money transmitter as defined in section ~~6-1201~~ 6-1241, individual transactions per consumer may not exceed \$2,500 and aggregate transactions per consumer may not exceed \$25,000.

Ch. 236 —

5. For sandbox participants testing financial products or services as a sales finance company as defined in section 44-281, all of the following apply:

- (a) Section 44-286.
- (b) Section 44-287, except subsection B, paragraph 8.
- (c) Section 44-288.
- (d) Section 44-289.
- (e) Section 44-290.
- (f) Section 44-291.
- (g) Section 44-293.
- (h) Section 47-9601.

6. For sandbox participants testing financial products or services that provide investment management that is regulated pursuant to title 44, chapter 13:

(a) Section 44-3241 applies.

(b) The corporation commission rules adopted pursuant to title 44, chapter 13 apply as they relate to dishonest and unethical practices.

C. If a sandbox participant demonstrates adequate financial capitalization, risk management process and management oversight, the attorney general may allow either or both of the following:

Chs. 187  
and 236

1. Except as provided in section 41-5608, an innovation may TO not be tested with more than seventeen thousand five hundred consumers.

Ch. 236 — 2. For a sandbox participant testing products or services as a money transmitter as defined in section ~~6-1201~~ 6-1241, individual transactions per consumer that do not exceed \$15,000 and aggregate transactions per consumer that do not exceed \$50,000.

D. This section does not restrict a sandbox participant who holds a license or other authorization in another jurisdiction from acting pursuant to and in accordance with that license or other authorization.

E. A sandbox participant is deemed to possess an appropriate license under the laws of this state for purposes of any provision of federal law requiring state licensure or authorization.

F. Except as otherwise provided in this chapter, a sandbox participant is not subject to state laws that establish requirements pursuant to a license or authorization issued by an applicable agency that otherwise would or may regulate an innovative financial product or service.

Ch. 187 — G. The attorney general may determine that certain state laws that regulate a financial product or service OR INNOVATION apply to a sandbox participant. If the attorney general makes this determination and approves an application for entry into the regulatory sandbox, the attorney general must notify the sandbox participant of the specific state regulatory laws that will apply to the sandbox participant. Pursuant to section 41-5611, the attorney general alone shall enforce the state regulatory laws applicable to sandbox participants, including the restrictions established by this section.

H. To the extent that a sandbox participant is required by this chapter to obtain, record, provide or maintain any information, writing, signature, record or disclosure, the sandbox participant may do so in electronic form, including as provided in section 44-7601, or may substitute any substantially similar equivalent information, writing, signature, record or disclosure that is approved by the attorney general.

EXPLANATION OF BLEND  
SECTION 42-2003

Laws 2022, Chapters 235 and 387

Laws 2022, Ch. 235, section 2

Effective September 24, 2022

Laws 2022, Ch. 387, section 4

Effective September 24, 2022

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 235 and Ch. 387 text changes to section 42-2003 are blended in the form shown on the following pages.

The Laws 2022, Ch. 387 version made a technical change in subsection B, paragraph 12, subdivision (c). The Ch. 235 version amended subsection B, paragraph 12, subdivision (c) so that the technical change is no longer necessary. Since this would not produce a substantive change, the blend version reflects the Ch. 235 version.

BLEND OF SECTION 42-2003  
Laws 2022, Chapters 235 and 387

42-2003. Authorized disclosure of confidential information

A. Confidential information relating to:

1. A taxpayer may be disclosed to the taxpayer, its successor in interest or a designee of the taxpayer who is authorized in writing by the taxpayer. A principal corporate officer of a parent corporation may execute a written authorization for a controlled subsidiary. IF A TAXPAYER ELECTS TO FILE AN ARIZONA SMALL BUSINESS INCOME TAX RETURN UNDER SECTION 43-302, A WRITTEN AUTHORIZATION BY A TAXPAYER TO ALLOW THE DEPARTMENT TO DISCLOSE PERSONAL INCOME TAX INFORMATION TO A DESIGNEE INCLUDES THE CORRESPONDING ARIZONA SMALL BUSINESS INCOME TAX RETURN.

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2. A corporate taxpayer may be disclosed to any principal officer, any person designated by a principal officer or any person designated in a resolution by the corporate board of directors or other similar governing body. If a corporate officer signs a statement under penalty of perjury representing that the officer is a principal officer, the department may rely on the statement until the statement is shown to be false. For the purposes of this paragraph, "principal officer" includes a chief executive officer, president, secretary, treasurer, vice president of tax, chief financial officer, chief operating officer or chief tax officer or any other corporate officer who has the authority to bind the taxpayer on matters related to state taxes.

3. A partnership may be disclosed to any partner of the partnership. This exception does not include disclosure of confidential information of a particular partner unless otherwise authorized.

4. A limited liability company may be disclosed to any member of the company or, if the company is manager-managed, to any manager.

5. An estate may be disclosed to the personal representative of the estate and to any heir, next of kin or beneficiary under the will of the decedent if the department finds that the heir, next of kin or beneficiary has a material interest that will be affected by the confidential information.

6. A trust may be disclosed to the trustee or trustees, jointly or separately, and to the grantor or any beneficiary of the trust if the department finds that the grantor or beneficiary has a material interest that will be affected by the confidential information.

7. A government entity may be disclosed to the head of the entity or a member of the governing board of the entity, or any employee of the entity who has been delegated the authorization in writing by the head of the entity or the governing board of the entity.

8. Any taxpayer may be disclosed if the taxpayer has waived any rights to confidentiality either in writing or on the record in any administrative or judicial proceeding.

9. The name and taxpayer identification numbers of persons issued direct payment permits may be publicly disclosed.

10. Any taxpayer may be disclosed during a meeting or telephone call if the taxpayer is present during the meeting or telephone call and authorizes the disclosure of confidential information.

B. Confidential information may be disclosed to:

1. Any employee of the department whose official duties involve tax administration.

2. The office of the attorney general solely for its use in preparation for, or in an investigation that may result in, any proceeding involving tax administration before the department or any other agency or board of this state, or before any grand jury or any state or federal court.

3. The department of liquor licenses and control for its use in determining whether a spirituous liquor licensee has paid all transaction privilege taxes and affiliated excise taxes incurred as a result of the sale of spirituous liquor, as defined in section 4-101, at the licensed establishment and imposed on the licensed establishments by this state and its political subdivisions.

4. Other state tax officials whose official duties require the disclosure for proper tax administration purposes if the information is sought in connection with an investigation or any other proceeding conducted by the official. Any disclosure is limited to information of a taxpayer who is being investigated or who is a party to a proceeding conducted by the official.

5. The following agencies, officials and organizations, if they grant substantially similar privileges to the department for the type of information being sought, pursuant to statute and a written agreement between the department and the foreign country, agency, state, Indian tribe or organization:

(a) The United States internal revenue service, alcohol and tobacco tax and trade bureau of the United States treasury, United States bureau of alcohol, tobacco, firearms and explosives of the United States department of justice, United States drug enforcement agency and federal bureau of investigation.

(b) A state tax official of another state.

(c) An organization of states, federation of tax administrators or multistate tax commission that operates an information exchange for tax administration purposes.

(d) An agency, official or organization of a foreign country with responsibilities that are comparable to those listed in subdivision (a), (b) or (c) of this paragraph.

(e) An agency, official or organization of an Indian tribal government with responsibilities comparable to the responsibilities of the agencies, officials or organizations identified in subdivision (a), (b) or (c) of this paragraph.

6. The auditor general, in connection with any audit of the department subject to the restrictions in section 42-2002, subsection D.

7. Any person to the extent necessary for effective tax administration in connection with:

(a) The processing, storage, transmission, destruction and reproduction of the information.

(b) The programming, maintenance, repair, testing and procurement of equipment for purposes of tax administration.

(c) The collection of the taxpayer's civil liability.

8. The office of administrative hearings relating to taxes administered by the department pursuant to section 42-1101, but the department shall not disclose any confidential information without the taxpayer's written consent:

(a) Regarding income tax or withholding tax.

(b) On any tax issue relating to information associated with the reporting of income tax or withholding tax.

9. The United States treasury inspector general for tax administration for the purpose of reporting a violation of internal revenue code section 7213A (26 United States Code section 7213A), unauthorized inspection of returns or return information.

10. The financial management service of the United States treasury department for use in the treasury offset program.

11. The United States treasury department or its authorized agent for use in the state income tax levy program and in the electronic federal tax payment system.

12. The Arizona commerce authority for its use in:

(a) Qualifying renewable energy operations for the tax incentives under section 42-12006.

(b) Qualifying businesses with a qualified facility for income tax credits under sections 43-1083.03 and 43-1164.04.

(c) Fulfilling its annual reporting responsibility pursuant to

Ch. 235 ~~section 41-1511, subsections U and V [and] section 41-1512, subsections U and V~~

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AND SECTION 41-1517, SUBSECTION L.

Ch. 387 (d) Certifying computer data centers for tax relief under section 41-1519.

(e) CERTIFYING APPLICANTS FOR THE TAX CREDIT FOR MOTION PICTURE PRODUCTION COSTS UNDER SECTIONS 43-1082 AND 43-1165.

13. A prosecutor for purposes of section 32-1164, subsection C.

14. The office of the state fire marshal for use in determining compliance with and enforcing title 37, chapter 9, article 5.

15. The department of transportation for its use in administering taxes, surcharges and penalties prescribed by title 28.

16. The Arizona health care cost containment system administration for its use in administering nursing facility provider assessments.

17. The department of administration risk management division and the office of the attorney general if the information relates to a claim against this state pursuant to section 12-821.01 involving the department of revenue.

18. Another state agency if the taxpayer authorizes the disclosure of confidential information in writing, including an authorization that is part of an application form or other document submitted to the agency.

19. The department of economic security for its use in determining whether an employer has paid all amounts due under the unemployment insurance program pursuant to title 23, chapter 4.

20. The department of health services for its use in determining the following:

(a) Whether a medical marijuana dispensary is in compliance with the tax requirements of chapter 5 of this title for the purposes of section 36-2806, subsection A.

(b) Whether a marijuana establishment, marijuana testing facility or dual licensee licensed under title 36, chapter 28.2 is in compliance with the tax obligations under this title or title 43.

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21. THE ARIZONA DEPARTMENT OF AGRICULTURE FOR THE PURPOSE OF ASCERTAINING COMPLIANCE WITH THE LICENSING PROVISIONS IN TITLE 3.

C. Confidential information may be disclosed in any state or federal judicial or administrative proceeding pertaining to tax administration pursuant to the following conditions:

1. One or more of the following circumstances must apply:

(a) The taxpayer is a party to the proceeding.

(b) The proceeding arose out of, or in connection with, determining the taxpayer's civil or criminal liability, or the collection of the taxpayer's civil liability, with respect to any tax imposed under this title or title 43.

(c) The treatment of an item reflected on the taxpayer's return is directly related to the resolution of an issue in the proceeding.

(d) Return information directly relates to a transactional relationship between a person who is a party to the proceeding and the taxpayer and directly affects the resolution of an issue in the proceeding.

2. Confidential information may not be disclosed under this subsection if the disclosure is prohibited by section 42-2002, subsection C or D.

D. Identity information may be disclosed for purposes of notifying persons entitled to tax refunds if the department is unable to locate the persons after reasonable effort.

E. The department, on the request of any person, shall provide the names and addresses of bingo licensees as defined in section 5-401, verify whether or not a person has a privilege license and number, a tobacco product distributor's license and number or a withholding license and number or disclose the information to be posted on the department's website or otherwise publicly accessible pursuant to section 42-1124, subsection F and section 42-3401.

F. A department employee, in connection with the official duties relating to any audit, collection activity or civil or criminal investigation, may disclose return information to the extent that disclosure is necessary to obtain information that is not otherwise reasonably available. These official duties include the correct determination of and liability for tax, the amount to be collected or the enforcement of other state tax revenue laws.

G. Confidential information relating to transaction privilege tax, use tax, severance tax, jet fuel excise and use tax and any other tax collected by the department on behalf of any jurisdiction may be disclosed

to any county, city or town tax official if the information relates to a taxpayer who is or may be taxable by a county, city or town or who may be subject to audit by the department pursuant to section 42-6002. Any taxpayer information that is released by the department to the county, city or town:

1. May be used only for internal purposes, including audits. If there is a legitimate business need relating to enforcing laws, regulations and ordinances pursuant to section 9-500.39 or 11-269.17, a county, city or town tax official may redisclose transaction privilege tax information relating to a vacation rental or short-term rental property owner or online lodging operator from the new license report and license update report, subject to the following:

(a) The information redisclosed is limited to the following:

(i) The transaction privilege tax license number.

(ii) The type of organization or ownership of the business.

(iii) The legal business name and doing business as name, if different from the legal name.

(iv) The business mailing address, tax record physical location address, telephone number, email address and fax number.

(v) The date the business started in this state, the business description and the North American industry classification system code.

(vi) The name, address and telephone number for each owner, partner, corporate officer, member, managing member or official of the employing unit.

(b) Redisclosure is limited to nonelected officials in other units within the county, city or town. The information may not be redisclosed to an elected official or the elected official's staff.

(c) All redisclosures of confidential information made pursuant to this paragraph are subject to paragraph 2 of this subsection.

2. May not be disclosed to the public in any manner that does not comply with confidentiality standards established by the department. The county, city or town shall agree in writing with the department that any release of confidential information that violates the confidentiality standards adopted by the department will result in the immediate suspension of any rights of the county, city or town to receive taxpayer information under this subsection.

H. The department may disclose statistical information gathered from confidential information if it does not disclose confidential information attributable to any one taxpayer. The department may disclose statistical information gathered from confidential information, even if it discloses confidential information attributable to a taxpayer, to:

1. The state treasurer in order to comply with the requirements of section 42-5029, subsection A, paragraph 3.

2. The joint legislative income tax credit review committee, the joint legislative budget committee staff and the legislative staff in order to comply with the requirements of section 43-221.

I. The department may disclose the aggregate amounts of any tax credit, tax deduction or tax exemption enacted after January 1, 1994. Information subject to disclosure under this subsection shall not be

disclosed if a taxpayer demonstrates to the department that such information would give an unfair advantage to competitors.

J. Except as provided in section 42-2002, subsection C, confidential information, described in section 42-2001, paragraph 1, subdivision (a), item (ii), may be disclosed to law enforcement agencies for law enforcement purposes.

K. The department may provide transaction privilege tax license information to property tax officials in a county for the purpose of identification and verification of the tax status of commercial property.

L. The department may provide transaction privilege tax, luxury tax, use tax, property tax and severance tax information to the ombudsman-citizens aide pursuant to title 41, chapter 8, article 5.

M. Except as provided in section 42-2002, subsection D, a court may order the department to disclose confidential information pertaining to a party to an action. An order shall be made only on a showing of good cause and that the party seeking the information has made demand on the taxpayer for the information.

N. This section does not prohibit the disclosure by the department of any information or documents submitted to the department by a bingo licensee. Before disclosing the information, the department shall obtain the name and address of the person requesting the information.

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O. If the department is required or ~~permitted~~ ALLOWED to disclose confidential information, it may charge the person or agency requesting the information for the reasonable cost of its services.

P. Except as provided in section 42-2002, subsection D, the department of revenue shall release confidential information as requested by the department of economic security pursuant to section 42-1122 or 46-291. Information disclosed under this subsection is limited to the same type of information that the United States internal revenue service is authorized to disclose under section 6103(1)(6) of the internal revenue code.

Q. Except as provided in section 42-2002, subsection D, the department shall release confidential information as requested by the courts and clerks of the court pursuant to section 42-1122.

R. To comply with the requirements of section 42-5031, the department may disclose to the state treasurer, to the county stadium district board of directors and to any city or town tax official that is part of the county stadium district confidential information attributable to a taxpayer's business activity conducted in the county stadium district.

S. The department shall release to the attorney general confidential information as requested by the attorney general for purposes of determining compliance with or enforcing any of the following:

1. Any public health control law relating to tobacco sales as provided under title 36, chapter 6, article 14.

2. Any law relating to reduced cigarette ignition propensity standards as provided under title 37, chapter 9, article 5.

3. Sections 44-7101 and 44-7111, the master settlement agreement referred to in those sections and all agreements regarding disputes under the master settlement agreement.

T. For proceedings before the department, the office of administrative hearings, the state board of tax appeals or any state or federal court involving penalties that were assessed against a return preparer, an electronic return preparer or a payroll service company pursuant to section 42-1103.02, 42-1125.01 or 43-419, confidential information may be disclosed only before the judge or administrative law judge adjudicating the proceeding, the parties to the proceeding and the parties' representatives in the proceeding prior to its introduction into evidence in the proceeding. The confidential information may be introduced as evidence in the proceeding only if the taxpayer's name, the names of any dependents listed on the return, all social security numbers, the taxpayer's address, the taxpayer's signature and any attachments containing any of the foregoing information are redacted and if either:

1. The treatment of an item reflected on such a return is or may be related to the resolution of an issue in the proceeding.

2. Such a return or the return information relates or may relate to a transactional relationship between a person who is a party to the proceeding and the taxpayer that directly affects the resolution of an issue in the proceeding.

3. The method of payment of the taxpayer's withholding tax liability or the method of filing the taxpayer's withholding tax return is an issue for the period.

U. The department and attorney general may share the information specified in subsection S of this section with any of the following:

1. Federal, state or local agencies located in this state for the purposes of enforcement of the statutes or agreements specified in subsection S of this section or for the purposes of enforcement of corresponding laws of other states.

2. Indian tribes located in this state for the purposes of enforcement of the statutes or agreements specified in subsection S of this section.

3. A court, arbitrator, data clearinghouse or similar entity for the purpose of assessing compliance with or making calculations required by the master settlement agreement or agreements regarding disputes under the master settlement agreement, and with counsel for the parties or expert witnesses in any such proceeding, if the information otherwise remains confidential.

V. The department may provide the name and address of qualifying hospitals and qualifying health care organizations, as defined in section 42-5001, to a business that is classified and reporting transaction privilege tax under the utilities classification.

W. The department may disclose to an official of any city, town or county in a current agreement or considering a prospective agreement with the department as described in section 42-5032.02, subsection G any information relating to amounts that are subject to distribution and that are required by section 42-5032.02. Information disclosed by the department under this subsection:

1. May ~~only~~ be used ONLY by the city, town or county for internal purposes.

2. May not be disclosed to the public in any manner that does not comply with confidentiality standards established by the department. The city, town or county must agree with the department in writing that any release of confidential information that violates the confidentiality standards will result in the immediate suspension of any rights of the city, town or county to receive information under this subsection.

X. Notwithstanding any other provision of this section, the department may not disclose information provided by an online lodging marketplace, as defined in section 42-5076, without the written consent of the online lodging marketplace, and the information may be disclosed only pursuant to subsection A, paragraphs 1 through 6, 8 and 10, subsection B, paragraphs 1, 2, 7 and 8 and subsections C, D and G of this section. Such information:

1. Is not subject to disclosure pursuant to title 39, relating to public records.

2. May not be disclosed to any agency of this state or of any county, city, town or other political subdivision of this state.

EXPLANATION OF BLEND

SECTION 42-5061 (as amended by Laws 2021, Ch. 266, section 3, Ch. 412, section 7, Ch. 417, section 4 and Ch. 443, section 2)

Laws 2022, Chapters 43 and 321

Laws 2022, Ch. 43, section 2

Effective September 24, 2022

Laws 2022, Ch. 321, section 7

Effective September 24, 2022

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 43 and Ch. 321 text changes to section 42-5061, as amended by Laws 2021, Ch. 266, section 3, Ch. 412, section 7, Ch. 417, section 4 and Ch. 443, section 2, are blended in the form shown on the following pages.

BLEND OF SECTION 42-5061 (as amended by Laws 2021, Ch. 266, section 3, Ch. 412, section 7, Ch. 417, section 4 and Ch. 443, section 2)  
Laws 2022, Chapters 43 and 321

42-5061. Retail classification; definitions

A. The retail classification is comprised of the business of selling tangible personal property at retail. The tax base for the retail classification is the gross proceeds of sales or gross income derived from the business. The tax imposed on the retail classification does not apply to the gross proceeds of sales or gross income from:

1. Professional or personal service occupations or businesses that involve sales or transfers of tangible personal property only as inconsequential elements.

2. Services rendered in addition to selling tangible personal property at retail.

3. Sales of warranty or service contracts. The storage, use or consumption of tangible personal property provided under the conditions of such contracts is subject to tax under section 42-5156.

4. Sales of tangible personal property by any nonprofit organization organized and operated exclusively for charitable purposes and recognized by the United States internal revenue service under section 501(c)(3) of the internal revenue code.

5. Sales to persons engaged in business classified under the restaurant classification of articles used by human beings for food, drink or condiment, whether simple, mixed or compounded.

6. Business activity that is properly included in any other business classification that is taxable under this article.

7. The sale of stocks and bonds.

8. Drugs and medical oxygen, including delivery hose, mask or tent, regulator and tank, if prescribed by a member of the medical, dental or veterinarian profession who is licensed by law to administer such substances.

9. Prosthetic appliances as defined in section 23-501 and as prescribed or recommended by a health professional who is licensed pursuant to title 32, chapter 7, 8, 11, 13, 14, 15, 16, 17 or 29.

10. Insulin, insulin syringes and glucose test strips.

11. Prescription eyeglasses or contact lenses.

12. Hearing aids as defined in section 36-1901.

13. Durable medical equipment that has a centers for medicare and medicaid services common procedure code, is designated reimbursable by medicare, is prescribed by a person who is licensed under title 32, chapter 7, 8, 13, 14, 15, 17 or 29, can withstand repeated use, is primarily and customarily used to serve a medical purpose, is generally not useful to a person in the absence of illness or injury and is appropriate for use in the home.

14. Sales of motor vehicles to nonresidents of this state for use outside this state IF EITHER OF THE FOLLOWING APPLY:

(a) If The motor vehicle dealer ships or delivers the motor vehicle to a destination out of this state.

(b) THE VEHICLE, TRAILER OR SEMITRAILER HAS A GROSS VEHICLE WEIGHT RATING OF MORE THAN TEN THOUSAND POUNDS, IS USED OR MAINTAINED TO TRANSPORT PROPERTY IN THE FURTHERANCE OF INTERSTATE COMMERCE AND OTHERWISE MEETS THE DEFINITION OF COMMERCIAL MOTOR VEHICLE AS DEFINED IN SECTION 28-5201.

15. Food, as provided in and subject to the conditions of article 3 of this chapter and sections 42-5074 and 42-6017.

16. Items purchased with United States department of agriculture coupons issued under the supplemental nutrition assistance program pursuant to the food and nutrition act of 2008 (P.L. 88-525; 78 Stat. 703; 7 United States Code sections 2011 through 2036b) by the United States department of agriculture food and nutrition service or food instruments issued under section 17 of the child nutrition act (P.L. 95-627; 92 Stat. 3603; P.L. 99-661, section 4302; P.L. 111-296; 42 United States Code section 1786).

17. Textbooks by any bookstore that are required by any state university or community college.

18. Food and drink to a person that is engaged in a business that is classified under the restaurant classification and that provides such food and drink without monetary charge to its employees for their own consumption on the premises during the employees' hours of employment.

19. Articles of food, drink or condiment and accessory tangible personal property to a school district or charter school if such articles and accessory tangible personal property are to be prepared and served to persons for consumption on the premises of a public school within the district or on the premises of the charter school during school hours.

20. Lottery tickets or shares pursuant to title 5, chapter 5.1, article 1.

21. The sale of cash equivalents and the sale of precious metal bullion and monetized bullion to the ultimate consumer, but the sale of coins or other forms of money for manufacture into jewelry or works of art is subject to the tax and the gross proceeds of sales or gross income derived from the redemption of any cash equivalent by the holder as a means of payment for goods or services that are taxable under this article is subject to the tax. For the purposes of this paragraph:

(a) "Cash equivalents" means items or intangibles, whether or not negotiable, that are sold to one or more persons, through which a value denominated in money is purchased in advance and may be redeemed in full or in part for tangible personal property, intangibles or services. Cash equivalents include gift cards, stored value cards, gift certificates, vouchers, traveler's checks, money orders or other instruments, orders or electronic mechanisms, such as an electronic code, personal identification number or digital payment mechanism, or any other prepaid intangible right to acquire tangible personal property, intangibles or services in the future, whether from the seller of the cash equivalent or from another person. Cash equivalents do not include either of the following:

(i) Items or intangibles that are sold to one or more persons, through which a value is not denominated in money.

(ii) Prepaid calling cards or prepaid authorization numbers for telecommunications services made taxable by subsection P of this section.

(b) "Monetized bullion" means coins and other forms of money that are manufactured from gold, silver or other metals and that have been or are used as a medium of exchange in this or another state, the United States or a foreign nation.

(c) "Precious metal bullion" means precious metal, including gold, silver, platinum, rhodium and palladium, that has been smelted or refined so that its value depends on its contents and not on its form.

22. Motor vehicle fuel and use fuel that are subject to a tax imposed under title 28, chapter 16, article 1, sales of use fuel to a holder of a valid single trip use fuel tax permit issued under section 28-5739, sales of aviation fuel that are subject to the tax imposed under section 28-8344 and sales of jet fuel that are subject to the tax imposed under article 8 of this chapter.

23. Tangible personal property sold to a person engaged in the business of leasing or renting such property under the personal property rental classification if such property is to be leased or rented by such person.

24. Tangible personal property sold in interstate or foreign commerce if prohibited from being so taxed by the constitution of the United States or the constitution of this state.

25. Tangible personal property sold to:

(a) A qualifying hospital as defined in section 42-5001.

(b) A qualifying health care organization as defined in section 42-5001 if the tangible personal property is used by the organization solely to provide health and medical related educational and charitable services.

(c) A qualifying health care organization as defined in section 42-5001 if the organization is dedicated to providing educational, therapeutic, rehabilitative and family medical education training for blind and visually impaired children and children with multiple disabilities from the time of birth to age twenty-one.

(d) A qualifying community health center as defined in section 42-5001.

(e) A nonprofit charitable organization that has qualified under section 501(c)(3) of the internal revenue code and that regularly serves meals to the needy and indigent on a continuing basis at no cost.

(f) For taxable periods beginning from and after June 30, 2001, a nonprofit charitable organization that has qualified under section 501(c)(3) of the internal revenue code and that provides residential apartment housing for low-income persons over sixty-two years of age in a facility that qualifies for a federal housing subsidy, if the tangible personal property is used by the organization solely to provide residential apartment housing for low-income persons over sixty-two years of age in a facility that qualifies for a federal housing subsidy.

(g) A qualifying health sciences educational institution as defined in section 42-5001.

(h) Any person representing or working on behalf of another person described in subdivisions (a) through (g) of this paragraph if the tangible personal property is incorporated or fabricated into a project described in section 42-5075, subsection 0.

26. Magazines or other periodicals or other publications by this state to encourage tourist travel.

27. Tangible personal property sold to:

(a) A person that is subject to tax under this article by reason of being engaged in business classified under section 42-5075 or to a subcontractor working under the control of a person engaged in business classified under section 42-5075, if the property so sold is any of the following:

(i) Incorporated or fabricated by the person into any real property, structure, project, development or improvement as part of the business.

(ii) Incorporated or fabricated by the person into any project described in section 42-5075, subsection 0.

(iii) Used in environmental response or remediation activities under section 42-5075, subsection B, paragraph 6.

(b) A person that is not subject to tax under section 42-5075 and that has been provided a copy of a certificate under section 42-5009, subsection L, if the property so sold is incorporated or fabricated by the person into the real property, structure, project, development or improvement described in the certificate.

28. The sale of a motor vehicle to a nonresident of this state if the purchaser's state of residence does not allow a corresponding use tax exemption to the tax imposed by article 1 of this chapter and if the nonresident has secured a special ninety day nonresident registration permit for the vehicle as prescribed by sections 28-2154 and 28-2154.01.

29. Tangible personal property purchased in this state by a nonprofit charitable organization that has qualified under section 501(c)(3) of the United States internal revenue code and that engages in and uses such property exclusively in programs for persons with mental or physical disabilities if the programs are exclusively for training, job placement, rehabilitation or testing.

30. Sales of tangible personal property by a nonprofit organization that is exempt from taxation under section 501(c)(3), 501(c)(4) or 501(c)(6) of the internal revenue code if the organization is associated with a major league baseball team or a national touring professional golfing association and no part of the organization's net earnings inures to the benefit of any private shareholder or individual. This paragraph does not apply to an organization that is owned, managed or controlled, in whole or in part, by a major league baseball team, or its owners, officers, employees or agents, or by a major league baseball association or professional golfing association, or its owners, officers, employees or agents, unless the organization conducted or operated exhibition events in this state before January 1, 2018 that were exempt from taxation under section 42-5073.

31. Sales of commodities, as defined by title 7 United States Code section 2, that are consigned for resale in a warehouse in this state in or from which the commodity is deliverable on a contract for future delivery

subject to the rules of a commodity market regulated by the United States commodity futures trading commission.

32. Sales of tangible personal property by a nonprofit organization that is exempt from taxation under section 501(c)(3), 501(c)(4), 501(c)(6), 501(c)(7) or 501(c)(8) of the internal revenue code if the organization sponsors or operates a rodeo featuring primarily farm and ranch animals and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

33. Sales of propagative materials to persons who use those items to commercially produce agricultural, horticultural, viticultural or floricultural crops in this state. For the purposes of this paragraph, "propagative materials":

(a) Includes seeds, seedlings, roots, bulbs, liners, transplants, cuttings, soil and plant additives, agricultural minerals, auxiliary soil and plant substances, micronutrients, fertilizers, insecticides, herbicides, fungicides, soil fumigants, desiccants, rodenticides, adjuvants, plant nutrients and plant growth regulators.

(b) Except for use in commercially producing industrial hemp as defined in section 3-311, does not include any propagative materials used in producing any part, including seeds, of any plant of the genus cannabis.

34. Machinery, equipment, technology or related supplies that are only useful to assist a person with a physical disability as defined in section 46-191 or a person who has a developmental disability as defined in section 36-551 or has a head injury as defined in section 41-3201 to be more independent and functional.

35. Sales of natural gas or liquefied petroleum gas used to propel a motor vehicle.

36. Paper machine clothing, such as forming fabrics and dryer felts, sold to a paper manufacturer and directly used or consumed in paper manufacturing.

37. Coal, petroleum, coke, natural gas, virgin fuel oil and electricity sold to a qualified environmental technology manufacturer, producer or processor as defined in section 41-1514.02 and directly used or consumed in generating or providing on-site power or energy solely for environmental technology manufacturing, producing or processing or environmental protection. This paragraph applies for twenty full consecutive calendar or fiscal years from the date the first paper manufacturing machine is placed in service. In the case of an environmental technology manufacturer, producer or processor that does not manufacture paper, the time period begins with the date the first manufacturing, processing or production equipment is placed in service.

38. Sales of liquid, solid or gaseous chemicals used in manufacturing, processing, fabricating, mining, refining, metallurgical operations, research and development and, beginning on January 1, 1999, printing, if using or consuming the chemicals, alone or as part of an integrated system of chemicals, involves direct contact with the materials from which the product is produced for the purpose of causing or allowing a chemical or physical change to occur in the materials as part of the production process. This paragraph does not include chemicals that are used or consumed in activities such as packaging, storage or transportation but does not affect

any deduction for such chemicals that is otherwise provided by this section. For the purposes of this paragraph, "printing" means a commercial printing operation and includes job printing, engraving, embossing, copying and bookbinding.

39. Through December 31, 1994, personal property liquidation transactions, conducted by a personal property liquidator. From and after December 31, 1994, personal property liquidation transactions shall be taxable under this section provided that nothing in this subsection shall be construed to authorize the taxation of casual activities or transactions under this chapter. For the purposes of this paragraph:

(a) "Personal property liquidation transaction" means a sale of personal property made by a personal property liquidator acting solely on behalf of the owner of the personal property sold at the dwelling of the owner or on the death of any owner, on behalf of the surviving spouse, if any, any devisee or heir or the personal representative of the estate of the deceased, if one has been appointed.

(b) "Personal property liquidator" means a person who is retained to conduct a sale in a personal property liquidation transaction.

40. Sales of food, drink and condiment for consumption within the premises of any prison, jail or other institution under the jurisdiction of the state department of corrections, the department of public safety, the department of juvenile corrections or a county sheriff.

41. A motor vehicle and any repair and replacement parts and tangible personal property becoming a part of such motor vehicle sold to a motor carrier that is subject to a fee prescribed in title 28, chapter 16, article 4 and that is engaged in the business of leasing or renting such property.

42. Sales of:

(a) Livestock and poultry to persons engaging in the businesses of farming, ranching or producing livestock or poultry.

(b) Livestock and poultry feed, salts, vitamins and other additives for livestock or poultry consumption that are sold to persons for use or consumption by their own livestock or poultry, for use or consumption in the businesses of farming, ranching and producing or feeding livestock, poultry, or livestock or poultry products or for use or consumption in noncommercial boarding of livestock. For the purposes of this paragraph, "poultry" includes ratites.

43. Sales of implants used as growth promotants and injectable medicines, not already exempt under paragraph 8 of this subsection, for livestock or poultry owned by or in possession of persons that are engaged in producing livestock, poultry, or livestock or poultry products or that are engaged in feeding livestock or poultry commercially. For the purposes of this paragraph, "poultry" includes ratites.

44. Sales of motor vehicles at auction to nonresidents of this state for use outside this state if the vehicles are shipped or delivered out of this state, regardless of where title to the motor vehicles passes or its free on board point.

45. Tangible personal property sold to a person engaged in business and subject to tax under the transient lodging classification if the tangible personal property is a personal hygiene item or articles used by human beings for food, drink or condiment, except alcoholic beverages, that are

furnished without additional charge to and intended to be consumed by the transient during the transient's occupancy.

46. Sales of alternative fuel, as defined in section 1-215, to a used oil fuel burner who has received a permit to burn used oil or used oil fuel under section 49-426 or 49-480.

47. Sales of materials that are purchased by or for publicly funded libraries, including school district libraries, charter school libraries, community college libraries, state university libraries or federal, state, county or municipal libraries, for use by the public as follows:

(a) Printed or photographic materials, beginning August 7, 1985.

(b) Electronic or digital media materials, beginning July 17, 1994.

48. Tangible personal property sold to a commercial airline and consisting of food, beverages and condiments and accessories used for serving the food and beverages, if those items are to be provided without additional charge to passengers for consumption in flight. For the purposes of this paragraph, "commercial airline" means a person holding a federal certificate of public convenience and necessity or foreign air carrier permit for air transportation to transport persons, property or United States mail in intrastate, interstate or foreign commerce.

49. Sales of alternative fuel vehicles if the vehicle was manufactured as a diesel fuel vehicle and converted to operate on alternative fuel and equipment that is installed in a conventional diesel fuel motor vehicle to convert the vehicle to operate on an alternative fuel, as defined in section 1-215.

50. Sales of any spirituous, vinous or malt liquor by a person that is licensed in this state as a wholesaler by the department of liquor licenses and control pursuant to title 4, chapter 2, article 1.

51. Sales of tangible personal property to be incorporated or installed as part of environmental response or remediation activities under section 42-5075, subsection B, paragraph 6.

52. Sales of tangible personal property by a nonprofit organization that is exempt from taxation under section 501(c)(6) of the internal revenue code if the organization produces, organizes or promotes cultural or civic related festivals or events and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

53. Application services that are designed to assess or test student learning or to promote curriculum design or enhancement purchased by or for any school district, charter school, community college or state university. For the purposes of this paragraph:

(a) "Application services" means software applications provided remotely using hypertext transfer protocol or another network protocol.

(b) "Curriculum design or enhancement" means planning, implementing or reporting on courses of study, lessons, assignments or other learning activities.

54. Sales of motor vehicle fuel and use fuel to a qualified business under section 41-1516 for off-road use in harvesting, processing or transporting qualifying forest products removed from qualifying projects as defined in section 41-1516.

55. Sales of repair parts installed in equipment used directly by a qualified business under section 41-1516 in harvesting, processing or

transporting qualifying forest products removed from qualifying projects as defined in section 41-1516.

56. Sales or other transfers of renewable energy credits or any other unit created to track energy derived from renewable energy resources. For the purposes of this paragraph, "renewable energy credit" means a unit created administratively by the corporation commission or governing body of a public power utility to track kilowatt hours of electricity derived from a renewable energy resource or the kilowatt hour equivalent of conventional energy resources displaced by distributed renewable energy resources.

57. Orthodontic devices dispensed by a dental professional who is licensed under title 32, chapter 11 to a patient as part of the practice of dentistry.

58. Sales of tangible personal property incorporated or fabricated into a project described in section 42-5075, subsection 0, that is located within the exterior boundaries of an Indian reservation for which the owner, as defined in section 42-5075, of the project is an Indian tribe or an affiliated Indian. For the purposes of this paragraph:

(a) "Affiliated Indian" means an individual Native American Indian who is duly registered on the tribal rolls of the Indian tribe for whose benefit the Indian reservation was established.

(b) "Indian reservation" means all lands that are within the limits of areas set aside by the United States for the exclusive use and occupancy of an Indian tribe by treaty, law or executive order and that are recognized as Indian reservations by the United States department of the interior.

(c) "Indian tribe" means any organized nation, tribe, band or community that is recognized as an Indian tribe by the United States department of the interior and includes any entity formed under the laws of the Indian tribe.

59. Sales of works of fine art, as defined in section 44-1771, at an art auction or gallery in this state to nonresidents of this state for use outside this state if the vendor ships or delivers the work of fine art to a destination outside this state.

60. Sales of tangible personal property by a marketplace seller that are facilitated by a marketplace facilitator in which the marketplace facilitator has remitted or will remit the applicable tax to the department pursuant to section 42-5014.

B. In addition to the deductions from the tax base prescribed by subsection A of this section, the gross proceeds of sales or gross income derived from sales of the following categories of tangible personal property shall be deducted from the tax base:

1. Machinery, or equipment, used directly in manufacturing, processing, fabricating, job printing, refining or metallurgical operations. The terms "manufacturing", "processing", "fabricating", "job printing", "refining" and "metallurgical" as used in this paragraph refer to and include those operations commonly understood within their ordinary meaning. "Metallurgical operations" includes leaching, milling, precipitating, smelting and refining.

2. Mining machinery, or equipment, used directly in the process of extracting ores or minerals from the earth for commercial purposes, including equipment required to prepare the materials for extraction and

handling, loading or transporting such extracted material to the surface. "Mining" includes underground, surface and open pit operations for extracting ores and minerals.

3. Tangible personal property sold to persons engaged in business classified under the telecommunications classification, including a person representing or working on behalf of such a person in a manner described in section 42-5075, subsection 0, and consisting of central office switching equipment, switchboards, private branch exchange equipment, microwave radio equipment and carrier equipment including optical fiber, coaxial cable and other transmission media that are components of carrier systems.

4. Machinery, equipment or transmission lines used directly in producing or transmitting electrical power, but not including distribution. Transformers and control equipment used at transmission substation sites constitute equipment used in producing or transmitting electrical power.

5. Machinery and equipment used directly for energy storage for later electrical use. For the purposes of this paragraph:

(a) "Electric utility scale" means a person that is engaged in a business activity described in section 42-5063, subsection A or such person's equipment or wholesale electricity suppliers.

(b) "Energy storage" means commercially available technology for electric utility scale that is capable of absorbing energy, storing energy for a period of time and thereafter dispatching the energy and that uses mechanical, chemical or thermal processes to store energy.

(c) "Machinery and equipment used directly" means all machinery and equipment that are used for electric energy storage from the point of receipt of such energy in order to facilitate storage of the electric energy to the point where the electric energy is released.

6. Neat animals, horses, asses, sheep, ratices, swine or goats used or to be used as breeding or production stock, including sales of breedings or ownership shares in such animals used for breeding or production.

7. Pipes or valves four inches in diameter or larger used to transport oil, natural gas, artificial gas, water or coal slurry, including compressor units, regulators, machinery and equipment, fittings, seals and any other part that is used in operating the pipes or valves.

8. Aircraft, navigational and communication instruments and other accessories and related equipment sold to:

(a) A person:

(i) Holding, or exempted by federal law from obtaining, a federal certificate of public convenience and necessity for use as, in conjunction with or becoming part of an aircraft to be used to transport persons for hire in intrastate, interstate or foreign commerce.

(ii) That is certificated or licensed under federal aviation administration regulations (14 Code of Federal Regulations part 121 or 135) as a scheduled or unscheduled carrier of persons for hire for use as or in conjunction with or becoming part of an aircraft to be used to transport persons for hire in intrastate, interstate or foreign commerce.

(iii) Holding a foreign air carrier permit for air transportation for use as or in conjunction with or becoming a part of aircraft to be used

to transport persons, property or United States mail in intrastate, interstate or foreign commerce.

(iv) Operating an aircraft to transport persons in any manner for compensation or hire, or for use in a fractional ownership program that meets the requirements of federal aviation administration regulations (14 Code of Federal Regulations part 91, subpart K), including as an air carrier, a foreign air carrier or a commercial operator or under a restricted category, within the meaning of 14 Code of Federal Regulations, regardless of whether the operation or aircraft is regulated or certified under part 91, 119, 121, 133, 135, 136 or 137, or another part of 14 Code of Federal Regulations.

(v) That will lease or otherwise transfer operational control, within the meaning of federal aviation administration operations specification A008, or its successor, of the aircraft, instruments or accessories to one or more persons described in item (i), (ii), (iii) or (iv) of this subdivision, subject to section 42-5009, subsection Q.

(b) Any foreign government.

(c) Persons who are not residents of this state and who will not use such property in this state other than in removing such property from this state. This subdivision also applies to corporations that are not incorporated in this state, regardless of maintaining a place of business in this state, if the principal corporate office is located outside this state and the property will not be used in this state other than in removing the property from this state.

9. Machinery, tools, equipment and related supplies used or consumed directly in repairing, remodeling or maintaining aircraft, aircraft engines or aircraft component parts by or on behalf of a certificated or licensed carrier of persons or property.

10. Railroad rolling stock, rails, ties and signal control equipment used directly to transport persons or property.

11. Machinery or equipment used directly to drill for oil or gas or used directly in the process of extracting oil or gas from the earth for commercial purposes.

12. Buses or other urban mass transit vehicles that are used directly to transport persons or property for hire or pursuant to a governmentally adopted and controlled urban mass transportation program and that are sold to bus companies holding a federal certificate of convenience and necessity or operated by any city, town or other governmental entity or by any person contracting with such governmental entity as part of a governmentally adopted and controlled program to provide urban mass transportation.

13. Groundwater measuring devices required under section 45-604.

Ch. 321 { 14. ~~New~~ Machinery and equipment consisting of agricultural aircraft, tractors, OFF-HIGHWAY VEHICLES, tractor-drawn implements, self-powered implements, machinery and equipment necessary for extracting milk, and machinery and equipment necessary for cooling milk and livestock, and drip irrigation lines not already exempt under paragraph 7 of this subsection and that are used for commercial production of agricultural, horticultural, viticultural and floricultural crops and products in this state. For the purposes of this paragraph:

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~~(a) "New machinery and equipment" means machinery and equipment that have never been sold at retail except pursuant to leases or rentals that do not total two years or more.~~

(a) "OFF-HIGHWAY VEHICLES" MEANS OFF-HIGHWAY VEHICLES AS DEFINED IN SECTION 28-1171 THAT ARE MODIFIED AT THE TIME OF SALE TO FUNCTION AS A TRACTOR OR TO TOW TRACTOR-DRAWN IMPLEMENTS AND THAT ARE NOT EQUIPPED WITH A MODIFIED EXHAUST SYSTEM TO INCREASE HORSEPOWER OR SPEED OR AN ENGINE THAT IS MORE THAN ONE THOUSAND CUBIC CENTIMETERS OR THAT HAVE A MAXIMUM SPEED OF FIFTY MILES PER HOUR OR LESS.

(b) "Self-powered implements" includes machinery and equipment that are electric-powered.

15. Machinery or equipment used in research and development. For the purposes of this paragraph, "research and development" means basic and applied research in the sciences and engineering, and designing, developing or testing prototypes, processes or new products, including research and development of computer software that is embedded in or an integral part of the prototype or new product or that is required for machinery or equipment otherwise exempt under this section to function effectively. Research and development do not include manufacturing quality control, routine consumer product testing, market research, sales promotion, sales service, research in social sciences or psychology, computer software research that is not included in the definition of research and development, or other nontechnological activities or technical services.

16. Tangible personal property that is used by either of the following to receive, store, convert, produce, generate, decode, encode, control or transmit telecommunications information:

(a) Any direct broadcast satellite television or data transmission service that operates pursuant to 47 Code of Federal Regulations part 25.

(b) Any satellite television or data transmission facility, if both of the following conditions are met:

(i) Over two-thirds of the transmissions, measured in megabytes, transmitted by the facility during the test period were transmitted to or on behalf of one or more direct broadcast satellite television or data transmission services that operate pursuant to 47 Code of Federal Regulations part 25.

(ii) Over two-thirds of the transmissions, measured in megabytes, transmitted by or on behalf of those direct broadcast television or data transmission services during the test period were transmitted by the facility to or on behalf of those services. For the purposes of subdivision (b) of this paragraph, "test period" means the three hundred sixty-five day period beginning on the later of the date on which the tangible personal property is purchased or the date on which the direct broadcast satellite television or data transmission service first transmits information to its customers.

17. Clean rooms that are used for manufacturing, processing, fabrication or research and development, as defined in paragraph 15 of this subsection, of semiconductor products. For the purposes of this paragraph, "clean room" means all property that comprises or creates an environment where humidity, temperature, particulate matter and contamination are precisely controlled within specified parameters, without regard to whether

the property is actually contained within that environment or whether any of the property is affixed to or incorporated into real property. Clean room:

(a) Includes the integrated systems, fixtures, piping, movable partitions, lighting and all property that is necessary or adapted to reduce contamination or to control airflow, temperature, humidity, chemical purity or other environmental conditions or manufacturing tolerances, as well as the production machinery and equipment operating in conjunction with the clean room environment.

(b) Does not include the building or other permanent, nonremovable component of the building that houses the clean room environment.

18. Machinery and equipment used directly in feeding poultry, environmentally controlling housing for poultry, moving eggs within a production and packaging facility or sorting or cooling eggs. This exemption does not apply to vehicles used for transporting eggs.

19. Machinery or equipment, including related structural components and containment structures, that is employed in connection with manufacturing, processing, fabricating, job printing, refining, mining, natural gas pipelines, metallurgical operations, telecommunications, producing or transmitting electricity or research and development and that is used directly to meet or exceed rules or regulations adopted by the federal energy regulatory commission, the United States environmental protection agency, the United States nuclear regulatory commission, the Arizona department of environmental quality or a political subdivision of this state to prevent, monitor, control or reduce land, water or air pollution. FOR THE PURPOSES OF THIS PARAGRAPH, "CONTAINMENT STRUCTURE" MEANS A STRUCTURE THAT PREVENTS, MONITORS, CONTROLS OR REDUCES NOXIOUS OR HARMFUL DISCHARGE INTO THE ENVIRONMENT.

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20. Machinery and equipment that are sold to a person engaged in commercially producing livestock, livestock products or agricultural, horticultural, viticultural or floricultural crops or products in this state, including a person representing or working on behalf of such a person in a manner described in section 42-5075, subsection 0, if the machinery and equipment are used directly and primarily to prevent, monitor, control or reduce air, water or land pollution.

21. Machinery or equipment that enables a television station to originate and broadcast or to receive and broadcast digital television signals and that was purchased to facilitate compliance with the telecommunications act of 1996 (P.L. 104-104; 110 Stat. 56; 47 United States Code section 336) and the federal communications commission order issued April 21, 1997 (47 Code of Federal Regulations part 73). This paragraph does not exempt any of the following:

(a) Repair or replacement parts purchased for the machinery or equipment described in this paragraph.

(b) Machinery or equipment purchased to replace machinery or equipment for which an exemption was previously claimed and taken under this paragraph.

(c) Any machinery or equipment purchased after the television station has ceased analog broadcasting, or purchased after November 1, 2009, whichever occurs first.

22. Qualifying equipment that is purchased from and after June 30, 2004 through June 30, 2024 by a qualified business under section 41-1516 for harvesting or processing qualifying forest products removed from qualifying projects as defined in section 41-1516. To qualify for this deduction, the qualified business at the time of purchase must present its certification approved by the department.

23. Computer data center equipment sold to the owner, operator or qualified colocation tenant of a computer data center that is certified by the Arizona commerce authority under section 41-1519 or an authorized agent of the owner, operator or qualified colocation tenant during the qualification period for use in the qualified computer data center. For the purposes of this paragraph, "computer data center", "computer data center equipment", "qualification period" and "qualified colocation tenant" have the same meanings prescribed in section 41-1519.

C. The deductions provided by subsection B of this section do not include sales of:

1. Expendable materials. For the purposes of this paragraph, expendable materials do not include any of the categories of tangible personal property specified in subsection B of this section regardless of the cost or useful life of that property.

2. Janitorial equipment and hand tools.

3. Office equipment, furniture and supplies.

4. Tangible personal property used in selling or distributing activities, other than the telecommunications transmissions described in subsection B, paragraph 16 of this section.

5. Motor vehicles required to be licensed by this state, except buses or other urban mass transit vehicles specifically exempted pursuant to subsection B, paragraph 12 of this section, without regard to the use of such motor vehicles.

6. Shops, buildings, docks, depots and all other materials of whatever kind or character not specifically included as exempt.

7. Motors and pumps used in drip irrigation systems.

8. Machinery and equipment or other tangible personal property used by a contractor in performing a contract.

D. In addition to the deductions from the tax base prescribed by subsection A of this section, there shall be deducted from the tax base the gross proceeds of sales or gross income derived from sales of machinery, equipment, materials and other tangible personal property used directly and predominantly to construct a qualified environmental technology manufacturing, producing or processing facility as described in section 41-1514.02. This subsection applies for ten full consecutive calendar or fiscal years after the start of initial construction.

E. In computing the tax base, gross proceeds of sales or gross income from retail sales of heavy trucks and trailers does not include any amount attributable to federal excise taxes imposed by 26 United States Code section 4051.

F. If a person is engaged in an occupation or business to which subsection A of this section applies, the person's books shall be kept so as to show separately the gross proceeds of sales of tangible personal property and the gross income from sales of services, and if not so kept

the tax shall be imposed on the total of the person's gross proceeds of sales of tangible personal property and gross income from services.

G. If a person is engaged in the business of selling tangible personal property at both wholesale and retail, the tax under this section applies only to the gross proceeds of the sales made other than at wholesale if the person's books are kept so as to show separately the gross proceeds of sales of each class, and if the books are not so kept, the tax under this section applies to the gross proceeds of every sale so made.

H. A person who engages in manufacturing, baling, crating, boxing, barreling, canning, bottling, sacking, preserving, processing or otherwise preparing for sale or commercial use any livestock, agricultural or horticultural product or any other product, article, substance or commodity and who sells the product of such business at retail in this state is deemed, as to such sales, to be engaged in business classified under the retail classification. This subsection does not apply to:

1. Agricultural producers who are owners, proprietors or tenants of agricultural lands, orchards, farms or gardens where agricultural products are grown, raised or prepared for market and who are marketing their own agricultural products.

2. Businesses classified under the:

- (a) Transporting classification.
- (b) Utilities classification.
- (c) Telecommunications classification.
- (d) Pipeline classification.
- (e) Private car line classification.
- (f) Publication classification.
- (g) Job printing classification.
- (h) Prime contracting classification.
- (i) Restaurant classification.

I. The gross proceeds of sales or gross income derived from the following shall be deducted from the tax base for the retail classification:

1. Sales made directly to the United States government or its departments or agencies by a manufacturer, modifier, assembler or repairer.

2. Sales made directly to a manufacturer, modifier, assembler or repairer if such sales are of any ingredient or component part of products sold directly to the United States government or its departments or agencies by the manufacturer, modifier, assembler or repairer.

3. Overhead materials or other tangible personal property that is used in performing a contract between the United States government and a manufacturer, modifier, assembler or repairer, including property used in performing a subcontract with a government contractor who is a manufacturer, modifier, assembler or repairer, to which title passes to the government under the terms of the contract or subcontract.

4. Sales of overhead materials or other tangible personal property to a manufacturer, modifier, assembler or repairer if the gross proceeds of sales or gross income derived from the property by the manufacturer, modifier, assembler or repairer will be exempt under paragraph 3 of this subsection.

J. There shall be deducted from the tax base fifty percent of the gross proceeds or gross income from any sale of tangible personal property

made directly to the United States government or its departments or agencies that is not deducted under subsection I of this section.

K. The department shall require every person claiming a deduction provided by subsection I or J of this section to file on forms prescribed by the department at such times as the department directs a sworn statement disclosing the name of the purchaser and the exact amount of sales on which the exclusion or deduction is claimed.

L. In computing the tax base, gross proceeds of sales or gross income does not include:

1. A manufacturer's cash rebate on the sales price of a motor vehicle if the buyer assigns the buyer's right in the rebate to the retailer.

2. The waste tire disposal fee imposed pursuant to section 44-1302.

M. There shall be deducted from the tax base the amount received from sales of solar energy devices. The retailer shall register with the department as a solar energy retailer. By registering, the retailer acknowledges that it will make its books and records relating to sales of solar energy devices available to the department for examination.

N. In computing the tax base in the case of the sale or transfer of wireless telecommunications equipment as an inducement to a customer to enter into or continue a contract for telecommunications services that are taxable under section 42-5064, gross proceeds of sales or gross income does not include any sales commissions or other compensation received by the retailer as a result of the customer entering into or continuing a contract for the telecommunications services.

O. For the purposes of this section, a sale of wireless telecommunications equipment to a person who holds the equipment for sale or transfer to a customer as an inducement to enter into or continue a contract for telecommunications services that are taxable under section 42-5064 is considered to be a sale for resale in the regular course of business.

P. Retail sales of prepaid calling cards or prepaid authorization numbers for telecommunications services, including sales of reauthorization of a prepaid card or authorization number, are subject to tax under this section.

Q. For the purposes of this section, the diversion of gas from a pipeline by a person engaged in the business of:

1. Operating a natural or artificial gas pipeline, for the sole purpose of fueling compressor equipment to pressurize the pipeline, is not a sale of the gas to the operator of the pipeline.

2. Converting natural gas into liquefied natural gas, for the sole purpose of fueling compressor equipment used in the conversion process, is not a sale of gas to the operator of the compressor equipment.

R. For the purposes of this section, the transfer of title or possession of coal from an owner or operator of a power plant to a person in the business of refining coal is not a sale of coal if both of the following apply:

1. The transfer of title or possession of the coal is for the purpose of refining the coal.

2. The title or possession of the coal is transferred back to the owner or operator of the power plant after completion of the coal refining

process. For the purposes of this paragraph, "coal refining process" means the application of a coal additive system that aids in the reduction of power plant emissions during the combustion of coal and the treatment of flue gas.

S. If a seller is entitled to a deduction pursuant to subsection B, paragraph 16, subdivision (b) of this section, the department may require the purchaser to establish that the requirements of subsection B, paragraph 16, subdivision (b) of this section have been satisfied. If the purchaser cannot establish that the requirements of subsection B, paragraph 16, subdivision (b) of this section have been satisfied, the purchaser is liable in an amount equal to any tax, penalty and interest that the seller would have been required to pay under article 1 of this chapter if the seller had not made a deduction pursuant to subsection B, paragraph 16, subdivision (b) of this section. Payment of the amount under this subsection exempts the purchaser from liability for any tax imposed under article 4 of this chapter and related to the tangible personal property purchased. The amount shall be treated as transaction privilege tax to the purchaser and as tax revenues collected from the seller to designate the distribution base pursuant to section 42-5029.

T. For the purposes of section 42-5032.01, the department shall separately account for revenues collected under the retail classification from businesses selling tangible personal property at retail:

1. On the premises of a multipurpose facility that is owned, leased or operated by the tourism and sports authority pursuant to title 5, chapter 8.

2. At professional football contests that are held in a stadium located on the campus of an institution under the jurisdiction of the Arizona board of regents.

U. In computing the tax base for the sale of a motor vehicle to a nonresident of this state, if the purchaser's state of residence allows a corresponding use tax exemption to the tax imposed by article 1 of this chapter and the rate of the tax in the purchaser's state of residence is lower than the rate prescribed in article 1 of this chapter or if the purchaser's state of residence does not impose an excise tax, and the nonresident has secured a special ninety day nonresident registration permit for the vehicle as prescribed by sections 28-2154 and 28-2154.01, there shall be deducted from the tax base a portion of the gross proceeds or gross income from the sale so that the amount of transaction privilege tax that is paid in this state is equal to the excise tax that is imposed by the purchaser's state of residence on the nonexempt sale or use of the motor vehicle.

V. For the purposes of this section:

1. "Agricultural aircraft" means an aircraft that is built for agricultural use for the aerial application of pesticides or fertilizer or for aerial seeding.

2. "Aircraft" includes:

- (a) An airplane flight simulator that is approved by the federal aviation administration for use as a phase II or higher flight simulator under appendix H, 14 Code of Federal Regulations part 121.

(b) Tangible personal property that is permanently affixed or attached as a component part of an aircraft that is owned or operated by a certificated or licensed carrier of persons or property.

3. "Other accessories and related equipment" includes aircraft accessories and equipment such as ground service equipment that physically contact aircraft at some point during the overall carrier operation.

4. "Selling at retail" means a sale for any purpose other than for resale in the regular course of business in the form of tangible personal property, but transfer of possession, lease and rental as used in the definition of sale mean only such transactions as are found on investigation to be in lieu of sales as defined without the words lease or rental.

W. For the purposes of subsection I of this section:

1. "Assembler" means a person who unites or combines products, wares or articles of manufacture so as to produce a change in form or substance without changing or altering the component parts.

2. "Manufacturer" means a person who is principally engaged in fabricating, producing or manufacturing products, wares or articles for use from raw or prepared materials, imparting to those materials new forms, qualities, properties and combinations.

3. "Modifier" means a person who reworks, changes or adds to products, wares or articles of manufacture.

4. "Overhead materials" means tangible personal property, the gross proceeds of sales or gross income derived from that would otherwise be included in the retail classification, and that are used or consumed in performing a contract, the cost of which is charged to an overhead expense account and allocated to various contracts based on generally accepted accounting principles and consistent with government contract accounting standards.

5. "Repairer" means a person who restores or renews products, wares or articles of manufacture.

6. "Subcontract" means an agreement between a contractor and any person who is not an employee of the contractor for furnishing supplies or services that, in whole or in part, are necessary to perform one or more government contracts, or under which any portion of the contractor's obligation under one or more government contracts is performed, undertaken or assumed and that includes provisions causing title to overhead materials or other tangible personal property used in performing the subcontract to pass to the government or that includes provisions incorporating such title passing clauses in a government contract into the subcontract.

EXPLANATION OF BLEND

SECTION 42-5061 (as amended by Laws 2021, Ch. 266, section 4, Ch. 412, section 8, Ch. 417, section 5 and Ch. 443, section 3)

Laws 2022, Chapters 43 and 321

Laws 2022, Ch. 43, section 3

Conditionally Effective

Laws 2022, Ch. 321, section 8

Conditionally Effective

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 43 and Ch. 321 text changes to section 42-5061, as amended by Laws 2021, Ch. 266, section 4, Ch. 412, section 8, Ch. 417, section 5 and Ch. 443, section 3, are blended in the form shown on the following pages.

BLEND OF SECTION 42-5061 (as amended by Laws 2021, Ch. 266, section 4, Ch. 412, section 8, Ch. 417, section 5 and Ch. 443, section 3)  
Laws 2022, Chapters 43 and 321

42-5061. Retail classification; definitions

A. The retail classification is comprised of the business of selling tangible personal property at retail. The tax base for the retail classification is the gross proceeds of sales or gross income derived from the business. The tax imposed on the retail classification does not apply to the gross proceeds of sales or gross income from:

1. Professional or personal service occupations or businesses that involve sales or transfers of tangible personal property only as inconsequential elements.

2. Services rendered in addition to selling tangible personal property at retail.

3. Sales of warranty or service contracts. The storage, use or consumption of tangible personal property provided under the conditions of such contracts is subject to tax under section 42-5156.

4. Sales of tangible personal property by any nonprofit organization organized and operated exclusively for charitable purposes and recognized by the United States internal revenue service under section 501(c)(3) of the internal revenue code.

5. Sales to persons engaged in business classified under the restaurant classification of articles used by human beings for food, drink or condiment, whether simple, mixed or compounded.

6. Business activity that is properly included in any other business classification that is taxable under this article.

7. The sale of stocks and bonds.

8. Drugs and medical oxygen, including delivery hose, mask or tent, regulator and tank, if prescribed by a member of the medical, dental or veterinarian profession who is licensed by law to administer such substances.

9. Prosthetic appliances as defined in section 23-501 and as prescribed or recommended by a health professional who is licensed pursuant to title 32, chapter 7, 8, 11, 13, 14, 15, 16, 17 or 29.

10. Insulin, insulin syringes and glucose test strips.

11. Prescription eyeglasses or contact lenses.

12. Hearing aids as defined in section 36-1901.

13. Durable medical equipment that has a centers for medicare and medicaid services common procedure code, is designated reimbursable by medicare, is prescribed by a person who is licensed under title 32, chapter 7, 8, 13, 14, 15, 17 or 29, can withstand repeated use, is primarily and customarily used to serve a medical purpose, is generally not useful to a person in the absence of illness or injury and is appropriate for use in the home.

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14. Sales of motor vehicles to nonresidents of this state for use outside this state IF EITHER OF THE FOLLOWING APPLY:

(a) If The motor vehicle dealer ships or delivers the motor vehicle to a destination out of this state.

(b) THE VEHICLE, TRAILER OR SEMITRAILER HAS A GROSS VEHICLE WEIGHT RATING OF MORE THAN TEN THOUSAND POUNDS, IS USED OR MAINTAINED TO TRANSPORT PROPERTY IN THE FURTHERANCE OF INTERSTATE COMMERCE AND OTHERWISE MEETS THE DEFINITION OF COMMERCIAL MOTOR VEHICLE AS DEFINED IN SECTION 28-5201.

15. Food, as provided in and subject to the conditions of article 3 of this chapter and sections 42-5074 and 42-6017.

16. Items purchased with United States department of agriculture coupons issued under the supplemental nutrition assistance program pursuant to the food and nutrition act of 2008 (P.L. 88-525; 78 Stat. 703; 7 United States Code sections 2011 through 2036b) by the United States department of agriculture food and nutrition service or food instruments issued under section 17 of the child nutrition act (P.L. 95-627; 92 Stat. 3603; P.L. 99-661, section 4302; P.L. 111-296; 42 United States Code section 1786).

17. Textbooks by any bookstore that are required by any state university or community college.

18. Food and drink to a person that is engaged in a business that is classified under the restaurant classification and that provides such food and drink without monetary charge to its employees for their own consumption on the premises during the employees' hours of employment.

19. Articles of food, drink or condiment and accessory tangible personal property to a school district or charter school if such articles and accessory tangible personal property are to be prepared and served to persons for consumption on the premises of a public school within the district or on the premises of the charter school during school hours.

20. Lottery tickets or shares pursuant to title 5, chapter 5.1, article 1.

21. The sale of cash equivalents and the sale of precious metal bullion and monetized bullion to the ultimate consumer, but the sale of coins or other forms of money for manufacture into jewelry or works of art is subject to the tax and the gross proceeds of sales or gross income derived from the redemption of any cash equivalent by the holder as a means of payment for goods or services that are taxable under this article is subject to the tax. For the purposes of this paragraph:

(a) "Cash equivalents" means items or intangibles, whether or not negotiable, that are sold to one or more persons, through which a value denominated in money is purchased in advance and may be redeemed in full or in part for tangible personal property, intangibles or services. Cash equivalents include gift cards, stored value cards, gift certificates, vouchers, traveler's checks, money orders or other instruments, orders or electronic mechanisms, such as an electronic code, personal identification number or digital payment mechanism, or any other prepaid intangible right to acquire tangible personal property, intangibles or services in the future, whether from the seller of the cash equivalent or from another person. Cash equivalents do not include either of the following:

(i) Items or intangibles that are sold to one or more persons, through which a value is not denominated in money.

(ii) Prepaid calling cards or prepaid authorization numbers for telecommunications services made taxable by subsection P of this section.

(b) "Monetized bullion" means coins and other forms of money that are manufactured from gold, silver or other metals and that have been or are used as a medium of exchange in this or another state, the United States or a foreign nation.

(c) "Precious metal bullion" means precious metal, including gold, silver, platinum, rhodium and palladium, that has been smelted or refined so that its value depends on its contents and not on its form.

22. Motor vehicle fuel and use fuel that are subject to a tax imposed under title 28, chapter 16, article 1, sales of use fuel to a holder of a valid single trip use fuel tax permit issued under section 28-5739, sales of aviation fuel that are subject to the tax imposed under section 28-8344 and sales of jet fuel that are subject to the tax imposed under article 8 of this chapter.

23. Tangible personal property sold to a person engaged in the business of leasing or renting such property under the personal property rental classification if such property is to be leased or rented by such person.

24. Tangible personal property sold in interstate or foreign commerce if prohibited from being so taxed by the constitution of the United States or the constitution of this state.

25. Tangible personal property sold to:

(a) A qualifying hospital as defined in section 42-5001.

(b) A qualifying health care organization as defined in section 42-5001 if the tangible personal property is used by the organization solely to provide health and medical related educational and charitable services.

(c) A qualifying health care organization as defined in section 42-5001 if the organization is dedicated to providing educational, therapeutic, rehabilitative and family medical education training for blind and visually impaired children and children with multiple disabilities from the time of birth to age twenty-one.

(d) A qualifying community health center as defined in section 42-5001.

(e) A nonprofit charitable organization that has qualified under section 501(c)(3) of the internal revenue code and that regularly serves meals to the needy and indigent on a continuing basis at no cost.

(f) For taxable periods beginning from and after June 30, 2001, a nonprofit charitable organization that has qualified under section 501(c)(3) of the internal revenue code and that provides residential apartment housing for low-income persons over sixty-two years of age in a facility that qualifies for a federal housing subsidy, if the tangible personal property is used by the organization solely to provide residential apartment housing for low-income persons over sixty-two years of age in a facility that qualifies for a federal housing subsidy.

(g) A qualifying health sciences educational institution as defined in section 42-5001.

(h) Any person representing or working on behalf of another person described in subdivisions (a) through (g) of this paragraph if the tangible

personal property is incorporated or fabricated into a project described in section 42-5075, subsection 0.

26. Magazines or other periodicals or other publications by this state to encourage tourist travel.

27. Tangible personal property sold to:

(a) A person that is subject to tax under this article by reason of being engaged in business classified under section 42-5075 or to a subcontractor working under the control of a person engaged in business classified under section 42-5075, if the property so sold is any of the following:

(i) Incorporated or fabricated by the person into any real property, structure, project, development or improvement as part of the business.

(ii) Incorporated or fabricated by the person into any project described in section 42-5075, subsection 0.

(iii) Used in environmental response or remediation activities under section 42-5075, subsection B, paragraph 6.

(b) A person that is not subject to tax under section 42-5075 and that has been provided a copy of a certificate under section 42-5009, subsection L, if the property so sold is incorporated or fabricated by the person into the real property, structure, project, development or improvement described in the certificate.

28. The sale of a motor vehicle to a nonresident of this state if the purchaser's state of residence does not allow a corresponding use tax exemption to the tax imposed by article 1 of this chapter and if the nonresident has secured a special ninety day nonresident registration permit for the vehicle as prescribed by sections 28-2154 and 28-2154.01.

29. Tangible personal property purchased in this state by a nonprofit charitable organization that has qualified under section 501(c)(3) of the United States internal revenue code and that engages in and uses such property exclusively in programs for persons with mental or physical disabilities if the programs are exclusively for training, job placement, rehabilitation or testing.

30. Sales of tangible personal property by a nonprofit organization that is exempt from taxation under section 501(c)(3), 501(c)(4) or 501(c)(6) of the internal revenue code if the organization is associated with a major league baseball team or a national touring professional golfing association and no part of the organization's net earnings inures to the benefit of any private shareholder or individual. This paragraph does not apply to an organization that is owned, managed or controlled, in whole or in part, by a major league baseball team, or its owners, officers, employees or agents, or by a major league baseball association or professional golfing association, or its owners, officers, employees or agents, unless the organization conducted or operated exhibition events in this state before January 1, 2018 that were exempt from taxation under section 42-5073.

31. Sales of commodities, as defined by title 7 United States Code section 2, that are consigned for resale in a warehouse in this state in or from which the commodity is deliverable on a contract for future delivery subject to the rules of a commodity market regulated by the United States commodity futures trading commission.

32. Sales of tangible personal property by a nonprofit organization that is exempt from taxation under section 501(c)(3), 501(c)(4), 501(c)(6), 501(c)(7) or 501(c)(8) of the internal revenue code if the organization sponsors or operates a rodeo featuring primarily farm and ranch animals and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

33. Sales of propagative materials to persons who use those items to commercially produce agricultural, horticultural, viticultural or floricultural crops in this state. For the purposes of this paragraph, "propagative materials":

(a) Includes seeds, seedlings, roots, bulbs, liners, transplants, cuttings, soil and plant additives, agricultural minerals, auxiliary soil and plant substances, micronutrients, fertilizers, insecticides, herbicides, fungicides, soil fumigants, desiccants, rodenticides, adjuvants, plant nutrients and plant growth regulators.

(b) Except for use in commercially producing industrial hemp as defined in section 3-311, does not include any propagative materials used in producing any part, including seeds, of any plant of the genus cannabis.

34. Machinery, equipment, technology or related supplies that are only useful to assist a person with a physical disability as defined in section 46-191 or a person who has a developmental disability as defined in section 36-551 or has a head injury as defined in section 41-3201 to be more independent and functional.

35. Sales of natural gas or liquefied petroleum gas used to propel a motor vehicle.

36. Paper machine clothing, such as forming fabrics and dryer felts, sold to a paper manufacturer and directly used or consumed in paper manufacturing.

37. Petroleum, coke, natural gas, virgin fuel oil and electricity sold to a qualified environmental technology manufacturer, producer or processor as defined in section 41-1514.02 and directly used or consumed in generating or providing on-site power or energy solely for environmental technology manufacturing, producing or processing or environmental protection. This paragraph applies for twenty full consecutive calendar or fiscal years from the date the first paper manufacturing machine is placed in service. In the case of an environmental technology manufacturer, producer or processor that does not manufacture paper, the time period begins with the date the first manufacturing, processing or production equipment is placed in service.

38. Sales of liquid, solid or gaseous chemicals used in manufacturing, processing, fabricating, mining, refining, metallurgical operations, research and development and, beginning on January 1, 1999, printing, if using or consuming the chemicals, alone or as part of an integrated system of chemicals, involves direct contact with the materials from which the product is produced for the purpose of causing or allowing a chemical or physical change to occur in the materials as part of the production process. This paragraph does not include chemicals that are used or consumed in activities such as packaging, storage or transportation but does not affect any deduction for such chemicals that is otherwise provided by this section. For the purposes of this paragraph, "printing" means a

commercial printing operation and includes job printing, engraving, embossing, copying and bookbinding.

39. Through December 31, 1994, personal property liquidation transactions, conducted by a personal property liquidator. From and after December 31, 1994, personal property liquidation transactions shall be taxable under this section provided that nothing in this subsection shall be construed to authorize the taxation of casual activities or transactions under this chapter. For the purposes of this paragraph:

(a) "Personal property liquidation transaction" means a sale of personal property made by a personal property liquidator acting solely on behalf of the owner of the personal property sold at the dwelling of the owner or on the death of any owner, on behalf of the surviving spouse, if any, any devisee or heir or the personal representative of the estate of the deceased, if one has been appointed.

(b) "Personal property liquidator" means a person who is retained to conduct a sale in a personal property liquidation transaction.

40. Sales of food, drink and condiment for consumption within the premises of any prison, jail or other institution under the jurisdiction of the state department of corrections, the department of public safety, the department of juvenile corrections or a county sheriff.

41. A motor vehicle and any repair and replacement parts and tangible personal property becoming a part of such motor vehicle sold to a motor carrier that is subject to a fee prescribed in title 28, chapter 16, article 4 and that is engaged in the business of leasing or renting such property.

42. Sales of:

(a) Livestock and poultry to persons engaging in the businesses of farming, ranching or producing livestock or poultry.

(b) Livestock and poultry feed, salts, vitamins and other additives for livestock or poultry consumption that are sold to persons for use or consumption by their own livestock or poultry, for use or consumption in the businesses of farming, ranching and producing or feeding livestock, poultry, or livestock or poultry products or for use or consumption in noncommercial boarding of livestock. For the purposes of this paragraph, "poultry" includes ratites.

43. Sales of implants used as growth promotants and injectable medicines, not already exempt under paragraph 8 of this subsection, for livestock or poultry owned by or in possession of persons that are engaged in producing livestock, poultry, or livestock or poultry products or that are engaged in feeding livestock or poultry commercially. For the purposes of this paragraph, "poultry" includes ratites.

44. Sales of motor vehicles at auction to nonresidents of this state for use outside this state if the vehicles are shipped or delivered out of this state, regardless of where title to the motor vehicles passes or its free on board point.

45. Tangible personal property sold to a person engaged in business and subject to tax under the transient lodging classification if the tangible personal property is a personal hygiene item or articles used by human beings for food, drink or condiment, except alcoholic beverages, that are furnished without additional charge to and intended to be consumed by the transient during the transient's occupancy.

46. Sales of alternative fuel, as defined in section 1-215, to a used oil fuel burner who has received a permit to burn used oil or used oil fuel under section 49-426 or 49-480.

47. Sales of materials that are purchased by or for publicly funded libraries, including school district libraries, charter school libraries, community college libraries, state university libraries or federal, state, county or municipal libraries, for use by the public as follows:

(a) Printed or photographic materials, beginning August 7, 1985.

(b) Electronic or digital media materials, beginning July 17, 1994.

48. Tangible personal property sold to a commercial airline and consisting of food, beverages and condiments and accessories used for serving the food and beverages, if those items are to be provided without additional charge to passengers for consumption in flight. For the purposes of this paragraph, "commercial airline" means a person holding a federal certificate of public convenience and necessity or foreign air carrier permit for air transportation to transport persons, property or United States mail in intrastate, interstate or foreign commerce.

49. Sales of alternative fuel vehicles if the vehicle was manufactured as a diesel fuel vehicle and converted to operate on alternative fuel and equipment that is installed in a conventional diesel fuel motor vehicle to convert the vehicle to operate on an alternative fuel, as defined in section 1-215.

50. Sales of any spirituous, vinous or malt liquor by a person that is licensed in this state as a wholesaler by the department of liquor licenses and control pursuant to title 4, chapter 2, article 1.

51. Sales of tangible personal property to be incorporated or installed as part of environmental response or remediation activities under section 42-5075, subsection B, paragraph 6.

52. Sales of tangible personal property by a nonprofit organization that is exempt from taxation under section 501(c)(6) of the internal revenue code if the organization produces, organizes or promotes cultural or civic related festivals or events and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

53. Application services that are designed to assess or test student learning or to promote curriculum design or enhancement purchased by or for any school district, charter school, community college or state university. For the purposes of this paragraph:

(a) "Application services" means software applications provided remotely using hypertext transfer protocol or another network protocol.

(b) "Curriculum design or enhancement" means planning, implementing or reporting on courses of study, lessons, assignments or other learning activities.

54. Sales of motor vehicle fuel and use fuel to a qualified business under section 41-1516 for off-road use in harvesting, processing or transporting qualifying forest products removed from qualifying projects as defined in section 41-1516.

55. Sales of repair parts installed in equipment used directly by a qualified business under section 41-1516 in harvesting, processing or transporting qualifying forest products removed from qualifying projects as defined in section 41-1516.

56. Sales or other transfers of renewable energy credits or any other unit created to track energy derived from renewable energy resources. For the purposes of this paragraph, "renewable energy credit" means a unit created administratively by the corporation commission or governing body of a public power utility to track kilowatt hours of electricity derived from a renewable energy resource or the kilowatt hour equivalent of conventional energy resources displaced by distributed renewable energy resources.

57. Orthodontic devices dispensed by a dental professional who is licensed under title 32, chapter 11 to a patient as part of the practice of dentistry.

58. Sales of tangible personal property incorporated or fabricated into a project described in section 42-5075, subsection 0, that is located within the exterior boundaries of an Indian reservation for which the owner, as defined in section 42-5075, of the project is an Indian tribe or an affiliated Indian. For the purposes of this paragraph:

(a) "Affiliated Indian" means an individual Native American Indian who is duly registered on the tribal rolls of the Indian tribe for whose benefit the Indian reservation was established.

(b) "Indian reservation" means all lands that are within the limits of areas set aside by the United States for the exclusive use and occupancy of an Indian tribe by treaty, law or executive order and that are recognized as Indian reservations by the United States department of the interior.

(c) "Indian tribe" means any organized nation, tribe, band or community that is recognized as an Indian tribe by the United States department of the interior and includes any entity formed under the laws of the Indian tribe.

59. Sales of works of fine art, as defined in section 44-1771, at an art auction or gallery in this state to nonresidents of this state for use outside this state if the vendor ships or delivers the work of fine art to a destination outside this state.

60. Sales of coal.

61. Sales of tangible personal property by a marketplace seller that are facilitated by a marketplace facilitator in which the marketplace facilitator has remitted or will remit the applicable tax to the department pursuant to section 42-5014.

B. In addition to the deductions from the tax base prescribed by subsection A of this section, the gross proceeds of sales or gross income derived from sales of the following categories of tangible personal property shall be deducted from the tax base:

1. Machinery, or equipment, used directly in manufacturing, processing, fabricating, job printing, refining or metallurgical operations. The terms "manufacturing", "processing", "fabricating", "job printing", "refining" and "metallurgical" as used in this paragraph refer to and include those operations commonly understood within their ordinary meaning. "Metallurgical operations" includes leaching, milling, precipitating, smelting and refining.

2. Mining machinery, or equipment, used directly in the process of extracting ores or minerals from the earth for commercial purposes, including equipment required to prepare the materials for extraction and handling, loading or transporting such extracted material to the surface.

"Mining" includes underground, surface and open pit operations for extracting ores and minerals.

3. Tangible personal property sold to persons engaged in business classified under the telecommunications classification, including a person representing or working on behalf of such a person in a manner described in section 42-5075, subsection 0, and consisting of central office switching equipment, switchboards, private branch exchange equipment, microwave radio equipment and carrier equipment including optical fiber, coaxial cable and other transmission media that are components of carrier systems.

4. Machinery, equipment or transmission lines used directly in producing or transmitting electrical power, but not including distribution. Transformers and control equipment used at transmission substation sites constitute equipment used in producing or transmitting electrical power.

5. Machinery and equipment used directly for energy storage for later electrical use. For the purposes of this paragraph:

(a) "Electric utility scale" means a person that is engaged in a business activity described in section 42-5063, subsection A or such person's equipment or wholesale electricity suppliers.

(b) "Energy storage" means commercially available technology for electric utility scale that is capable of absorbing energy, storing energy for a period of time and thereafter dispatching the energy and that uses mechanical, chemical or thermal processes to store energy.

(c) "Machinery and equipment used directly" means all machinery and equipment that are used for electric energy storage from the point of receipt of such energy in order to facilitate storage of the electric energy to the point where the electric energy is released.

6. Neat animals, horses, asses, sheep, ratices, swine or goats used or to be used as breeding or production stock, including sales of breedings or ownership shares in such animals used for breeding or production.

7. Pipes or valves four inches in diameter or larger used to transport oil, natural gas, artificial gas, water or coal slurry, including compressor units, regulators, machinery and equipment, fittings, seals and any other part that is used in operating the pipes or valves.

8. Aircraft, navigational and communication instruments and other accessories and related equipment sold to:

(a) A person:

(i) Holding, or exempted by federal law from obtaining, a federal certificate of public convenience and necessity for use as, in conjunction with or becoming part of an aircraft to be used to transport persons for hire in intrastate, interstate or foreign commerce.

(ii) That is certificated or licensed under federal aviation administration regulations (14 Code of Federal Regulations part 121 or 135) as a scheduled or unscheduled carrier of persons for hire for use as or in conjunction with or becoming part of an aircraft to be used to transport persons for hire in intrastate, interstate or foreign commerce.

(iii) Holding a foreign air carrier permit for air transportation for use as or in conjunction with or becoming a part of aircraft to be used to transport persons, property or United States mail in intrastate, interstate or foreign commerce.

(iv) Operating an aircraft to transport persons in any manner for compensation or hire, or for use in a fractional ownership program that meets the requirements of federal aviation administration regulations (14 Code of Federal Regulations part 91, subpart K), including as an air carrier, a foreign air carrier or a commercial operator or under a restricted category, within the meaning of 14 Code of Federal Regulations, regardless of whether the operation or aircraft is regulated or certified under part 91, 119, 121, 133, 135, 136 or 137, or another part of 14 Code of Federal Regulations.

(v) That will lease or otherwise transfer operational control, within the meaning of federal aviation administration operations specification A008, or its successor, of the aircraft, instruments or accessories to one or more persons described in item (i), (ii), (iii) or (iv) of this subdivision, subject to section 42-5009, subsection Q.

(b) Any foreign government.

(c) Persons who are not residents of this state and who will not use such property in this state other than in removing such property from this state. This subdivision also applies to corporations that are not incorporated in this state, regardless of maintaining a place of business in this state, if the principal corporate office is located outside this state and the property will not be used in this state other than in removing the property from this state.

9. Machinery, tools, equipment and related supplies used or consumed directly in repairing, remodeling or maintaining aircraft, aircraft engines or aircraft component parts by or on behalf of a certificated or licensed carrier of persons or property.

10. Railroad rolling stock, rails, ties and signal control equipment used directly to transport persons or property.

11. Machinery or equipment used directly to drill for oil or gas or used directly in the process of extracting oil or gas from the earth for commercial purposes.

12. Buses or other urban mass transit vehicles that are used directly to transport persons or property for hire or pursuant to a governmentally adopted and controlled urban mass transportation program and that are sold to bus companies holding a federal certificate of convenience and necessity or operated by any city, town or other governmental entity or by any person contracting with such governmental entity as part of a governmentally adopted and controlled program to provide urban mass transportation.

13. Groundwater measuring devices required under section 45-604.

Ch. 321 { 14. ~~New~~ Machinery and equipment consisting of agricultural aircraft, tractors, OFF-HIGHWAY VEHICLES, tractor-drawn implements, self-powered implements, machinery and equipment necessary for extracting milk, and machinery and equipment necessary for cooling milk and livestock, and drip irrigation lines not already exempt under paragraph 7 of this subsection and that are used for commercial production of agricultural, horticultural, viticultural and floricultural crops and products in this state. For the purposes of this paragraph:

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~~(a) "New machinery and equipment" means machinery and equipment that have never been sold at retail except pursuant to leases or rentals that do not total two years or more.~~

(a) "OFF-HIGHWAY VEHICLES" MEANS OFF-HIGHWAY VEHICLES AS DEFINED IN SECTION 28-1171 THAT ARE MODIFIED AT THE TIME OF SALE TO FUNCTION AS A TRACTOR OR TO TOW TRACTOR-DRAWN IMPLEMENTS AND THAT ARE NOT EQUIPPED WITH A MODIFIED EXHAUST SYSTEM TO INCREASE HORSEPOWER OR SPEED OR AN ENGINE THAT IS MORE THAN ONE THOUSAND CUBIC CENTIMETERS OR THAT HAVE A MAXIMUM SPEED OF FIFTY MILES PER HOUR OR LESS.

(b) "Self-powered implements" includes machinery and equipment that are electric-powered.

15. Machinery or equipment used in research and development. For the purposes of this paragraph, "research and development" means basic and applied research in the sciences and engineering, and designing, developing or testing prototypes, processes or new products, including research and development of computer software that is embedded in or an integral part of the prototype or new product or that is required for machinery or equipment otherwise exempt under this section to function effectively. Research and development do not include manufacturing quality control, routine consumer product testing, market research, sales promotion, sales service, research in social sciences or psychology, computer software research that is not included in the definition of research and development, or other nontechnological activities or technical services.

16. Tangible personal property that is used by either of the following to receive, store, convert, produce, generate, decode, encode, control or transmit telecommunications information:

(a) Any direct broadcast satellite television or data transmission service that operates pursuant to 47 Code of Federal Regulations part 25.

(b) Any satellite television or data transmission facility, if both of the following conditions are met:

(i) Over two-thirds of the transmissions, measured in megabytes, transmitted by the facility during the test period were transmitted to or on behalf of one or more direct broadcast satellite television or data transmission services that operate pursuant to 47 Code of Federal Regulations part 25.

(ii) Over two-thirds of the transmissions, measured in megabytes, transmitted by or on behalf of those direct broadcast television or data transmission services during the test period were transmitted by the facility to or on behalf of those services.

For the purposes of subdivision (b) of this paragraph, "test period" means the three hundred sixty-five day period beginning on the later of the date on which the tangible personal property is purchased or the date on which the direct broadcast satellite television or data transmission service first transmits information to its customers.

17. Clean rooms that are used for manufacturing, processing, fabrication or research and development, as defined in paragraph 15 of this subsection, of semiconductor products. For the purposes of this paragraph, "clean room" means all property that comprises or creates an environment where humidity, temperature, particulate matter and contamination are precisely controlled within specified parameters, without regard to whether

the property is actually contained within that environment or whether any of the property is affixed to or incorporated into real property. Clean room:

(a) Includes the integrated systems, fixtures, piping, movable partitions, lighting and all property that is necessary or adapted to reduce contamination or to control airflow, temperature, humidity, chemical purity or other environmental conditions or manufacturing tolerances, as well as the production machinery and equipment operating in conjunction with the clean room environment.

(b) Does not include the building or other permanent, nonremovable component of the building that houses the clean room environment.

18. Machinery and equipment used directly in feeding poultry, environmentally controlling housing for poultry, moving eggs within a production and packaging facility or sorting or cooling eggs. This exemption does not apply to vehicles used for transporting eggs.

19. Machinery or equipment, including related structural components and containment structures, that is employed in connection with manufacturing, processing, fabricating, job printing, refining, mining, natural gas pipelines, metallurgical operations, telecommunications, producing or transmitting electricity or research and development and that is used directly to meet or exceed rules or regulations adopted by the federal energy regulatory commission, the United States environmental protection agency, the United States nuclear regulatory commission, the Arizona department of environmental quality or a political subdivision of this state to prevent, monitor, control or reduce land, water or air pollution. FOR THE PURPOSES OF THIS PARAGRAPH, "CONTAINMENT STRUCTURE" MEANS A STRUCTURE THAT PREVENTS, MONITORS, CONTROLS OR REDUCES NOXIOUS OR HARMFUL DISCHARGE INTO THE ENVIRONMENT.

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20. Machinery and equipment that are sold to a person engaged in commercially producing livestock, livestock products or agricultural, horticultural, viticultural or floricultural crops or products in this state, including a person representing or working on behalf of such a person in a manner described in section 42-5075, subsection 0, if the machinery and equipment are used directly and primarily to prevent, monitor, control or reduce air, water or land pollution.

21. Machinery or equipment that enables a television station to originate and broadcast or to receive and broadcast digital television signals and that was purchased to facilitate compliance with the telecommunications act of 1996 (P.L. 104-104; 110 Stat. 56; 47 United States Code section 336) and the federal communications commission order issued April 21, 1997 (47 Code of Federal Regulations part 73). This paragraph does not exempt any of the following:

(a) Repair or replacement parts purchased for the machinery or equipment described in this paragraph.

(b) Machinery or equipment purchased to replace machinery or equipment for which an exemption was previously claimed and taken under this paragraph.

(c) Any machinery or equipment purchased after the television station has ceased analog broadcasting, or purchased after November 1, 2009, whichever occurs first.

22. Qualifying equipment that is purchased from and after June 30, 2004 through June 30, 2024 by a qualified business under section 41-1516 for harvesting or processing qualifying forest products removed from qualifying projects as defined in section 41-1516. To qualify for this deduction, the qualified business at the time of purchase must present its certification approved by the department.

23. Computer data center equipment sold to the owner, operator or qualified colocation tenant of a computer data center that is certified by the Arizona commerce authority under section 41-1519 or an authorized agent of the owner, operator or qualified colocation tenant during the qualification period for use in the qualified computer data center. For the purposes of this paragraph, "computer data center", "computer data center equipment", "qualification period" and "qualified colocation tenant" have the same meanings prescribed in section 41-1519.

C. The deductions provided by subsection B of this section do not include sales of:

1. Expendable materials. For the purposes of this paragraph, expendable materials do not include any of the categories of tangible personal property specified in subsection B of this section regardless of the cost or useful life of that property.

2. Janitorial equipment and hand tools.

3. Office equipment, furniture and supplies.

4. Tangible personal property used in selling or distributing activities, other than the telecommunications transmissions described in subsection B, paragraph 16 of this section.

5. Motor vehicles required to be licensed by this state, except buses or other urban mass transit vehicles specifically exempted pursuant to subsection B, paragraph 12 of this section, without regard to the use of such motor vehicles.

6. Shops, buildings, docks, depots and all other materials of whatever kind or character not specifically included as exempt.

7. Motors and pumps used in drip irrigation systems.

8. Machinery and equipment or other tangible personal property used by a contractor in performing a contract.

D. In addition to the deductions from the tax base prescribed by subsection A of this section, there shall be deducted from the tax base the gross proceeds of sales or gross income derived from sales of machinery, equipment, materials and other tangible personal property used directly and predominantly to construct a qualified environmental technology manufacturing, producing or processing facility as described in section 41-1514.02. This subsection applies for ten full consecutive calendar or fiscal years after the start of initial construction.

E. In computing the tax base, gross proceeds of sales or gross income from retail sales of heavy trucks and trailers does not include any amount attributable to federal excise taxes imposed by 26 United States Code section 4051.

F. If a person is engaged in an occupation or business to which subsection A of this section applies, the person's books shall be kept so as to show separately the gross proceeds of sales of tangible personal property and the gross income from sales of services, and if not so kept

the tax shall be imposed on the total of the person's gross proceeds of sales of tangible personal property and gross income from services.

G. If a person is engaged in the business of selling tangible personal property at both wholesale and retail, the tax under this section applies only to the gross proceeds of the sales made other than at wholesale if the person's books are kept so as to show separately the gross proceeds of sales of each class, and if the books are not so kept, the tax under this section applies to the gross proceeds of every sale so made.

H. A person who engages in manufacturing, baling, crating, boxing, barreling, canning, bottling, sacking, preserving, processing or otherwise preparing for sale or commercial use any livestock, agricultural or horticultural product or any other product, article, substance or commodity and who sells the product of such business at retail in this state is deemed, as to such sales, to be engaged in business classified under the retail classification. This subsection does not apply to:

1. Agricultural producers who are owners, proprietors or tenants of agricultural lands, orchards, farms or gardens where agricultural products are grown, raised or prepared for market and who are marketing their own agricultural products.

2. Businesses classified under the:

- (a) Transporting classification.
- (b) Utilities classification.
- (c) Telecommunications classification.
- (d) Pipeline classification.
- (e) Private car line classification.
- (f) Publication classification.
- (g) Job printing classification.
- (h) Prime contracting classification.
- (i) Restaurant classification.

I. The gross proceeds of sales or gross income derived from the following shall be deducted from the tax base for the retail classification:

1. Sales made directly to the United States government or its departments or agencies by a manufacturer, modifier, assembler or repairer.

2. Sales made directly to a manufacturer, modifier, assembler or repairer if such sales are of any ingredient or component part of products sold directly to the United States government or its departments or agencies by the manufacturer, modifier, assembler or repairer.

3. Overhead materials or other tangible personal property that is used in performing a contract between the United States government and a manufacturer, modifier, assembler or repairer, including property used in performing a subcontract with a government contractor who is a manufacturer, modifier, assembler or repairer, to which title passes to the government under the terms of the contract or subcontract.

4. Sales of overhead materials or other tangible personal property to a manufacturer, modifier, assembler or repairer if the gross proceeds of sales or gross income derived from the property by the manufacturer, modifier, assembler or repairer will be exempt under paragraph 3 of this subsection.

J. There shall be deducted from the tax base fifty percent of the gross proceeds or gross income from any sale of tangible personal property

made directly to the United States government or its departments or agencies that is not deducted under subsection I of this section.

K. The department shall require every person claiming a deduction provided by subsection I or J of this section to file on forms prescribed by the department at such times as the department directs a sworn statement disclosing the name of the purchaser and the exact amount of sales on which the exclusion or deduction is claimed.

L. In computing the tax base, gross proceeds of sales or gross income does not include:

1. A manufacturer's cash rebate on the sales price of a motor vehicle if the buyer assigns the buyer's right in the rebate to the retailer.

2. The waste tire disposal fee imposed pursuant to section 44-1302.

M. There shall be deducted from the tax base the amount received from sales of solar energy devices. The retailer shall register with the department as a solar energy retailer. By registering, the retailer acknowledges that it will make its books and records relating to sales of solar energy devices available to the department for examination.

N. In computing the tax base in the case of the sale or transfer of wireless telecommunications equipment as an inducement to a customer to enter into or continue a contract for telecommunications services that are taxable under section 42-5064, gross proceeds of sales or gross income does not include any sales commissions or other compensation received by the retailer as a result of the customer entering into or continuing a contract for the telecommunications services.

O. For the purposes of this section, a sale of wireless telecommunications equipment to a person who holds the equipment for sale or transfer to a customer as an inducement to enter into or continue a contract for telecommunications services that are taxable under section 42-5064 is considered to be a sale for resale in the regular course of business.

P. Retail sales of prepaid calling cards or prepaid authorization numbers for telecommunications services, including sales of reauthorization of a prepaid card or authorization number, are subject to tax under this section.

Q. For the purposes of this section, the diversion of gas from a pipeline by a person engaged in the business of:

1. Operating a natural or artificial gas pipeline, for the sole purpose of fueling compressor equipment to pressurize the pipeline, is not a sale of the gas to the operator of the pipeline.

2. Converting natural gas into liquefied natural gas, for the sole purpose of fueling compressor equipment used in the conversion process, is not a sale of gas to the operator of the compressor equipment.

R. If a seller is entitled to a deduction pursuant to subsection B, paragraph 16, subdivision (b) of this section, the department may require the purchaser to establish that the requirements of subsection B, paragraph 16, subdivision (b) of this section have been satisfied. If the purchaser cannot establish that the requirements of subsection B, paragraph 16, subdivision (b) of this section have been satisfied, the purchaser is liable in an amount equal to any tax, penalty and interest that the seller would have been required to pay under article 1 of this chapter if the seller had

not made a deduction pursuant to subsection B, paragraph 16, subdivision (b) of this section. Payment of the amount under this subsection exempts the purchaser from liability for any tax imposed under article 4 of this chapter and related to the tangible personal property purchased. The amount shall be treated as transaction privilege tax to the purchaser and as tax revenues collected from the seller to designate the distribution base pursuant to section 42-5029.

S. For the purposes of section 42-5032.01, the department shall separately account for revenues collected under the retail classification from businesses selling tangible personal property at retail:

1. On the premises of a multipurpose facility that is owned, leased or operated by the tourism and sports authority pursuant to title 5, chapter 8.

2. At professional football contests that are held in a stadium located on the campus of an institution under the jurisdiction of the Arizona board of regents.

T. In computing the tax base for the sale of a motor vehicle to a nonresident of this state, if the purchaser's state of residence allows a corresponding use tax exemption to the tax imposed by article 1 of this chapter and the rate of the tax in the purchaser's state of residence is lower than the rate prescribed in article 1 of this chapter or if the purchaser's state of residence does not impose an excise tax, and the nonresident has secured a special ninety day nonresident registration permit for the vehicle as prescribed by sections 28-2154 and 28-2154.01, there shall be deducted from the tax base a portion of the gross proceeds or gross income from the sale so that the amount of transaction privilege tax that is paid in this state is equal to the excise tax that is imposed by the purchaser's state of residence on the nonexempt sale or use of the motor vehicle.

U. For the purposes of this section:

1. "Agricultural aircraft" means an aircraft that is built for agricultural use for the aerial application of pesticides or fertilizer or for aerial seeding.

2. "Aircraft" includes:

(a) An airplane flight simulator that is approved by the federal aviation administration for use as a phase II or higher flight simulator under appendix H, 14 Code of Federal Regulations part 121.

(b) Tangible personal property that is permanently affixed or attached as a component part of an aircraft that is owned or operated by a certificated or licensed carrier of persons or property.

3. "Other accessories and related equipment" includes aircraft accessories and equipment such as ground service equipment that physically contact aircraft at some point during the overall carrier operation.

4. "Selling at retail" means a sale for any purpose other than for resale in the regular course of business in the form of tangible personal property, but transfer of possession, lease and rental as used in the definition of sale mean only such transactions as are found on investigation to be in lieu of sales as defined without the words lease or rental.

V. For the purposes of subsection I of this section:

1. "Assembler" means a person who unites or combines products, wares or articles of manufacture so as to produce a change in form or substance without changing or altering the component parts.

2. "Manufacturer" means a person who is principally engaged in fabricating, producing or manufacturing products, wares or articles for use from raw or prepared materials, imparting to those materials new forms, qualities, properties and combinations.

3. "Modifier" means a person who reworks, changes or adds to products, wares or articles of manufacture.

4. "Overhead materials" means tangible personal property, the gross proceeds of sales or gross income derived from that would otherwise be included in the retail classification, and that are used or consumed in performing a contract, the cost of which is charged to an overhead expense account and allocated to various contracts based on generally accepted accounting principles and consistent with government contract accounting standards.

5. "Repairer" means a person who restores or renews products, wares or articles of manufacture.

6. "Subcontract" means an agreement between a contractor and any person who is not an employee of the contractor for furnishing supplies or services that, in whole or in part, are necessary to perform one or more government contracts, or under which any portion of the contractor's obligation under one or more government contracts is performed, undertaken or assumed and that includes provisions causing title to overhead materials or other tangible personal property used in performing the subcontract to pass to the government or that includes provisions incorporating such title passing clauses in a government contract into the subcontract.

EXPLANATION OF BLEND  
SECTION 42-5075

Laws 2022, Chapters 235 and 321

Laws 2022, Ch. 235, section 3

Effective September 24, 2022

Laws 2022, Ch. 321, section 10

Effective September 24, 2022  
(Retroactive to January 1, 2016)

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 235 and Ch. 321 text changes to section 42-5075 are blended in the form shown on the following pages.

BLEND OF SECTION 42-5075  
Laws 2022, Chapters 235 and 321

42-5075. Prime contracting classification; exemptions; definitions

A. The prime contracting classification is comprised of the business of prime contracting and the business of manufactured building dealer. Sales for resale to another manufactured building dealer are not subject to tax. Sales for resale do not include sales to a lessor of manufactured buildings. The sale of a used manufactured building is not taxable under this chapter. The prime contracting classification does not include any work or operation performed by a person that is not required to be licensed by the registrar of contractors pursuant to section 32-1121.

B. The tax base for the prime contracting classification is sixty-five percent of the gross proceeds of sales or gross income derived from the business. The following amounts shall be deducted from the gross proceeds of sales or gross income before computing the tax base:

1. The sales price of land, which shall not exceed the fair market value.

2. Sales and installation of groundwater measuring devices required under section 45-604 and groundwater monitoring wells required by law, including monitoring wells installed for acquiring information for a permit required by law.

3. The sales price of furniture, furnishings, fixtures, appliances and attachments that are not incorporated as component parts of or attached to a manufactured building or the setup site. The sale of such items may be subject to the taxes imposed by article 1 of this chapter separately and distinctly from the sale of the manufactured building.

4. The gross proceeds of sales or gross income received from a contract entered into for the modification of any building, highway, road, railroad, excavation, manufactured building or other structure, project, development or improvement located in a military reuse zone for providing aviation or aerospace services or for a manufacturer, assembler or fabricator of aviation or aerospace products within an active military reuse zone after the zone is initially established or renewed under section 41-1531. To be eligible to qualify for this deduction, before beginning work under the contract, the prime contractor must have applied for a letter of qualification from the department of revenue.

5. The gross proceeds of sales or gross income derived from a contract to construct a qualified environmental technology manufacturing, producing or processing facility, as described in section 41-1514.02, and from subsequent construction and installation contracts that begin within ten years after the start of initial construction. To qualify for this deduction, before beginning work under the contract, the prime contractor must obtain a letter of qualification from the department of revenue. This

paragraph shall apply for ten full consecutive calendar or fiscal years after the start of initial construction.

6. The gross proceeds of sales or gross income from a contract to provide for one or more of the following actions, or a contract for site preparation, constructing, furnishing or installing machinery, equipment or other tangible personal property, including structures necessary to protect exempt incorporated materials or installed machinery or equipment, and tangible personal property incorporated into the project, to perform one or more of the following actions in response to a release or suspected release of a hazardous substance, pollutant or contaminant from a facility to the environment, unless the release was authorized by a permit issued by a governmental authority:

(a) Actions to monitor, assess and evaluate such a release or a suspected release.

(b) Excavation, removal and transportation of contaminated soil and its treatment or disposal.

(c) Treatment of contaminated soil by vapor extraction, chemical or physical stabilization, soil washing or biological treatment to reduce the concentration, toxicity or mobility of a contaminant.

(d) Pumping and treatment or in situ treatment of contaminated groundwater or surface water to reduce the concentration or toxicity of a contaminant.

(e) The installation of structures, such as cutoff walls or caps, to contain contaminants present in groundwater or soil and prevent them from reaching a location where they could threaten human health or welfare or the environment.

This paragraph does not include asbestos removal or the construction or use of ancillary structures such as maintenance sheds, offices or storage facilities for unattached equipment, pollution control equipment, facilities or other control items required or to be used by a person to prevent or control contamination before it reaches the environment.

7. The gross proceeds of sales or gross income that is derived from a contract for the installation, assembly, repair or maintenance of machinery, equipment or other tangible personal property that is either deducted from the tax base of the retail classification under section 42-5061, subsection B or that is exempt from use tax under section 42-5159, subsection B and that has independent functional utility, pursuant to the following provisions:

(a) The deduction provided in this paragraph includes the gross proceeds of sales or gross income derived from all of the following:

(i) Any activity performed on machinery, equipment or other tangible personal property with independent functional utility.

(ii) Any activity performed on any tangible personal property relating to machinery, equipment or other tangible personal property with independent functional utility in furtherance of any of the purposes provided for under subdivision (d) of this paragraph.

(iii) Any activity that is related to the activities described in items (i) and (ii) of this subdivision, including inspecting the installation of or testing the machinery, equipment or other tangible personal property.

(b) The deduction provided in this paragraph does not include gross proceeds of sales or gross income from the portion of any contracting activity that consists of the development of, or modification to, real property in order to facilitate the installation, assembly, repair, maintenance or removal of machinery, equipment or other tangible personal property that is either deducted from the tax base of the retail classification under section 42-5061, subsection B or exempt from use tax under section 42-5159, subsection B.

(c) The deduction provided in this paragraph shall be determined without regard to the size or useful life of the machinery, equipment or other tangible personal property.

(d) For the purposes of this paragraph, "independent functional utility" means that the machinery, equipment or other tangible personal property can independently perform its function without attachment to real property, other than attachment for any of the following purposes:

(i) Assembling the machinery, equipment or other tangible personal property.

(ii) Connecting items of machinery, equipment or other tangible personal property to each other.

(iii) Connecting the machinery, equipment or other tangible personal property, whether as an individual item or as a system of items, to water, power, gas, communication or other services.

(iv) Stabilizing or protecting the machinery, equipment or other tangible personal property during operation by bolting, burying or performing other similar nonpermanent connections to either real property or real property improvements.

8. The gross proceeds of sales or gross income attributable to the purchase of machinery, equipment or other tangible personal property that is exempt from or deductible from transaction privilege and use tax under:

(a) Section 42-5061, subsection A, paragraph 25, 29 or 58.

(b) Section 42-5061, subsection B.

(c) Section 42-5159, subsection A, paragraph 13, subdivision (a), (b), (c), (d), (e), (f), (j), (k), (m) or (n) or paragraph 55.

(d) Section 42-5159, subsection B.

9. The gross proceeds of sales or gross income received from a contract for the construction of an environmentally controlled facility for the raising of poultry for the production of eggs and the sorting, cooling and packaging of eggs.

10. The gross proceeds of sales or gross income that is derived from a contract entered into with a person who is engaged in the commercial production of livestock, livestock products or agricultural, horticultural, viticultural or floricultural crops or products in this state for the modification of any building, highway, road, excavation, manufactured building or other structure, project, development or improvement used directly and primarily to prevent, monitor, control or reduce air, water or land pollution.

11. The gross proceeds of sales or gross income that is derived from the installation, assembly, repair or maintenance of clean rooms that are deducted from the tax base of the retail classification pursuant to section 42-5061, subsection B, paragraph 17.

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12. For taxable periods beginning from and after June 30, 2001, the gross proceeds of sales or gross income derived from a contract entered into for the construction of a residential apartment housing facility that qualifies for a federal housing subsidy for ~~low-income~~ LOW-INCOME persons over sixty-two years of age and that is owned by a nonprofit charitable organization that has qualified under section 501(c)(3) of the internal revenue code.

13. For taxable periods beginning from and after December 31, 1996 and ending before January 1, 2017, the gross proceeds of sales or gross income derived from a contract to provide and install a solar energy device. The contractor shall register with the department as a solar energy contractor. By registering, the contractor acknowledges that it will make its books and records relating to sales of solar energy devices available to the department for examination.

14. The gross proceeds of sales or gross income derived from a contract entered into for the construction of a launch site, as defined in 14 Code of Federal Regulations section 401.5.

15. The gross proceeds of sales or gross income derived from a contract entered into for the construction of a domestic violence shelter that is owned and operated by a nonprofit charitable organization that has qualified under section 501(c)(3) of the internal revenue code.

16. The gross proceeds of sales or gross income derived from contracts to perform postconstruction treatment of real property for termite and general pest control, including wood-destroying organisms.

17. The gross proceeds of sales or gross income received from contracts entered into before July 1, 2006 for constructing a state university research infrastructure project if the project has been reviewed by the joint committee on capital review before the university enters into the construction contract for the project. For the purposes of this paragraph, "research infrastructure" has the same meaning prescribed in section 15-1670.

18. The gross proceeds of sales or gross income received from a contract for the construction of any building, or other structure, project, development or improvement owned by a qualified business under section 41-1516 for harvesting or processing qualifying forest products removed from qualifying projects as defined in section 41-1516 if actual construction begins before January 1, 2024. To qualify for this deduction, the prime contractor must obtain a letter of qualification from the Arizona commerce authority before beginning work under the contract.

19. Any amount of the gross proceeds of sales or gross income attributable to development fees that are incurred in relation to a contract for construction, development or improvement of real property and that are paid by a prime contractor or subcontractor. For the purposes of this paragraph:

(a) The attributable amount shall not exceed the value of the development fees actually imposed.

(b) The attributable amount is equal to the total amount of development fees paid by the prime contractor or subcontractor, and the total development fees credited in exchange for the construction of, contribution to or dedication of real property for providing public

infrastructure, public safety or other public services necessary to the development. The real property must be the subject of the development fees.

(c) "Development fees" means fees imposed to offset capital costs of providing public infrastructure, public safety or other public services to a development and authorized pursuant to section 9-463.05, section 11-1102 or title 48 regardless of the jurisdiction to which the fees are paid.

20. The gross proceeds of sales or gross income derived from a contract entered into for the construction of a mixed waste processing facility that is located on a municipal solid waste landfill and that is constructed for the purpose of recycling solid waste or producing renewable energy from landfill waste. For the purposes of this paragraph:

(a) "Mixed waste processing facility" means a solid waste facility that is owned, operated or used for the treatment, processing or disposal of solid waste, recyclable solid waste, conditionally exempt small quantity generator waste or household hazardous waste. For the purposes of this subdivision, "conditionally exempt small quantity generator waste", "household hazardous waste" and "solid waste facility" have the same meanings prescribed in section 49-701, except that solid waste facility does include a site that stores, treats or processes paper, glass, wood, cardboard, household textiles, scrap metal, plastic, vegetative waste, aluminum, steel or other recyclable material.

(b) "Municipal solid waste landfill" has the same meaning prescribed in section 49-701.

(c) "Recycling" means collecting, separating, cleansing, treating and reconstituting recyclable solid waste that would otherwise become solid waste, but does not include incineration or other similar processes.

(d) ~~"Renewable energy" has the same meaning prescribed in section 41-1511~~ MEANS USABLE ENERGY, INCLUDING ELECTRICITY, FUELS, GAS AND HEAT, PRODUCED THROUGH THE CONVERSION OF ENERGY PROVIDED BY SUNLIGHT, WATER, WIND, GEOTHERMAL, HEAT, BIOMASS, BIOGAS, LANDFILL GAS OR OTHER NONFOSSIL RENEWABLE RESOURCE.

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21. THE GROSS PROCEEDS OF SALES OR GROSS INCOME DERIVED FROM A CONTRACT TO INSTALL CONTAINMENT STRUCTURES. FOR THE PURPOSES OF THIS PARAGRAPH, "CONTAINMENT STRUCTURE" MEANS A STRUCTURE THAT PREVENTS, MONITORS, CONTROLS OR REDUCES NOXIOUS OR HARMFUL DISCHARGE INTO THE ENVIRONMENT.

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C. Entitlement to the deduction pursuant to subsection B, paragraph 7 of this section is subject to the following provisions:

1. A prime contractor may establish entitlement to the deduction by both:

(a) Marking the invoice for the transaction to indicate that the gross proceeds of sales or gross income derived from the transaction was deducted from the base.

(b) Obtaining a certificate executed by the purchaser indicating the name and address of the purchaser, the precise nature of the business of the purchaser, the purpose for which the purchase was made, the necessary facts to establish the deductibility of the property under section 42-5061, subsection B, and a certification that the person executing the certificate is authorized to do so on behalf of the purchaser. The certificate may be

disregarded if the prime contractor has reason to believe that the information contained in the certificate is not accurate or complete.

2. A person who does not comply with paragraph 1 of this subsection may establish entitlement to the deduction by presenting facts necessary to support the entitlement, but the burden of proof is on that person.

3. The department may prescribe a form for the certificate described in paragraph 1, subdivision (b) of this subsection. The department may also adopt rules that describe the transactions with respect to which a person is not entitled to rely solely on the information contained in the certificate provided in paragraph 1, subdivision (b) of this subsection but must instead obtain such additional information as required in order to be entitled to the deduction.

4. If a prime contractor is entitled to a deduction by complying with paragraph 1 of this subsection, the department may require the purchaser who caused the execution of the certificate to establish the accuracy and completeness of the information required to be contained in the certificate that would entitle the prime contractor to the deduction. If the purchaser cannot establish the accuracy and completeness of the information, the purchaser is liable in an amount equal to any tax, penalty and interest that the prime contractor would have been required to pay under article 1 of this chapter if the prime contractor had not complied with paragraph 1 of this subsection. Payment of the amount under this paragraph exempts the purchaser from liability for any tax imposed under article 4 of this chapter. The amount shall be treated as a transaction privilege tax to the purchaser and as tax revenues collected from the prime contractor in order to designate the distribution base for purposes of section 42-5029.

D. Subcontractors or others who perform modification activities are not subject to tax if they can demonstrate that the job was within the control of a prime contractor or contractors or a dealership of manufactured buildings and that the prime contractor or dealership is liable for the tax on the gross income, gross proceeds of sales or gross receipts attributable to the job and from which the subcontractors or others were paid.

E. Amounts received by a contractor for a project are excluded from the contractor's gross proceeds of sales or gross income derived from the business if the person who hired the contractor executes and provides a certificate to the contractor stating that the person providing the certificate is a prime contractor and is liable for the tax under article 1 of this chapter. The department shall prescribe the form of the certificate. If the contractor has reason to believe that the information contained on the certificate is erroneous or incomplete, the department may disregard the certificate. If the person who provides the certificate is not liable for the tax as a prime contractor, that person is nevertheless deemed to be the prime contractor in lieu of the contractor and is subject to the tax under this section on the gross receipts or gross proceeds received by the contractor.

F. Every person engaging or continuing in this state in the business of prime contracting or dealership of manufactured buildings shall present to the purchaser of such prime contracting or manufactured building a written receipt of the gross income or gross proceeds of sales from such activity and shall separately state the taxes to be paid pursuant to this section.

G. For the purposes of section 42-5032.01, the department shall separately account for revenues collected under the prime contracting classification from any prime contractor engaged in the preparation or construction of a multipurpose facility, and related infrastructure, that is owned, operated or leased by the tourism and sports authority pursuant to title 5, chapter 8.

H. For the purposes of section 42-5032.02, from and after September 30, 2013, the department shall separately account for revenues reported and collected under the prime contracting classification from any prime contractor engaged in the construction of any buildings and associated improvements that are for the benefit of a manufacturing facility. For the purposes of this subsection, "associated improvements" and "manufacturing facility" have the same meanings prescribed in section 42-5032.02.

I. The gross proceeds of sales or gross income derived from a contract for lawn maintenance services is not subject to tax under this section if the contract does not include landscaping activities. Lawn maintenance service is a service pursuant to section 42-5061, subsection A, paragraph 1, and includes lawn mowing and edging, weeding, repairing sprinkler heads or drip irrigation heads, seasonal replacement of flowers, refreshing gravel, lawn dethatching, seeding winter lawns, leaf and debris collection and removal, tree or shrub pruning or clipping, garden and gravel raking and applying pesticides, as defined in section 3-361, and fertilizer materials, as defined in section 3-262.

J. Except as provided in subsection O of this section, the gross proceeds of sales or gross income derived from landscaping activities is subject to tax under this section. Landscaping includes installing lawns, grading or leveling ground, installing gravel or boulders, planting trees and other plants, felling trees, removing or mulching tree stumps, removing other imbedded plants, building irrigation berms, installing railroad ties and installing underground sprinkler or watering systems.

K. The portion of gross proceeds of sales or gross income attributable to the actual direct costs of providing architectural or engineering services that are incorporated in a contract is not subject to tax under this section. For the purposes of this subsection, "direct costs" means the portion of the actual costs that are directly expended in providing architectural or engineering services.

L. Operating a landfill or a solid waste disposal facility is not subject to taxation under this section, including filling, compacting and creating vehicle access to and from cell sites within the landfill. Constructing roads to a landfill or solid waste disposal facility and constructing cells within a landfill or solid waste disposal facility may be deemed prime contracting under this section.

M. The following apply in determining the taxable situs of sales of manufactured buildings:

1. For sales in this state where the manufactured building dealer contracts to deliver the building to a setup site or to perform the setup in this state, the taxable situs is the setup site.

2. For sales in this state where the manufactured building dealer does not contract to deliver the building to a setup site or does not perform

the setup, the taxable situs is the location of the dealership where the building is delivered to the buyer.

3. For sales in this state where the manufactured building dealer contracts to deliver the building to a setup site that is outside this state, the situs is outside this state and the transaction is excluded from tax.

N. The gross proceeds of sales or gross income attributable to a written contract for design phase services or professional services, executed before modification begins and with terms, conditions and pricing of all of these services separately stated in the contract from those for construction phase services, is not subject to tax under this section, regardless of whether the services are provided sequential to or concurrent with prime contracting activities that are subject to tax under this section. This subsection does not include the gross proceeds of sales or gross income attributable to construction phase services. For the purposes of this subsection:

1. "Construction phase services" means services for the execution and completion of any modification, including the following:

(a) Administration or supervision of any modification performed on the project, including team management and coordination, scheduling, cost controls, submittal process management, field management, safety program, close-out process and warranty period services.

(b) Administration or supervision of any modification performed pursuant to a punch list. For the purposes of this subdivision, "punch list" means minor items of modification work performed after substantial completion and before final completion of the project.

(c) Administration or supervision of any modification performed pursuant to change orders. For the purposes of this subdivision, "change order" means a written instrument issued after execution of a contract for modification work, providing for all of the following:

(i) The scope of a change in the modification work, contract for modification work or other contract documents.

(ii) The amount of an adjustment, if any, to the guaranteed maximum price as set in the contract for modification work. For the purposes of this item, "guaranteed maximum price" means the amount guaranteed to be the maximum amount due to a prime contractor for the performance of all modification work for the project.

(iii) The extent of an adjustment, if any, to the contract time of performance set forth in the contract.

(d) Administration or supervision of any modification performed pursuant to change directives. For the purposes of this subdivision, "change directive" means a written order directing a change in modification work before agreement on an adjustment of the guaranteed maximum price or contract time.

(e) Inspection to determine the dates of substantial completion or final completion.

(f) Preparation of any manuals, warranties, as-built drawings, spares or other items the prime contractor must furnish pursuant to the contract for modification work. For the purposes of this subdivision, "as-built drawing" means a drawing that indicates field changes made to adapt to field

conditions, field changes resulting from change orders or buried and concealed installation of piping, conduit and utility services.

(g) Preparation of status reports after modification work has begun detailing the progress of work performed, including preparation of any of the following:

(i) Master schedule updates.

(ii) Modification work cash flow projection updates.

(iii) Site reports made on a periodic basis.

(iv) Identification of discrepancies, conflicts or ambiguities in modification work documents that require resolution.

(v) Identification of any health and safety issues that have arisen in connection with the modification work.

(h) Preparation of daily logs of modification work, including documentation of personnel, weather conditions and on-site occurrences.

(i) Preparation of any submittals or shop drawings used by the prime contractor to illustrate details of the modification work performed.

(j) Administration or supervision of any other activities for which a prime contractor receives a certificate for payment or certificate for final payment based on the progress of modification work performed on the project.

2. "Design phase services" means services for developing and completing a design for a project that are not construction phase services, including the following:

(a) Evaluating surveys, reports, test results or any other information on-site conditions for the project, including physical characteristics, legal limitations and utility locations for the site.

(b) Evaluating any criteria or programming objectives for the project to ascertain requirements for the project, such as physical requirements affecting cost or projected utilization of the project.

(c) Preparing drawings and specifications for architectural program documents, schematic design documents, design development documents, modification work documents or documents that identify the scope of or materials for the project.

(d) Preparing an initial schedule for the project, excluding the preparation of updates to the master schedule after modification work has begun.

(e) Preparing preliminary estimates of costs of modification work before completion of the final design of the project, including an estimate or schedule of values for any of the following:

(i) Labor, materials, machinery and equipment, tools, water, heat, utilities, transportation and other facilities and services used in the execution and completion of modification work, regardless of whether they are temporary or permanent or whether they are incorporated in the modifications.

(ii) The cost of labor and materials to be furnished by the owner of the real property.

(iii) The cost of any equipment of the owner of the real property to be assigned by the owner to the prime contractor.

(iv) The cost of any labor for installation of equipment separately provided by the owner of the real property that has been designed, specified, selected or specifically provided for in any design document for the project.

(v) Any fee paid by the owner of the real property to the prime contractor pursuant to the contract for modification work.

(vi) Any bond and insurance premiums.

(vii) Any applicable taxes.

(viii) Any contingency fees for the prime contractor that may be used before final completion of the project.

(f) Reviewing and evaluating cost estimates and project documents to prepare recommendations on site use, site improvements, selection of materials, building systems and equipment, modification feasibility, availability of materials and labor, local modification activity as related to schedules and time requirements for modification work.

(g) Preparing the plan and procedures for selection of subcontractors, including any prequalification of subcontractor candidates.

3. "Professional services" means architect services, engineer services, geologist services, land surveying services or landscape architect services that are within the scope of those services as provided in title 32, chapter 1 and for which gross proceeds of sales or gross income has not otherwise been deducted under subsection K of this section.

0. The gross proceeds of sales or gross income derived from a contract with the owner of real property or improvements to real property for the maintenance, repair, replacement or alteration of existing property is not subject to tax under this section if the contract does not include modification activities, except as specified in this subsection. The gross proceeds of sales or gross income derived from a de minimis amount of modification activity does not subject the contract or any part of the contract to tax under this section. For the purposes of this subsection:

1. Tangible personal property that is incorporated or fabricated into a project described in this subsection may be subject to the amount prescribed in section 42-5008.01.

2. Each contract is independent of any other contract, except that any change order that directly relates to the scope of work of the original contract shall be treated the same as the original contract under this chapter, regardless of the amount of modification activities included in the change order. If a change order does not directly relate to the scope of work of the original contract, the change order shall be treated as a new contract, with the tax treatment of any subsequent change order to follow the tax treatment of the contract to which the scope of work of the subsequent change order directly relates.

P. Notwithstanding subsection 0 of this section, a contract that primarily involves surface or subsurface improvements to land and that is subject to title 28, chapter 19, 20 or 22 or title 34, chapter 2 or 6 is taxable under this section, even if the contract also includes vertical improvements. Agencies that are subject to procurement processes under those provisions shall include in the request for proposals a notice to bidders when those projects are subject to this section. This subsection does not apply to contracts with:

1. Community facilities districts, fire districts, county television improvement districts, community park maintenance districts, cotton pest control districts, hospital districts, pest abatement districts, health service districts, agricultural improvement districts, county free library districts, county jail districts, county stadium districts, special health care districts, public health services districts, theme park districts or revitalization districts.

2. Any special taxing district not specified in paragraph 1 of this subsection if the district does not substantially engage in the modification, maintenance, repair, replacement or alteration of surface or subsurface improvements to land.

Q. Notwithstanding subsection R, paragraph 10 of this section, a person owning real property who enters into a contract for sale of the real property, who is responsible to the new owner of the property for modifications made to the property in the period subsequent to the transfer of title and who receives a consideration for the modifications is considered a prime contractor solely for purposes of taxing the gross proceeds of sale or gross income received for the modifications made subsequent to the transfer of title. The original owner's gross proceeds of sale or gross income received for the modifications shall be determined according to the following methodology:

1. If any part of the contract for sale of the property specifies amounts to be paid to the original owner for the modifications to be made in the period subsequent to the transfer of title, the amounts are included in the original owner's gross proceeds of sale or gross income under this section. Proceeds from the sale of the property that are received after transfer of title and that are unrelated to the modifications made subsequent to the transfer of title are not considered gross proceeds of sale or gross income from the modifications.

2. If the original owner enters into an agreement separate from the contract for sale of the real property providing for amounts to be paid to the original owner for the modifications to be made in the period subsequent to the transfer of title to the property, the amounts are included in the original owner's gross proceeds of sale or gross income received for the modifications made subsequent to the transfer of title.

3. If the original owner is responsible to the new owner for modifications made to the property in the period subsequent to the transfer of title and derives any gross proceeds of sale or gross income from the project subsequent to the transfer of title other than a delayed disbursement from escrow unrelated to the modifications, it is presumed that the amounts are received for the modifications made subsequent to the transfer of title unless the contrary is established by the owner through its books, records and papers kept in the regular course of business.

4. The tax base of the original owner is computed in the same manner as a prime contractor under this section.

R. For the purposes of this section:

1. "Alteration" means an activity or action that causes a direct physical change to existing property. For the purposes of this paragraph:

(a) For existing property that is properly classified as class two property under section 42-12002, paragraph 1, subdivision (c) or paragraph

2, subdivision (c) and that is used for residential purposes, class three property under section 42-12003 or class four property under section 42-12004, this paragraph does not apply if the contract amount is more than twenty-five percent of the most recent full cash value established under chapter 13, article 2 of this title as of the date of any bid for the work or the date of the contract, whichever value is higher.

(b) For all existing property other than existing property described in subdivision (a) of this paragraph, this paragraph does not apply if the contract amount is more than \$750,000.

(c) Project elements may not be artificially separated from a contract to cause a project to qualify as an alteration. The department has the burden of proof that project elements have been artificially separated from a contract.

(d) If a project for which the owner and the person performing the work reasonably believed, at the inception of the contract, would be treated as an alteration under this paragraph and, on completion of the project, the project exceeded the applicable threshold described in either subdivision (a) or (b) of this paragraph by no more than twenty-five percent of the applicable threshold for any reason, the work performed under the contract qualifies as an alteration.

(e) A change order that directly relates to the scope of work of the original contract shall be treated as part of the original contract, and the contract amount shall include any amount attributable to a change order that directly relates to the scope of work of the original contract.

(f) Alteration does not include maintenance, repair or replacement.

2. "Contracting" means engaging in business as a contractor.

3. "Contractor" is synonymous with the term "builder" and means any person or organization that undertakes to or offers to undertake to, or purports to have the capacity to undertake to, or submits a bid to, or does personally or by or through others, modify any building, highway, road, railroad, excavation, manufactured building or other structure, project, development or improvement, or to do any part of such a project, including the erection of scaffolding or other structure or works in connection with such a project, and includes subcontractors and specialty contractors. For all purposes of taxation or deduction, this definition shall govern without regard to whether or not such a contractor is acting in fulfillment of a contract.

4. "Manufactured building" means a manufactured home, mobile home or factory-built building, as defined in section 41-4001.

5. "Manufactured building dealer" means a dealer who either:

(a) Is licensed pursuant to title 41, chapter 37, article 4 and who sells manufactured buildings to the final consumer.

(b) Supervises, performs or coordinates the excavation and completion of site improvements or the setup of a manufactured building, including the contracting, if any, with any subcontractor or specialty contractor for the completion of the contract.

6. "Modification" means construction, grading and leveling ground, wreckage or demolition. Modification does not include:

(a) Any project described in subsection 0 of this section.

(b) Any wreckage or demolition of existing property, or any other activity that is a necessary component of a project described in subsection 0 of this section.

(c) Any mobilization or demobilization related to a project described in subsection 0 of this section, such as the erection or removal of temporary facilities to be used by those persons working on the project.

7. "Modify" means to make a modification or cause a modification to be made.

8. "Owner" means the person that holds title to the real property or improvements to real property that is the subject of the work, as well as an agent of the title holder and any person with the authority to perform or authorize work on the real property or improvements, including a tenant and a property manager. For the purposes of subsection 0 of this section, a person who is hired by a general contractor that is hired by an owner, or a subcontractor of a general contractor that is hired by an owner, is considered to be hired by the owner.

9. "Prime contracting" means engaging in business as a prime contractor.

10. "Prime contractor" means a contractor who supervises, performs or coordinates the modification of any building, highway, road, railroad, excavation, manufactured building or other structure, project, development or improvement, including the contracting, if any, with any subcontractors or specialty contractors and who is responsible for the completion of the contract. Except as provided in subsections E and Q of this section, a person who owns real property, who engages one or more contractors to modify that real property and who does not itself modify that real property is not a prime contractor within the meaning of this paragraph regardless of the existence of a contract for sale or the subsequent sale of that real property.

11. "Replacement" means the removal from service of one component or system of existing property or tangible personal property installed in existing property, including machinery or equipment, and the installation of a new component or system or new tangible personal property, including machinery or equipment, that provides the same, a similar or an upgraded design or functionality, regardless of the contract amount and regardless of whether the existing component or system or existing tangible personal property is physically removed from the existing property.

12. "Sale of a used manufactured building" does not include a lease of a used manufactured building.

EXPLANATION OF BLEND  
SECTION 42-6004 (as amended by Laws 2021, Ch. 417, section 10)

Laws 2022, Chapters 43 and 321

Laws 2022, Ch. 43, section 4

Effective September 24, 2022

Laws 2022, Ch. 321, section 12

Effective September 24, 2022  
(Retroactive to January 1, 2016)

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 43 and Ch. 321 text changes to section 42-6004, as amended by Laws 2021, Ch. 417, section 10, are blended in the form shown on the following pages.

BLEND OF SECTION 42-6004 (as amended by Laws 2021, Ch. 417, section 10)  
Laws 2022, Chapters 43 and 321

42-6004. Exemption from municipal tax; definitions

A. A city, town or special taxing district shall not levy a transaction privilege, sales, use or other similar tax on:

1. Exhibition events in this state sponsored, conducted or operated by a nonprofit organization that is exempt from taxation under section 501(c)(3), 501(c)(4) or 501(c)(6) of the internal revenue code if the organization is associated with a major league baseball team or a national touring professional golfing association and no part of the organization's net earnings inures to the benefit of any private shareholder or individual. This paragraph does not apply to an organization that is owned, managed or controlled, in whole or in part, by a major league baseball team, or its owners, officers, employees or agents, or by a major league baseball association or professional golfing association, or its owners, officers, employees or agents, unless the organization conducted or operated exhibition events in this state before January 1, 2018 that were exempt from state transaction privilege tax under section 42-5073.

2. Interstate telecommunications services, which include that portion of telecommunications services, such as subscriber line service, allocable by federal law to interstate telecommunications service.

3. Sales of warranty or service contracts.

4. Sales of motor vehicles to nonresidents of this state for use outside this state IF EITHER OF THE FOLLOWING APPLY:

(a) If The motor vehicle dealer ships or delivers the motor vehicle to a destination outside this state.

(b) THE VEHICLE, TRAILER OR SEMITRAILER HAS A GROSS VEHICLE WEIGHT RATING OF MORE THAN TEN THOUSAND POUNDS, IS USED OR MAINTAINED TO TRANSPORT PROPERTY IN THE FURTHERANCE OF INTERSTATE COMMERCE AND OTHERWISE MEETS THE DEFINITION OF COMMERCIAL MOTOR VEHICLE AS DEFINED IN SECTION 28-5201.

5. Interest on finance contracts.

6. Dealer documentation fees on the sales of motor vehicles.

7. Orthodontic devices dispensed by a dental professional who is licensed under title 32, chapter 11 to a patient as part of the practice of dentistry.

8. Sales of internet access services to the person's subscribers and customers. For the purposes of this paragraph:

(a) "Internet" means the computer and telecommunications facilities that comprise the interconnected worldwide network of networks that employ the transmission control protocol or internet protocol, or any predecessor or successor protocol, to communicate information of all kinds by wire or radio.

(b) "Internet access" means a service that enables users to access content, information, electronic mail or other services over the internet.

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Internet access does not include telecommunication services provided by a common carrier.

9. The gross proceeds of sales or gross income retained by the Arizona exposition and state fair board from ride ticket sales at the annual Arizona state fair.

10. Leasing real property between affiliated companies, businesses, persons or reciprocal insurers. For the purposes of this paragraph:

(a) "Affiliated companies, businesses, persons or reciprocal insurers" means the lessor holds a controlling interest in the lessee, the lessee holds a controlling interest in the lessor, affiliated persons hold a controlling interest in both the lessor and the lessee, or an unrelated person holds a controlling interest in both the lessor and lessee.

(b) "Affiliated persons" means members of the individual's family or persons who have ownership or control of a business entity.

(c) "Controlling interest" means direct or indirect ownership of at least eighty percent of the voting shares of a corporation or of the interests in a company, business or person other than a corporation.

(d) "Members of the individual's family" means the individual's spouse and brothers and sisters, whether by whole or half blood, including adopted persons, ancestors and lineal descendants.

(e) "Reciprocal insurer" has the same meaning prescribed in section 20-762.

11. The gross proceeds of sales or gross income derived from a contract for the installation, assembly, repair or maintenance of machinery, equipment or other tangible personal property that is described in section 42-5061, subsection B and that has independent functional utility, pursuant to the following provisions:

(a) The deduction provided in this paragraph includes the gross proceeds of sales or gross income derived from all of the following:

(i) Any activity performed on machinery, equipment or other tangible personal property with independent functional utility.

(ii) Any activity performed on any tangible personal property relating to machinery, equipment or other tangible personal property with independent functional utility in furtherance of any of the purposes provided for under subdivision (d) of this paragraph.

(iii) Any activity that is related to the activities described in items (i) and (ii) of this subdivision, including inspecting the installation of or testing the machinery, equipment or other tangible personal property.

(b) The deduction provided in this paragraph does not include gross proceeds of sales or gross income from the portion of any contracting activity that consists of the development of, or modification to, real property in order to facilitate the installation, assembly, repair, maintenance or removal of machinery, equipment or other tangible personal property described in section 42-5061, subsection B.

(c) The deduction provided in this paragraph shall be determined without regard to the size or useful life of the machinery, equipment or other tangible personal property.

(d) For the purposes of this paragraph, "independent functional utility" means that the machinery, equipment or other tangible personal

property can independently perform its function without attachment to real property, other than attachment for any of the following purposes:

(i) Assembling the machinery, equipment or other tangible personal property.

(ii) Connecting items of machinery, equipment or other tangible personal property to each other.

(iii) Connecting the machinery, equipment or other tangible personal property, whether as an individual item or as a system of items, to water, power, gas, communication or other services.

(iv) Stabilizing or protecting the machinery, equipment or other tangible personal property during operation by bolting, burying or performing other dissimilar nonpermanent connections to either real property or real property improvements.

12. The leasing or renting of certified ignition interlock devices installed pursuant to the requirements prescribed by section 28-1461. For the purposes of this paragraph, "certified ignition interlock device" has the same meaning prescribed in section 28-1301.

13. Computer data center equipment sold to the owner, operator or qualified colocation tenant of a computer data center that is certified by the Arizona commerce authority under section 41-1519 or an authorized agent of the owner, operator or qualified colocation tenant during the qualification period for use in the qualified computer data center. For the purposes of this paragraph, "computer data center", "computer data center equipment", "qualification period" and "qualified colocation tenant" have the same meanings prescribed in section 41-1519.

14. The gross proceeds of sales or gross income derived from a contract with the owner of real property or improvements to real property for the maintenance, repair, replacement or alteration of existing property, except as specified in this paragraph. The gross proceeds of sales or gross income derived from a de minimis amount of modification activity does not subject the contract or any part of the contract to tax. For the purposes of this paragraph:

(a) Each contract is independent of another contract, except that any change order that directly relates to the scope of work of the original contract shall be treated the same as the original contract under this paragraph, regardless of the amount of modification activities included in the change order. If a change order does not directly relate to the scope of work of the original contract, the change order shall be treated as a new contract, with the tax treatment of any subsequent change order to follow the tax treatment of the contract to which the scope of work of the subsequent change order directly relates.

(b) Any term not defined in this paragraph that is defined in section 42-5075 has the same meaning prescribed in section 42-5075.

(c) This paragraph does not apply to a contract that primarily involves surface or subsurface improvements to land and that is subject to title 28, chapter 19, 20 or 22 or title 34, chapter 2 or 6 even if the contract also includes vertical improvements. If a city or town imposes a tax on contracts that are subject to procurement processes under those provisions, the city or town shall include in the request for proposals a

notice to bidders when those projects are subject to the tax. This subdivision does not apply to contracts with:

(i) Community facilities districts, fire districts, county television improvement districts, community park maintenance districts, cotton pest control districts, hospital districts, pest abatement districts, health service districts, agricultural improvement districts, county free library districts, county jail districts, county stadium districts, special health care districts, public health services districts, theme park districts or revitalization districts.

(ii) Any special taxing district not specified in item (i) of this subdivision if the district does not substantially engage in the modification, maintenance, repair, replacement or alteration of surface or subsurface improvements to land.

15. Monitoring services relating to an alarm system as defined in section 32-101.

16. Tangible personal property, job printing or publications sold to or purchased by, or tangible personal property leased, rented or licensed for use to or by, a qualifying health sciences educational institution as defined in section 42-5001.

17. The transfer of title or possession of coal back and forth between an owner or operator of a power plant and a person who is responsible for refining coal if both of the following apply:

(a) The transfer of title or possession of the coal is for the purpose of refining the coal.

(b) The title or possession of the coal is transferred back to the owner or operator of the power plant after completion of the coal refining process. For the purposes of this subdivision, "coal refining process" means the application of a coal additive system that aids the reduction of power plant emissions during the combustion of coal and the treatment of flue gas.

18. Tangible personal property incorporated or fabricated into a project described in paragraph 14 of this subsection, that is located within the exterior boundaries of an Indian reservation for which the owner, as defined in section 42-5075, of the project is an Indian tribe or an affiliated Indian. For the purposes of this paragraph:

(a) "Affiliated Indian" means an individual Native American Indian who is duly registered on the tribal rolls of the Indian tribe for whose benefit the Indian reservation was established.

(b) "Indian reservation" means all lands that are within the limits of areas set aside by the United States for the exclusive use and occupancy of an Indian tribe by treaty, law or executive order and that are recognized as Indian reservations by the United States department of the interior.

(c) "Indian tribe" means any organized nation, tribe, band or community that is recognized as an Indian tribe by the United States department of the interior and includes any entity formed under the laws of that Indian tribe.

19. The charges for the leasing or renting of space to make attachments to utility poles as follows:

(a) By a person that is engaged in the business of providing or furnishing electrical services or telecommunication services or that is a cable operator.

(b) To a person that is engaged in the business of providing or furnishing electrical services or telecommunication services or that is a cable operator.

20. Until March 1, 2017, the gross proceeds of sales or gross income derived from entry fees paid by participants for events that consist of a run, walk, swim or bicycle ride or a similar event, or any combination of these events.

21. The gross proceeds of sales or gross income derived from entry fees paid by participants for events that are operated or conducted by nonprofit organizations that are exempt from taxation under section 501(c)(3) of the internal revenue code and of which no part of the organization's net earnings inures to the benefit of any private shareholder or individual, if the event consists of a run, walk, swim or bicycle ride or a similar event, or any combination of these events.

22. The gross proceeds of sales or gross income derived from sales of machinery and equipment used directly for energy storage for later electrical use. For the purposes of this paragraph:

(a) "Electric utility scale" means a person that is engaged in a business activity described in section 42-5063, subsection A or such person's equipment or wholesale electricity suppliers.

(b) "Energy storage" means commercially available technology for electric utility scale that is capable of absorbing energy, storing energy for a period of time and thereafter dispatching the energy and that uses mechanical, chemical or thermal processes to store energy.

(c) "Machinery and equipment used directly" means all machinery and equipment that are used for electric energy storage from the point of receipt of such energy in order to facilitate storage of the electric energy to the point where the electric energy is released.

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23. THE GROSS PROCEEDS OF SALES OR GROSS INCOME DERIVED FROM A CONTRACT TO INSTALL CONTAINMENT STRUCTURES. FOR THE PURPOSES OF THIS PARAGRAPH, "CONTAINMENT STRUCTURE" MEANS A STRUCTURE THAT PREVENTS, MONITORS, CONTROLS OR REDUCES NOXIOUS OR HARMFUL DISCHARGE INTO THE ENVIRONMENT.

B. A city, town or other taxing jurisdiction shall not levy a transaction privilege, sales, use, franchise or other similar tax or fee, however denominated, on natural gas or liquefied petroleum gas used to propel a motor vehicle.

C. A city, town or other taxing jurisdiction shall not levy a transaction privilege, sales, gross receipts, use, franchise or other similar tax or fee, however denominated, on gross proceeds of sales or gross income derived from any of the following:

1. A motor carrier's use on the public highways in this state if the motor carrier is subject to a fee prescribed in title 28, chapter 16, article 4.

2. Leasing, renting or licensing a motor vehicle subject to and on which the fee has been paid under title 28, chapter 16, article 4.

3. The sale of a motor vehicle and any repair and replacement parts and tangible personal property becoming a part of such motor vehicle to a motor carrier who is subject to a fee prescribed in title 28, chapter 16, article 4 and who is engaged in the business of leasing, renting or licensing such property.

4. Incarcerating or detaining in a privately operated prison, jail or detention facility prisoners who are under the jurisdiction of the United States, this state or any other state or a political subdivision of this state or of any other state.

5. Transporting for hire persons, freight or property by light motor vehicles subject to a fee under title 28, chapter 15, article 4.

6. Any amount attributable to development fees that are incurred in relation to the construction, development or improvement of real property and paid by the taxpayer as defined in the model city tax code or by a contractor providing services to the taxpayer. For the purposes of this paragraph:

(a) The attributable amount shall not exceed the value of the development fees actually imposed.

(b) The attributable amount is equal to the total amount of development fees paid by the taxpayer or by a contractor providing services to the taxpayer and the total development fees credited in exchange for the construction of, contribution to or dedication of real property for providing public infrastructure, public safety or other public services necessary to the development. The real property must be the subject of the development fees.

(c) "Development fees" means fees imposed to offset capital costs of providing public infrastructure, public safety or other public services to a development and authorized pursuant to section 9-463.05, section 11-1102 or title 48 regardless of the jurisdiction to which the fees are paid.

7. Any amount attributable to fees collected by transportation network companies issued a permit pursuant to section 28-9552.

8. Transporting for hire persons by transportation network company drivers on transactions involving transportation network services as defined in section 28-9551.

9. Transporting for hire persons by vehicle for hire companies that are issued permits pursuant to section 28-9503.

10. Transporting for hire persons by vehicle for hire drivers on transactions involving vehicle for hire services as defined in section 28-9501.

D. A city, town or other taxing jurisdiction shall not levy a transaction privilege, sales, use, franchise or other similar tax or fee, however denominated, in excess of one-tenth of one percent of the value of the entire product mined, smelted, extracted, refined, produced or prepared for sale, profit or commercial use, on persons engaged in the business of mineral processing, except to the extent that the tax is computed on the gross proceeds or gross income from sales at retail.

E. In computing the tax base, any city, town or other taxing jurisdiction shall not include in the gross proceeds of sales or gross income:

1. A manufacturer's cash rebate on the sales price of a motor vehicle if the buyer assigns the buyer's right in the rebate to the retailer.

2. The waste tire disposal fee imposed pursuant to section 44-1302.

F. A city or town shall not levy a use tax on the storage, use or consumption of tangible personal property in the city or town by a school district or charter school.

G. A city, town or taxing jurisdiction shall not levy a transaction privilege, sales, gross receipts, use, franchise or other similar tax or fee, however denominated, on gross proceeds of sales or gross income derived from over-the-top services. For the purposes of this subsection, "over-the-top services" means audio or video programming services that are received by the purchaser by means of an internet connection, regardless of the technology used, that include linear or live programming and that are generally considered comparable to programming provided by a radio or television broadcast station and includes related on-demand programming that is provided at no additional charge, regardless of whether the services are provided independently or packaged with other audio or video programming.

H. For the purposes of this section:

1. "Cable operator" has the same meaning prescribed in section 9-505 and includes a video service provider.

2. "Electrical services" means transmitting or distributing electricity, electric lights, current or power over lines, wires or cables.

3. "Telecommunication services" means transmitting or relaying sound, visual image, data, information, images or material over lines, wires or cables by radio signal, light beam, telephone, telegraph or other electromagnetic means.

4. "Utility pole" means any wooden, metal or other pole used for utility purposes and the pole's appurtenances that are attached or authorized for attachment by the person controlling the pole.

EXPLANATION OF BLEND

SECTION 42-6004 (as amended by Laws 2021, Ch. 417, section 11)

Laws 2022, Chapters 43 and 321

Laws 2022, Ch. 43, section 5

Conditionally Effective

Laws 2022, Ch. 321, section 13

Conditionally Effective

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 43 and Ch. 321 text changes to section 42-6004, as amended by Laws 2021, Ch. 417, section 11, are blended in the form shown on the following pages.

BLEND OF SECTION 42-6004 (as amended by Laws 2021, Ch. 417, section 11)  
Laws 2022, Chapters 43 and 321

42-6004. Exemption from municipal tax; definitions

A. A city, town or special taxing district shall not levy a transaction privilege, sales, use or other similar tax on:

1. Exhibition events in this state sponsored, conducted or operated by a nonprofit organization that is exempt from taxation under section 501(c)(3), 501(c)(4) or 501(c)(6) of the internal revenue code if the organization is associated with a major league baseball team or a national touring professional golfing association and no part of the organization's net earnings inures to the benefit of any private shareholder or individual. This paragraph does not apply to an organization that is owned, managed or controlled, in whole or in part, by a major league baseball team, or its owners, officers, employees or agents, or by a major league baseball association or professional golfing association, or its owners, officers, employees or agents, unless the organization conducted or operated exhibition events in this state before January 1, 2018 that were exempt from state transaction privilege tax under section 42-5073.

2. Interstate telecommunications services, which include that portion of telecommunications services, such as subscriber line service, allocable by federal law to interstate telecommunications service.

3. Sales of warranty or service contracts.

4. Sales of motor vehicles to nonresidents of this state for use outside this state IF EITHER OF THE FOLLOWING APPLY:

(a) If The motor vehicle dealer ships or delivers the motor vehicle to a destination outside this state.

(b) THE VEHICLE, TRAILER OR SEMITRAILER HAS A GROSS VEHICLE WEIGHT RATING OF MORE THAN TEN THOUSAND POUNDS, IS USED OR MAINTAINED TO TRANSPORT PROPERTY IN THE FURTHERANCE OF INTERSTATE COMMERCE AND OTHERWISE MEETS THE DEFINITION OF COMMERCIAL MOTOR VEHICLE AS DEFINED IN SECTION 28-5201.

5. Interest on finance contracts.

6. Dealer documentation fees on the sales of motor vehicles.

7. Orthodontic devices dispensed by a dental professional who is licensed under title 32, chapter 11 to a patient as part of the practice of dentistry.

8. Sales of internet access services to the person's subscribers and customers. For the purposes of this paragraph:

(a) "Internet" means the computer and telecommunications facilities that comprise the interconnected worldwide network of networks that employ the transmission control protocol or internet protocol, or any predecessor or successor protocol, to communicate information of all kinds by wire or radio.

(b) "Internet access" means a service that enables users to access content, information, electronic mail or other services over the internet.

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Internet access does not include telecommunication services provided by a common carrier.

9. The gross proceeds of sales or gross income retained by the Arizona exposition and state fair board from ride ticket sales at the annual Arizona state fair.

10. Leasing real property between affiliated companies, businesses, persons or reciprocal insurers. For the purposes of this paragraph:

(a) "Affiliated companies, businesses, persons or reciprocal insurers" means the lessor holds a controlling interest in the lessee, the lessee holds a controlling interest in the lessor, affiliated persons hold a controlling interest in both the lessor and the lessee, or an unrelated person holds a controlling interest in both the lessor and lessee.

(b) "Affiliated persons" means members of the individual's family or persons who have ownership or control of a business entity.

(c) "Controlling interest" means direct or indirect ownership of at least eighty percent of the voting shares of a corporation or of the interests in a company, business or person other than a corporation.

(d) "Members of the individual's family" means the individual's spouse and brothers and sisters, whether by whole or half blood, including adopted persons, ancestors and lineal descendants.

(e) "Reciprocal insurer" has the same meaning prescribed in section 20-762.

11. The gross proceeds of sales or gross income derived from a contract for the installation, assembly, repair or maintenance of machinery, equipment or other tangible personal property that is described in section 42-5061, subsection B and that has independent functional utility, pursuant to the following provisions:

(a) The deduction provided in this paragraph includes the gross proceeds of sales or gross income derived from all of the following:

(i) Any activity performed on machinery, equipment or other tangible personal property with independent functional utility.

(ii) Any activity performed on any tangible personal property relating to machinery, equipment or other tangible personal property with independent functional utility in furtherance of any of the purposes provided for under subdivision (d) of this paragraph.

(iii) Any activity that is related to the activities described in items (i) and (ii) of this subdivision, including inspecting the installation of or testing the machinery, equipment or other tangible personal property.

(b) The deduction provided in this paragraph does not include gross proceeds of sales or gross income from the portion of any contracting activity that consists of the development of, or modification to, real property in order to facilitate the installation, assembly, repair, maintenance or removal of machinery, equipment or other tangible personal property described in section 42-5061, subsection B.

(c) The deduction provided in this paragraph shall be determined without regard to the size or useful life of the machinery, equipment or other tangible personal property.

(d) For the purposes of this paragraph, "independent functional utility" means that the machinery, equipment or other tangible personal

property can independently perform its function without attachment to real property, other than attachment for any of the following purposes:

(i) Assembling the machinery, equipment or other tangible personal property.

(ii) Connecting items of machinery, equipment or other tangible personal property to each other.

(iii) Connecting the machinery, equipment or other tangible personal property, whether as an individual item or as a system of items, to water, power, gas, communication or other services.

(iv) Stabilizing or protecting the machinery, equipment or other tangible personal property during operation by bolting, burying or performing other dissimilar nonpermanent connections to either real property or real property improvements.

12. The leasing or renting of certified ignition interlock devices installed pursuant to the requirements prescribed by section 28-1461. For the purposes of this paragraph, "certified ignition interlock device" has the same meaning prescribed in section 28-1301.

13. Computer data center equipment sold to the owner, operator or qualified colocation tenant of a computer data center that is certified by the Arizona commerce authority under section 41-1519 or an authorized agent of the owner, operator or qualified colocation tenant during the qualification period for use in the qualified computer data center. For the purposes of this paragraph, "computer data center", "computer data center equipment", "qualification period" and "qualified colocation tenant" have the same meanings prescribed in section 41-1519.

14. The gross proceeds of sales or gross income derived from a contract with the owner of real property or improvements to real property for the maintenance, repair, replacement or alteration of existing property, except as specified in this paragraph. The gross proceeds of sales or gross income derived from a de minimis amount of modification activity does not subject the contract or any part of the contract to tax. For the purposes of this paragraph:

(a) Each contract is independent of another contract, except that any change order that directly relates to the scope of work of the original contract shall be treated the same as the original contract under this paragraph, regardless of the amount of modification activities included in the change order. If a change order does not directly relate to the scope of work of the original contract, the change order shall be treated as a new contract, with the tax treatment of any subsequent change order to follow the tax treatment of the contract to which the scope of work of the subsequent change order directly relates.

(b) Any term not defined in this paragraph that is defined in section 42-5075 has the same meaning prescribed in section 42-5075.

(c) This paragraph does not apply to a contract that primarily involves surface or subsurface improvements to land and that is subject to title 28, chapter 19, 20 or 22 or title 34, chapter 2 or 6 even if the contract also includes vertical improvements. If a city or town imposes a tax on contracts that are subject to procurement processes under those provisions, the city or town shall include in the request for proposals a

notice to bidders when those projects are subject to the tax. This subdivision does not apply to contracts with:

(i) Community facilities districts, fire districts, county television improvement districts, community park maintenance districts, cotton pest control districts, hospital districts, pest abatement districts, health service districts, agricultural improvement districts, county free library districts, county jail districts, county stadium districts, special health care districts, public health services districts, theme park districts or revitalization districts.

(ii) Any special taxing district not specified in item (i) of this subdivision if the district does not substantially engage in the modification, maintenance, repair, replacement or alteration of surface or subsurface improvements to land.

15. Monitoring services relating to an alarm system as defined in section 32-101.

16. Tangible personal property, job printing or publications sold to or purchased by, or tangible personal property leased, rented or licensed for use to or by, a qualifying health sciences educational institution as defined in section 42-5001.

17. The sale of coal.

18. Tangible personal property incorporated or fabricated into a project described in paragraph 14 of this subsection, that is located within the exterior boundaries of an Indian reservation for which the owner, as defined in section 42-5075, of the project is an Indian tribe or an affiliated Indian. For the purposes of this paragraph:

(a) "Affiliated Indian" means an individual Native American Indian who is duly registered on the tribal rolls of the Indian tribe for whose benefit the Indian reservation was established.

(b) "Indian reservation" means all lands that are within the limits of areas set aside by the United States for the exclusive use and occupancy of an Indian tribe by treaty, law or executive order and that are recognized as Indian reservations by the United States department of the interior.

(c) "Indian tribe" means any organized nation, tribe, band or community that is recognized as an Indian tribe by the United States department of the interior and includes any entity formed under the laws of that Indian tribe.

19. The charges for the leasing or renting of space to make attachments to utility poles as follows:

(a) By a person that is engaged in the business of providing or furnishing electrical services or telecommunication services or that is a cable operator.

(b) To a person that is engaged in the business of providing or furnishing electrical services or telecommunication services or that is a cable operator.

20. Until March 1, 2017, the gross proceeds of sales or gross income derived from entry fees paid by participants for events that consist of a run, walk, swim or bicycle ride or a similar event, or any combination of these events.

21. The gross proceeds of sales or gross income derived from entry fees paid by participants for events that are operated or conducted by

nonprofit organizations that are exempt from taxation under section 501(c)(3) of the internal revenue code and of which no part of the organization's net earnings inures to the benefit of any private shareholder or individual, if the event consists of a run, walk, swim or bicycle ride or a similar event, or any combination of these events.

22. The gross proceeds of sales or gross income derived from sales of machinery and equipment used directly for energy storage for later electrical use. For the purposes of this paragraph:

(a) "Electric utility scale" means a person that is engaged in a business activity described in section 42-5063, subsection A or such person's equipment or wholesale electricity suppliers.

(b) "Energy storage" means commercially available technology for electric utility scale that is capable of absorbing energy, storing energy for a period of time and thereafter dispatching the energy and that uses mechanical, chemical or thermal processes to store energy.

(c) "Machinery and equipment used directly" means all machinery and equipment that are used for electric energy storage from the point of receipt of such energy in order to facilitate storage of the electric energy to the point where the electric energy is released.

Ch. 321

23. THE GROSS PROCEEDS OF SALES OR GROSS INCOME DERIVED FROM A CONTRACT TO INSTALL CONTAINMENT STRUCTURES. FOR THE PURPOSES OF THIS PARAGRAPH, "CONTAINMENT STRUCTURE" MEANS A STRUCTURE THAT PREVENTS, MONITORS, CONTROLS OR REDUCES NOXIOUS OR HARMFUL DISCHARGE INTO THE ENVIRONMENT.

B. A city, town or other taxing jurisdiction shall not levy a transaction privilege, sales, use, franchise or other similar tax or fee, however denominated, on natural gas or liquefied petroleum gas used to propel a motor vehicle.

C. A city, town or other taxing jurisdiction shall not levy a transaction privilege, sales, gross receipts, use, franchise or other similar tax or fee, however denominated, on gross proceeds of sales or gross income derived from any of the following:

1. A motor carrier's use on the public highways in this state if the motor carrier is subject to a fee prescribed in title 28, chapter 16, article 4.

2. Leasing, renting or licensing a motor vehicle subject to and on which the fee has been paid under title 28, chapter 16, article 4.

3. The sale of a motor vehicle and any repair and replacement parts and tangible personal property becoming a part of such motor vehicle to a motor carrier who is subject to a fee prescribed in title 28, chapter 16, article 4 and who is engaged in the business of leasing, renting or licensing such property.

4. Incarcerating or detaining in a privately operated prison, jail or detention facility prisoners who are under the jurisdiction of the United States, this state or any other state or a political subdivision of this state or of any other state.

5. Transporting for hire persons, freight or property by light motor vehicles subject to a fee under title 28, chapter 15, article 4.

6. Any amount attributable to development fees that are incurred in relation to the construction, development or improvement of real property

and paid by the taxpayer as defined in the model city tax code or by a contractor providing services to the taxpayer. For the purposes of this paragraph:

(a) The attributable amount shall not exceed the value of the development fees actually imposed.

(b) The attributable amount is equal to the total amount of development fees paid by the taxpayer or by a contractor providing services to the taxpayer and the total development fees credited in exchange for the construction of, contribution to or dedication of real property for providing public infrastructure, public safety or other public services necessary to the development. The real property must be the subject of the development fees.

(c) "Development fees" means fees imposed to offset capital costs of providing public infrastructure, public safety or other public services to a development and authorized pursuant to section 9-463.05, section 11-1102 or title 48 regardless of the jurisdiction to which the fees are paid.

7. Any amount attributable to fees collected by transportation network companies issued a permit pursuant to section 28-9552.

8. Transporting for hire persons by transportation network company drivers on transactions involving transportation network services as defined in section 28-9551.

9. Transporting for hire persons by vehicle for hire companies that are issued permits pursuant to section 28-9503.

10. Transporting for hire persons by vehicle for hire drivers on transactions involving vehicle for hire services as defined in section 28-9501.

D. A city, town or other taxing jurisdiction shall not levy a transaction privilege, sales, use, franchise or other similar tax or fee, however denominated, in excess of one-tenth of one percent of the value of the entire product mined, smelted, extracted, refined, produced or prepared for sale, profit or commercial use, on persons engaged in the business of mineral processing, except to the extent that the tax is computed on the gross proceeds or gross income from sales at retail.

E. In computing the tax base, any city, town or other taxing jurisdiction shall not include in the gross proceeds of sales or gross income:

1. A manufacturer's cash rebate on the sales price of a motor vehicle if the buyer assigns the buyer's right in the rebate to the retailer.

2. The waste tire disposal fee imposed pursuant to section 44-1302.

F. A city or town shall not levy a use tax on the storage, use or consumption of tangible personal property in the city or town by a school district or charter school.

G. A city, town or taxing jurisdiction shall not levy a transaction privilege, sales, gross receipts, use, franchise or other similar tax or fee, however denominated, on gross proceeds of sales or gross income derived from over-the-top services. For the purposes of this subsection, "over-the-top services" means audio or video programming services that are received by the purchaser by means of an internet connection, regardless of the technology used, that include linear or live programming and that are generally considered comparable to programming provided by a radio or

television broadcast station and includes related on-demand programming that is provided at no additional charge, regardless of whether the services are provided independently or packaged with other audio or video programming.

H. For the purposes of this section:

1. "Cable operator" has the same meaning prescribed in section 9-505 and includes a video service provider.

2. "Electrical services" means transmitting or distributing electricity, electric lights, current or power over lines, wires or cables.

3. "Telecommunication services" means transmitting or relaying sound, visual image, data, information, images or material over lines, wires or cables by radio signal, light beam, telephone, telegraph or other electromagnetic means.

4. "Utility pole" means any wooden, metal or other pole used for utility purposes and the pole's appurtenances that are attached or authorized for attachment by the person controlling the pole.

EXPLANATION OF BLEND  
SECTION 42-11152

Laws 2022, Chapters 228 and 261

Laws 2022, Ch. 228, section 2

Effective September 24, 2022

Laws 2022, Ch. 261, section 2

Effective September 24, 2022

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 228 and Ch. 261 text changes to section 42-11152 are blended in the form shown on the following page.

Section 42-11152 was amended an additional time by Laws 2022, Ch. 341, which was not included in this blend due to the conditional enactment of that version. Section 42-11152 was therefore blended an additional time and will be separately published to include the changes made by Laws 2022, Ch. 341.

BLEND OF SECTION 42-11152  
Laws 2022, Chapters 228 and 261

42-11152. Affidavit; electronic submission; acknowledgment of receipt; false statements

Ch. 261 — A. Except as provided in sections 42-11104, 42-11109, 42-11110, 42-11111 and 42-11131 and except for property described in sections 42-11125, 42-11127, 42-11132, ~~and~~ 42-11132.01 AND 42-11132.02, a person who claims exemption from taxation under article IX, section 2, 2.1 or 2.2, Constitution of Arizona, shall:

1. When initially claiming the exemption AND CLAIMING THE EXEMPTION IN SUBSEQUENT YEARS, ~~appear before the county assessor to make~~ FILE an affidavit WITH THE COUNTY ASSESSOR, SIGNED UNDER PENALTY OF PERJURY, as to the person's eligibility. ~~if a personal appearance before the county assessor would create a severe hardship, the county assessor may arrange a mutually satisfactory meeting place to make an affidavit as to the person's eligibility.~~

~~2. When claiming the exemption in subsequent years, appear before the county assessor or a notary public to make an affidavit as to the person's eligibility.~~

Ch. 228 — ~~3.~~ 2. Fully answer all questions on the eligibility form or otherwise required by the assessor for that purpose.

B. At the assessor's discretion, the assessor may require additional proof of the facts stated by the person before allowing an exemption.

~~C. A person who is in the United States military service and who is absent from this state or who is confined in a veterans' hospital or another licensed hospital may make the required affidavit in the presence of any officer who is authorized to administer oaths on a form obtained from the county assessor.~~

C. THE COUNTY ASSESSOR MAY ACCEPT AFFIDAVITS REQUIRED BY THIS SECTION ELECTRONICALLY. IF THE COUNTY ASSESSOR ACCEPTS ELECTRONIC AFFIDAVITS, THE COUNTY ASSESSOR SHALL PROVIDE AN ELECTRONIC ACKNOWLEDGEMENT OF RECEIPT TO THE PERSON WHO SUBMITTED THE AFFIDAVIT.

D. A false statement that is made ~~or sworn to~~ in the affidavit is perjury.

EXPLANATION OF BLEND  
SECTION 42-11152

Laws 2022, Chapters 228, 261 and 341

Laws 2022, Ch. 228, section 2	Effective September 24, 2022
Laws 2022, Ch. 261, section 2	Effective September 24, 2022
Laws 2022, Ch. 341, section 4	Conditionally Effective

Explanation

Since these three enactments are compatible, the Laws 2022, Ch. 228, Ch. 261 and Ch. 341 text changes to section 42-11152 are blended in the form shown on the following page.

Due to the conditional enactment of the Laws 2022, Ch. 341 version, section 42-11152 was blended an additional time without the Ch. 341 version. That blend version will be published separately in addition to this blend.

BLEND OF SECTION 42-11152  
Laws 2022, Chapters 228, 261 and 341

42-11152. Affidavit; electronic submission; acknowledgment of receipt; false statements

Ch. 261 — A. Except as provided in sections 42-11104, 42-11109, 42-11110, 42-11111 and 42-11131 and except for property described in sections  
Ch. 341 — 42-11125, 42-11127, 42-11132, ~~and~~ 42-11132.01 AND 42-11132.02, a person who claims exemption from taxation under article IX, section 2, ~~2.1 or 2.2,~~ Constitution of Arizona, shall:

1. When initially claiming the exemption AND CLAIMING THE EXEMPTION IN SUBSEQUENT YEARS, ~~appear before the county assessor to make~~ FILE an affidavit WITH THE COUNTY ASSESSOR, SIGNED UNDER PENALTY OF PERJURY, as to the person's eligibility. ~~If a personal appearance before the county assessor would create a severe hardship, the county assessor may arrange a mutually satisfactory meeting place to make an affidavit as to the person's eligibility.~~

~~2. When claiming the exemption in subsequent years, appear before the county assessor or a notary public to make an affidavit as to the person's eligibility.~~

Ch. 228 — ~~3.~~ 2. Fully answer all questions on the eligibility form or otherwise required by the assessor for that purpose.

B. At the assessor's discretion, the assessor may require additional proof of the facts stated by the person before allowing an exemption.

~~C. A person who is in the United States military service and who is absent from this state or who is confined in a veterans' hospital or another licensed hospital may make the required affidavit in the presence of any officer who is authorized to administer oaths on a form obtained from the county assessor.~~

C. THE COUNTY ASSESSOR MAY ACCEPT AFFIDAVITS REQUIRED BY THIS SECTION ELECTRONICALLY. IF THE COUNTY ASSESSOR ACCEPTS ELECTRONIC AFFIDAVITS, THE COUNTY ASSESSOR SHALL PROVIDE AN ELECTRONIC ACKNOWLEDGEMENT OF RECEIPT TO THE PERSON WHO SUBMITTED THE AFFIDAVIT.

D. A false statement that is made ~~or sworn to~~ in the affidavit is perjury.

EXPLANATION OF BLEND  
SECTION 43-222

Laws 2022, Chapters 235 and 387

Laws 2022, Ch. 235, section 7

Effective September 24, 2022

Laws 2022, Ch. 387, section 5

Effective September 24, 2022

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 235 and Ch. 387 text changes to section 43-222 are blended in the form shown on the following page.

BLEND OF SECTION 43-222  
Laws 2022, Chapters 235 and 387

43-222. Income tax credit review schedule

The joint legislative income tax credit review committee shall review the following income tax credits:

1. For years ending in 0 and 5, sections 43-1079.01, 43-1088, 43-1089.04, 43-1167.01 and 43-1175.

2. For years ending in 1 and 6, sections 43-1072.02, 43-1074.02, 43-1075, 43-1076.01, 43-1077, 43-1078, 43-1083, 43-1083.02, 43-1162, 43-1164.03 and 43-1183.

Ch. 387 — 3. For years ending in 2 and 7, sections 43-1073, [43-1082,] 43-1085, 43-1086, 43-1089, 43-1089.01, 43-1089.02, 43-1089.03,

Ch. 235 — 43-1164[~~,-~~]

Ch. 387 — 43-1165,

~~43-1169~~ and 43-1181.

Ch. 235 — 4. For years ending in 3 and 8, sections 43-1074.01, ~~43-1081,~~ 43-1168, 43-1170 and 43-1178.

5. For years ending in 4 and 9, sections 43-1073.01, ~~43-1076,~~ 43-1081.01, 43-1083.03, 43-1084, 43-1164.04, 43-1164.05 and 43-1184.

EXPLANATION OF BLEND  
SECTION 43-1014

Laws 2022, Chapters 235 and 321

Laws 2022, Ch. 235, section 9

Effective September 24, 2022

Laws 2022, Ch. 321, section 15

Effective September 24, 2022

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 235 and Ch. 321 text changes to section 43-1014 are blended in the form shown on the following pages.

BLEND OF SECTION 43-1014  
Laws 2022, Chapters 235 and 321

43-1014. Entity-level tax election; partnerships;  
S corporations; rules

Ch. 321 { A. For taxable years beginning from and after December 31, 2021, the partners or shareholders of a business that is treated as a partnership or S corporation for federal income tax purposes may consent to be taxed at the entity level at a TAX rate of four and one-half percent of THAT IS THE SAME AS THE TAX RATE PRESCRIBED BY SECTION 43-1011 APPLICABLE TO the entire portion of its taxable income that is attributable to its resident partners or shareholders and the portion of its taxable income derived from sources within this state that is attributable to its nonresident partners or shareholders for that taxable year. The election under this subsection must be made on or before the due date or extended due date of the business's return under this title.

B. If the election is made under subsection A of this section, all of the following apply:

Ch. 235 { 1. The taxable income of the partnership or S corporation ~~shall be computed under this chapter or chapter 14 of this title, as applicable~~ IS AS FOLLOWS:  
(a) FOR A PARTNERSHIP, THE ARIZONA TAXABLE INCOME DETERMINED UNDER CHAPTER 14 OF THIS TITLE.  
(b) FOR AN S CORPORATION, THE TOTAL OF ALL DISTRIBUTIVE INCOME PASSED THROUGH TO THE SHAREHOLDERS UNDER SECTION 43-1126, SUBSECTION B.

2. If the partnership or S corporation does not pay the amount owed to the department as a result of the election under this section, the department may collect the amount from the partners or shareholders based on the proportionate share of income that is attributable to each partner or shareholder for Arizona tax purposes.

3. The partnership or S corporation shall pay estimated tax pursuant to section 43-581 as necessary.

C. The election under subsection A of this section does not apply to the following:

1. Partners or shareholders that are not individuals, estates or trusts. The portion of the taxable income attributable to a partner or shareholder that is not an individual, estate or trust is not included in the entity-level tax under subsection A of this section.

Chs. 235 and 321 { 2. Partners or shareholders who are individuals, estates or trusts and who opt out or ~~waive the right to opt out~~ of the election pursuant to subsection D of this section. The portion of the taxable income attributable to a partner or shareholder who is an individual, estate or trust and who opts out or ~~waives the right to opt out~~ of the election pursuant to subsection D of this section is not included in the entity-level tax under subsection A of this section.

D. A partnership or S corporation that intends to make the election under subsection A of this section shall notify all partners or shareholders who are individuals, estates or trusts of the intent to make the election and that each partner or shareholder who is an individual, estate or trust has the right to opt out of the election. The notice shall allow each partner or shareholder who is an individual, estate or trust at least sixty days after receiving the notice to notify the partnership or S corporation that the partner or shareholder who is an individual, estate or trust is exercising the partner's or shareholder's right to opt out of the election. If the partner or shareholder who is an individual, estate or trust does not respond within the sixty-day period or waives the right to opt out, the partner or shareholder will be included in the election.

E. The department shall adopt rules and prescribe forms and procedures as necessary to administer this section.

EXPLANATION OF BLEND  
SECTION 43-1021

Laws 2022, Chapters 235 and 387

Laws 2022, Ch. 235, section 10

Effective September 24, 2022

Laws 2022, Ch. 387, section 6

Effective September 24, 2022

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 235 and Ch. 387 text changes to section 43-1021 are blended in the form shown on the following pages.

BLEND OF SECTION 43-1021  
Laws 2022, Chapters 235 and 387

43-1021. Addition to Arizona gross income

In computing Arizona adjusted gross income, the following amounts shall be added to Arizona gross income:

1. A beneficiary's share of the fiduciary adjustment to the extent that the amount determined by section 43-1333 increases the beneficiary's Arizona gross income.

2. An amount equal to the ordinary income portion of a lump sum distribution that was excluded from federal adjusted gross income pursuant to the special rule for individuals who attained fifty years of age before January 1, 1986 under Public Law 99-514, section 1122(h)(3).

Ch. 387 — 3. The amount of interest income received on obligations of any state, territory or possession of the United States, or any political subdivision thereof, located outside the OF THIS state of ~~Arizona~~, reduced, for taxable years beginning from and after December 31, 1996, by the amount of any interest on indebtedness and other related expenses that were incurred or continued to purchase or carry those obligations and that are not otherwise deducted or subtracted in arriving at Arizona gross income.

4. The excess of a partner's share of partnership taxable income required to be included under chapter 14, article 2 of this title over the income required to be reported under section 702(a)(8) of the internal revenue code.

5. The excess of a partner's share of partnership losses determined pursuant to section 702(a)(8) of the internal revenue code over the losses allowable under chapter 14, article 2 of this title.

6. Any amount of agricultural water conservation expenses that were deducted pursuant to the internal revenue code for which a credit is claimed under section 43-1084.

7. The amount by which the depreciation or amortization computed under the internal revenue code with respect to property for which a credit was taken under ~~either section 43-1081 or 43-1081.01~~ OR THAT IS POLLUTION CONTROL EQUIPMENT FOR WHICH A CREDIT WAS TAKEN BEFORE TAXABLE YEAR 2022 exceeds the amount of depreciation or amortization computed pursuant to the internal revenue code on the Arizona adjusted basis of the property.

Ch. 235 — 8. The amount by which the adjusted basis computed under the internal revenue code with respect to property for which a credit was claimed under section 43-1074.02, ~~43-1081~~ or 43-1081.01 OR THAT IS POLLUTION CONTROL EQUIPMENT FOR WHICH A CREDIT WAS TAKEN BEFORE TAXABLE YEAR 2022 and that is sold or otherwise disposed of during the taxable year exceeds the adjusted basis of the property computed under section 43-1074.02, ~~43-1081~~ or 43-1081.01 OR FOR POLLUTION CONTROL EQUIPMENT, THE SECTION IN WHICH THE CREDIT WAS TAKEN, as applicable.

9. The deduction referred to in section 1341(a)(4) of the internal revenue code for restoration of a substantial amount held under a claim of right.

10. The amount by which a net operating loss carryover or capital loss carryover allowable pursuant to section 1341(b)(5) of the internal revenue code exceeds the net operating loss carryover or capital loss carryover allowable pursuant to section 43-1029, subsection F.

11. The amount of any depreciation allowance allowed pursuant to section 167(a) of the internal revenue code to the extent not previously added.

12. The amount of a nonqualified withdrawal, as defined in section 15-1871, from a college savings plan established pursuant to section 529 of the internal revenue code that is made to a distributee to the extent the amount is not included in computing federal adjusted gross income, except that the amount added under this paragraph shall not exceed the difference between the amount subtracted under section 43-1022 in prior taxable years and the amount added under this section in any prior taxable years.

13. If a subtraction is or has been taken by the taxpayer under section 43-1024, in the current or a prior taxable year for the full amount of eligible access expenditures paid or incurred to comply with the requirements of the Americans with disabilities act of 1990 (P.L. 101-336) or title 41, chapter 9, article 8, any amount of eligible access expenditures that is recognized under the internal revenue code, including any amount that is amortized according to federal amortization schedules, and that is included in computing taxable income for the current taxable year.

14. For taxable years beginning from and after December 31, 2017, the amount of any net capital loss included in Arizona gross income for the taxable year that is derived from the exchange of one kind of legal tender for another kind of legal tender. For the purposes of this paragraph:

(a) "Legal tender" means a medium of exchange, including specie, that is authorized by the United States Constitution or Congress to pay debts, public charges, taxes and dues.

(b) "Specie" means coins having precious metal content.

15. For taxable years beginning from and after December 31, 2021, the amount deducted by the partnership or S corporation pursuant to the internal revenue code for the amount paid to this state under section 43-1014 and for taxes that the department determines are substantially similar to the tax imposed under section 43-1014. This amount shall be reflected in the partner's or shareholder's Arizona gross income and the partnership's or S corporation's Arizona taxable income.

16. THE AMOUNT OF ANY MOTION PICTURE PRODUCTION COSTS THAT WAS DEDUCTED PURSUANT TO THE INTERNAL REVENUE CODE FOR WHICH A TAX CREDIT IS CLAIMED UNDER SECTION 43-1082.

Ch. 387



EXPLANATION OF BLEND  
SECTION 43-1022

Laws 2022, Chapters 235 and 369

Laws 2022, Ch. 235, section 11

Effective September 24, 2022

Laws 2022, Ch. 369, section 1

Effective January 1, 2023

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 235 and Ch. 369 text changes to section 43-1022 are blended effective from and after December 31, 2022 in the form shown on the following pages.

BLEND OF SECTION 43-1022  
Laws 2022, Chapters 235 and 369

43-1022. Subtractions from Arizona gross income

In computing Arizona adjusted gross income, the following amounts shall be subtracted from Arizona gross income:

1. The amount of exemptions allowed by section 43-1023.
2. Benefits, annuities and pensions in an amount totaling not more than \$2,500 received from one or more of the following:
  - (a) The United States government service retirement and disability fund, the United States foreign service retirement and disability system and any other retirement system or plan established by federal law, except retired or retainer pay of the uniformed services of the United States that qualifies for a subtraction under paragraph 26 of this section.
  - (b) The Arizona state retirement system, the corrections officer retirement plan, the public safety personnel retirement system, the elected officials' retirement plan, an optional retirement program established by the Arizona board of regents under section 15-1628, an optional retirement program established by a community college district board under section 15-1451 or a retirement plan established for employees of a county, city or town in this state.
3. A beneficiary's share of the fiduciary adjustment to the extent that the amount determined by section 43-1333 decreases the beneficiary's Arizona gross income.
4. Interest income received on obligations of the United States, minus any interest on indebtedness, or other related expenses, and deducted in arriving at Arizona gross income, that were incurred or continued to purchase or carry such obligations.
5. The excess of a partner's share of income required to be included under section 702(a)(8) of the internal revenue code over the income required to be included under chapter 14, article 2 of this title.
6. The excess of a partner's share of partnership losses determined pursuant to chapter 14, article 2 of this title over the losses allowable under section 702(a)(8) of the internal revenue code.
7. The amount allowed by section 43-1025 for contributions during the taxable year of agricultural crops to charitable organizations.
8. The portion of any wages or salaries paid or incurred by the taxpayer for the taxable year that is equal to the amount of the federal work opportunity credit, the empowerment zone employment credit, the credit for employer paid social security taxes on employee cash tips and the Indian employment credit that the taxpayer received under sections 45A, 45B, 51(a) and 1396 of the internal revenue code.
9. The amount of exploration expenses that is determined pursuant to section 617 of the internal revenue code, that has been deferred in a taxable year ending before January 1, 1990 and for which a subtraction has not

previously been made. The subtraction shall be made on a ratable basis as the units of produced ores or minerals discovered or explored as a result of this exploration are sold.

10. The amount included in federal adjusted gross income pursuant to section 86 of the internal revenue code, relating to taxation of social security and railroad retirement benefits.

11. To the extent not already excluded from Arizona gross income under the internal revenue code, compensation received for active service as a member of the reserves, the national guard or the armed forces of the United States, including compensation for service in a combat zone as determined under section 112 of the internal revenue code.

12. The amount of unreimbursed medical and hospital costs, adoption counseling, legal and agency fees and other nonrecurring costs of adoption not to exceed \$3,000. In the case of a husband and wife who file separate returns, the subtraction may be taken by either taxpayer or may be divided between them, but the total subtractions allowed both husband and wife may not exceed \$3,000. The subtraction under this paragraph may be taken for the costs that are described in this paragraph and that are incurred in prior years, but the subtraction may be taken only in the year during which the final adoption order is granted.

13. The amount authorized by section 43-1027 for the taxable year relating to qualified wood stoves, wood fireplaces or gas fired fireplaces.

14. The amount by which a net operating loss carryover or capital loss carryover allowable pursuant to section 43-1029, subsection F exceeds the net operating loss carryover or capital loss carryover allowable pursuant to section 1341(b)(5) of the internal revenue code.

15. Any amount of qualified educational expenses that is distributed from a qualified state tuition program determined pursuant to section 529 of the internal revenue code and that is included in income in computing federal adjusted gross income.

16. Any item of income resulting from an installment sale that has been properly subjected to income tax in another state in a previous taxable year and that is included in Arizona gross income in the current taxable year.

17. For property placed in service:

(a) In taxable years beginning before December 31, 2012, an amount equal to the depreciation allowable pursuant to section 167(a) of the internal revenue code for the taxable year computed as if the election described in section 168(k) of the internal revenue code had been made for each applicable class of property in the year the property was placed in service.

(b) In taxable years beginning from and after December 31, 2012 through December 31, 2013, an amount determined in the year the asset was placed in service based on the calculation in subdivision (a) of this paragraph. In the first taxable year beginning from and after December 31, 2013, the taxpayer may elect to subtract the amount necessary to make the depreciation claimed to date for the purposes of this title the same as it would have been if subdivision (c) of this paragraph had applied for the entire time the asset was in service. Subdivision (c) of this paragraph applies for the remainder of the asset's life. If the taxpayer does not

make the election under this subdivision, subdivision (a) of this paragraph applies for the remainder of the asset's life.

(c) In taxable years beginning from and after December 31, 2013 through December 31, 2015, an amount equal to the depreciation allowable pursuant to section 167(a) of the internal revenue code for the taxable year as computed as if the additional allowance for depreciation had been ten percent of the amount allowed pursuant to section 168(k) of the internal revenue code.

(d) In taxable years beginning from and after December 31, 2015 through December 31, 2016, an amount equal to the depreciation allowable pursuant to section 167(a) of the internal revenue code for the taxable year as computed as if the additional allowance for depreciation had been fifty-five percent of the amount allowed pursuant to section 168(k) of the internal revenue code.

(e) In taxable years beginning from and after December 31, 2016, an amount equal to the depreciation allowable pursuant to section 167(a) of the internal revenue code for the taxable year as computed as if the additional allowance for depreciation had been the full amount allowed pursuant to section 168(k) of the internal revenue code.

18. With respect to property that is sold or otherwise disposed of during the taxable year by a taxpayer that complied with section 43-1021, paragraph 11 with respect to that property, the amount of depreciation that has been allowed pursuant to section 167(a) of the internal revenue code to the extent that the amount has not already reduced Arizona taxable income in the current or prior taxable years.

19. The amount contributed during the taxable year to college savings plans established pursuant to section 529 of the internal revenue code on behalf of the designated beneficiary to the extent that the contributions were not deducted in computing federal adjusted gross income. The amount subtracted may not exceed:

(a) \$2,000 per beneficiary for a single individual or a head of household.

(b) \$4,000 per beneficiary for a married couple filing a joint return. In the case of a husband and wife who file separate returns, the subtraction may be taken by either taxpayer or may be divided between them, but the total subtractions allowed both husband and wife may not exceed \$4,000 per beneficiary.

20. The portion of the net operating loss carryforward that would have been allowed as a deduction in the current year pursuant to section 172 of the internal revenue code if the election described in section 172(b)(1)(H) of the internal revenue code had not been made in the year of the loss that exceeds the actual net operating loss carryforward that was deducted in arriving at federal adjusted gross income. This subtraction only applies to taxpayers who made an election under section 172(b)(1)(H) of the internal revenue code as amended by section 1211 of the American recovery and reinvestment act of 2009 (P.L. 111-5) or as amended by section 13 of the worker, homeownership, and business assistance act of 2009 (P.L. 111-92).

21. For taxable years beginning from and after December 31, 2013, the amount of any net capital gain included in federal adjusted gross income

for the taxable year derived from investment in a qualified small business as determined by the Arizona commerce authority pursuant to section 41-1518.

22. An amount of any net long-term capital gain included in federal adjusted gross income for the taxable year that is derived from an investment in an asset acquired after December 31, 2011, as follows:

(a) For taxable years beginning from and after December 31, 2012 through December 31, 2013, ten percent of the net long-term capital gain included in federal adjusted gross income.

(b) For taxable years beginning from and after December 31, 2013 through December 31, 2014, twenty percent of the net long-term capital gain included in federal adjusted gross income.

(c) For taxable years beginning from and after December 31, 2014, twenty-five percent of the net long-term capital gain included in federal adjusted gross income. For the purposes of this paragraph, a transferee that receives an asset by gift or at the death of a transferor is considered to have acquired the asset when the asset was acquired by the transferor. If the date an asset is acquired cannot be verified, a subtraction under this paragraph is not allowed.

23. If an individual is not claiming itemized deductions pursuant to section 43-1042, the amount of premium costs for long-term care insurance, as defined in section 20-1691.

24. The amount of eligible access expenditures paid or incurred during the taxable year to comply with the requirements of the Americans with disabilities act of 1990 (P.L. 101-336) or title 41, chapter 9, article 8 as provided by section 43-1024.

25. For taxable years beginning from and after December 31, 2017, the amount of any net capital gain included in Arizona gross income for the taxable year that is derived from the exchange of one kind of legal tender for another kind of legal tender. For the purposes of this paragraph:

(a) "Legal tender" means a medium of exchange, including specie, that is authorized by the United States Constitution or Congress to pay debts, public charges, taxes and dues.

(b) "Specie" means coins having precious metal content.

26. Benefits, annuities and pensions received as retired or retainer pay of the uniformed services of the United States in amounts as follows:

(a) For taxable years through December 31, 2018, an amount totaling not more than \$2,500.

(b) For taxable years beginning from and after December 31, 2018 through December 31, 2020, an amount totaling not more than \$3,500.

(c) For taxable years beginning from and after December 31, 2020, the full amount received.

27. For taxable years beginning from and after December 31, 2020, the amount contributed during the taxable year to an achieving a better life experience account established pursuant to section 529A of the internal revenue code on behalf of the designated beneficiary to the extent that the contributions were not deducted in computing federal adjusted gross income. The amount subtracted may not exceed:

(a) \$2,000 per beneficiary for a single individual or a head of household.

(b) \$4,000 per beneficiary for a married couple filing a joint return. In the case of a husband and wife who file separate returns, the subtraction may be taken by either taxpayer or may be divided between them, but the total subtractions allowed both husband and wife may not exceed \$4,000 per beneficiary.

Ch. 235 — 28. For taxable years beginning from and after December 31, 2020, Arizona small business ~~adjusted~~ gross income, but only if an individual taxpayer has elected to separately report and pay tax on the taxpayer's Arizona small business adjusted gross income on the Arizona small business income tax return.

29. TO THE EXTENT NOT ALREADY EXCLUDED FROM ARIZONA GROSS INCOME UNDER THE INTERNAL REVENUE CODE, THE VALUE OF VIRTUAL CURRENCY AND NON-FUNGIBLE TOKENS THE TAXPAYER RECEIVED PURSUANT TO AN AIRDROP AT THE TIME OF THE AIRDROP. THIS PARAGRAPH MAY NOT BE INTERPRETED AS PROVIDING A SUBTRACTION FOR ANY APPRECIATION IN VALUE THAT OCCURS FROM HOLDING THE VIRTUAL CURRENCY AFTER THE INITIAL RECEIPT OF THE AIRDROP. FOR THE PURPOSES OF THIS PARAGRAPH:

Ch. 369 — (a) "AIRDROP" MEANS THE RECEIPT OF VIRTUAL CURRENCY THROUGH A MEANS OF DISTRIBUTION OF VIRTUAL CURRENCY TO THE DISTRIBUTED LEDGER ADDRESSES OF MULTIPLE TAXPAYERS.

(b) "NON-FUNGIBLE TOKEN" HAS THE SAME MEANING PRESCRIBED IN SECTION 43-1028.

(c) "VIRTUAL CURRENCY" HAS THE SAME MEANING PRESCRIBED IN SECTION 43-1028.

30. THE AMOUNT ALLOWED AS A SUBTRACTION BY SECTION 43-1028 FOR GAS FEES NOT ALREADY INCLUDED IN THE TAXPAYER'S VIRTUAL CURRENCY OR NON-FUNGIBLE TOKEN BASIS.

EXPLANATION OF BLEND  
SECTION 43-1121

Laws 2022, Chapters 235 and 387

Laws 2022, Ch. 235, section 16

Effective September 24, 2022

Laws 2022, Ch. 387, section 9

Effective September 24, 2022

Explanation

Since these two enactments are compatible, the Laws 2022, Ch. 235 and Ch. 387 text changes to section 43-1121 are blended in the form shown on the following pages.

BLEND OF SECTION 43-1121  
Laws 2022, Chapters 235 and 387

43-1121. Additions to Arizona gross income; corporations

In computing Arizona taxable income for a corporation, the following amounts shall be added to Arizona gross income:

1. The amount of interest income received on obligations of any state, territory or possession of the United States, or any political subdivision thereof, located outside this state, reduced, for taxable years beginning from and after December 31, 1996, by the amount of any interest on indebtedness and other related expenses that were incurred or continued to purchase or carry those obligations and that are not otherwise deducted or subtracted in arriving at Arizona gross income.

2. The excess of a partner's share of partnership taxable income required to be included under chapter 14, article 2 of this title over the income required to be reported under section 702(a)(8) of the internal revenue code.

3. The excess of a partner's share of partnership losses determined pursuant to section 702(a)(8) of the internal revenue code over the losses allowable under chapter 14, article 2 of this title.

4. The amount of any depreciation allowance allowed pursuant to section 167(a) of the internal revenue code to the extent not previously added.

5. The amount of dividend income received from corporations and allowed as a deduction pursuant to sections 243, 245, 245A and 250(a)(1)(B) of the internal revenue code.

6. Taxes that are based on income paid to states, local governments or foreign governments and that were deducted in computing federal taxable income.

7. Expenses and interest relating to tax-exempt income on indebtedness incurred or continued to purchase or carry obligations the interest on which is wholly exempt from the tax imposed by this title. Financial institutions, as defined in section 6-101, shall be governed by section 43-961, paragraph 2.

8. Commissions, rentals and other amounts paid or accrued to a domestic international sales corporation controlled by the payor corporation if the domestic international sales corporation is not required to report its taxable income to this state because its income is not derived from or attributable to sources within this state. If the domestic international sales corporation is subject to article 4 of this chapter, the department shall prescribe by rule the method of determining the portion of the commissions, rentals and other amounts that are paid or accrued to the controlled domestic international sales corporation and that shall be deducted by the payor. For the purposes of this paragraph, "control" means direct or indirect ownership or control of fifty percent or more of the

voting stock of the domestic international sales corporation by the payor corporation.

9. The amount of net operating loss taken pursuant to section 172 of the internal revenue code.

10. The amount of exploration expenses determined pursuant to section 617 of the internal revenue code to the extent that they exceed \$75,000 and to the extent that the election is made to defer those expenses not in excess of \$75,000.

11. Amortization of costs incurred to install pollution control devices and deducted pursuant to the internal revenue code or the amount of deduction for depreciation taken pursuant to the internal revenue code on pollution control devices for which an election is made pursuant to section 43-1129.

12. The amount of depreciation or amortization of costs of child care facilities deducted pursuant to section 167 or 188 of the internal revenue code for which an election is made to amortize pursuant to section 43-1130.

13. The loss of an insurance company that is exempt under section 43-1201 to the extent that it is included in computing Arizona gross income on a consolidated return pursuant to section 43-947.

~~14. The amount by which the depreciation or amortization computed under the internal revenue code with respect to property for which a credit was taken under section 43-1169 exceeds the amount of depreciation or amortization computed pursuant to the internal revenue code on the Arizona adjusted basis of the property.~~

~~15. The amount by which the adjusted basis computed under the internal revenue code with respect to property for which a credit was claimed under section 43-1169 and that is sold or otherwise disposed of during the taxable year exceeds the adjusted basis of the property computed under section 43-1169.~~

14. The amount by which the depreciation or amortization computed under the internal revenue code with respect to property for which a credit was taken under section 43-1170 exceeds the amount of depreciation or amortization computed pursuant to the internal revenue code on the Arizona adjusted basis of the property.

15. The amount by which the adjusted basis computed under the internal revenue code with respect to property for which a credit was claimed under section 43-1170 and that is sold or otherwise disposed of during the taxable year exceeds the adjusted basis of the property computed under section 43-1170.

~~16.~~ 16. The deduction referred to in section 1341(a)(4) of the internal revenue code for restoration of a substantial amount held under a claim of right.

~~19.~~ 17. The amount by which a capital loss carryover allowable pursuant to section 1341(b)(5) of the internal revenue code exceeds the capital loss carryover allowable pursuant to section 43-1130.01, subsection F.

~~20.~~ 18. Any wage expenses deducted pursuant to the internal revenue code for which a credit is claimed under section 43-1175 and representing net increases in qualified employment positions for employment of temporary assistance for needy families recipients.

Ch. 235

~~21.~~ 19. Any amount of expenses that were deducted pursuant to the internal revenue code and for which a credit is claimed under section 43-1178.

~~22.~~ 20. Any amount deducted pursuant to section 170 of the internal revenue code representing contributions to a school tuition organization for which a credit is claimed under section 43-1183 or 43-1184.

~~23.~~ 21. If a subtraction is or has been taken by the taxpayer under section 43-1124, in the current or a prior taxable year for the full amount of eligible access expenditures paid or incurred to comply with the requirements of the Americans with disabilities act of 1990 (P.L. 101-336) or title 41, chapter 9, article 8, any amount of eligible access expenditures that is recognized under the internal revenue code, including any amount that is amortized according to federal amortization schedules, and that is included in computing Arizona taxable income for the current taxable year.

~~24.~~ 22. For taxable years beginning from and after December 31, 2017, the amount of any net capital loss included in Arizona gross income for the taxable year that is derived from the exchange of one kind of legal tender for another kind of legal tender. For the purposes of this paragraph:

(a) "Legal tender" means a medium of exchange, including specie, that is authorized by the United States Constitution or Congress to pay debts, public charges, taxes and dues.

(b) "Specie" means coins having precious metal content.

~~25.~~ 23. The amount of any deduction that is claimed in computing Arizona gross income and that represents a donation of a school site for which a credit is claimed under section 43-1181.

24. THE AMOUNT OF ANY MOTION PICTURE PRODUCTION COSTS THAT WAS DEDUCTED PURSUANT TO THE INTERNAL REVENUE CODE FOR WHICH A TAX CREDIT IS CLAIMED UNDER SECTION 43-1165.

Ch. 387



EXPLANATION OF BLEND  
SECTION 49-210

Laws 2022, Chapters 177, 204 and 312

Laws 2022, Ch. 177, section 2	Effective September 24, 2022
Laws 2022, Ch. 204, section 2	Effective September 24, 2022
Laws 2022, Ch. 312, section 2	Effective September 24, 2022

Explanation

Since these three enactments are compatible, the Laws 2022, Ch. 177, Ch. 204 and Ch. 312 text changes to section 49-210 are blended in the form shown on the following page.

BLEND OF SECTION 49-210  
Laws 2022, Chapters 177, 204 and 312

49-210. Water quality fee fund; appropriation; exemption;  
monies held in trust

Ch. 312 — A. The water quality fee fund is established consisting of monies appropriated by the legislature and fees received pursuant to sections 49-104, 49-203, [49-211,] 49-241, 49-241.02, 49-242, 49-255.01, [49-332,] — Ch. 177 49-352, 49-353 and 49-361. The director shall administer the fund.

B. Monies in the fund are subject to annual legislative appropriation to the department for water quality programs. Monies in the fund are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

C. On notice from the director, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.

Ch. 204 — D. Monies in the water quality fee fund shall be used for the following purposes ~~ACTIVITIES REQUIRED TO IMPLEMENT THIS CHAPTER, EXCEPT FOR ARTICLES 1.1 AND 5 OF THIS CHAPTER, AND TO IMPLEMENT SECTION 49-104, SUBSECTION B, PARAGRAPHS 9 THROUGH 13 AND SUBSECTION C.~~ —

1. ~~To issue aquifer protection permits pursuant to section 49-241.~~

2. ~~The aquifer protection permit registration fee procedures pursuant to section 49-242.~~

Chs. 177 and 204 — 3. ~~Dry well registration fee procedures pursuant to section 49-332.~~

4. ~~Technical review fee procedures pursuant to section 49-353.~~

5. ~~Inspection fee procedures pursuant to section 49-104, subsection C.~~

6. ~~To issue permits under the Arizona pollutant discharge elimination system program pursuant to section 49-255.01.~~

7. ~~Operator certification pursuant to sections 49-352 and 49-361.~~

Ch. 204 — 8. ~~Paying the cost of implementing section 49-203, subsection A, paragraph 7 and section 49-221, subsection E.~~

9. ~~Water quality monitoring pursuant to section 49-225 and reporting of aquifer pollution information pursuant to section 49-249.~~

10. ~~To implement and administer the underground injection control permit program established pursuant to article 3.3 of this chapter.~~

11. ~~To implement and administer the dredge and fill permit program established pursuant to article 3.2 of this chapter, including review and analysis for issuing jurisdictional determinations.~~

E. Any fee, assessment or other levy that is authorized by law or administrative rule and that is collected and deposited in the water quality fee fund shall be held in trust. The monies in the fund may be used only for the purposes prescribed by statute and shall not be appropriated or transferred by the legislature to fund the general operations of this state or to otherwise meet the obligations of the general fund of this state. This subsection does not apply to any taxes or other levies that are imposed pursuant to title 42 or 43.