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REFERENCE TITLE: department of financial institutions

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

HB 2241

Introduced by
Representative Carpenter

AN ACT

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

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

4 5-324. Public records; identification of requester; supplying
5 information by mail; records custodians; certification
6 of records

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

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

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

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

- 19 1. The name of the owner.
- 20 2. The hull identification number of the watercraft.
- 21 3. The department issued number assigned to the watercraft.

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

- 24 1. This state or any of its departments, agencies or political
25 subdivisions.
- 26 2. A court.
- 27 3. A law enforcement officer.
- 28 4. A licensed private investigator.
- 29 5. Financial institutions and enterprises under the jurisdiction of
30 the ~~state banking~~ department **OF FINANCIAL INSTITUTIONS** or a federal monetary
31 authority.
- 32 6. The federal government or any of its agencies.
- 33 7. An attorney admitted to practice in this state who alleges the
34 information is relevant to any pending or potential court proceeding.
- 35 8. An operator of a self-service storage facility located in this
36 state who alleges both of the following:
 - 37 (a) That the watercraft on which the operator is requesting the record
38 is in the operator's possession.
 - 39 (b) That the record is requested to allow the operator to notify the
40 registered owner and any lienholders of record of the operator's intent to
41 foreclose its lien and to sell the watercraft.
- 42 9. A towing company located in this state that alleges both of the
43 following:
 - 44 (a) That the watercraft on which the towing company is requesting the
45 record is in the towing company's possession.

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

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

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

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

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

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

21 6-101. Definitions

22 In this title, unless the context otherwise requires:

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

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

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

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

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

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

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

- 1 8. "Financial institution" means banks, trust companies, savings and
2 loan associations, credit unions, consumer lenders, international banking
3 facilities and financial institution holding companies under the jurisdiction
4 of the department.
- 5 9. "Home state" means the state that has granted the bank its charter,
6 permit or license to operate.
- 7 10. "Host state" means the state in which a financial institution is
8 doing business and not the state that has granted the bank its charter,
9 permit or license to operate.
- 10 11. "In-state financial institution" means a state or federal bank,
11 savings bank, savings and loan association or holding company with its home
12 office located in this state.
- 13 12. "International banking facility" means a facility represented by a
14 set of asset and liability accounts segregated on the books and records of a
15 commercial bank, the principal office of which is located in this state, and
16 which is incorporated and doing business under the laws of the United States
17 or of this state, a United States branch or agency of a foreign bank, an edge
18 corporation organized under section 25(a) of the federal reserve act (12
19 United States Code sections 611 through 631) or an agreement corporation
20 having an agreement or undertaking with the board of governors of the federal
21 reserve system under section 25 of the federal reserve act (12 United States
22 Code sections 601 through 604(a)) that includes only international banking
23 facility time deposits and international banking facility extensions of
24 credit as defined in 12 Code of Federal Regulations part 204.
- 25 13. "National credit union administration" includes any successor to
26 the ~~corporation~~ ORGANIZATION or other agency or instrumentality of the United
27 States which undertakes to discharge the purposes of the ~~corporation~~
28 ORGANIZATION.
- 29 14. "Out-of-state bank" means a bank, savings bank or savings and loan
30 association that is approved by the superintendent pursuant to section 6-322
31 and that has a charter, a permit or any other license to operate that is
32 issued by a state other than this state.
- 33 15. "Out-of-state financial institution" means a state or federal bank,
34 savings bank, savings and loan association or holding company with its home
35 office in a state other than this state.
- 36 16. "Superintendent" means the superintendent of ~~banks~~ FINANCIAL
37 INSTITUTIONS.
- 38 17. "Title" includes this title, title 32, chapter 9 and title 44,
39 chapter 2.1.
- 40 Sec. 3. Section 6-110, Arizona Revised Statutes, is amended to read:
41 6-110. Department of financial institutions
42 ~~There shall be a state banking~~ THE department OF FINANCIAL INSTITUTIONS
43 IS ESTABLISHED. ~~which shall have~~ THE DEPARTMENT HAS charge of the execution
44 of the laws of this state relating to financial institutions and enterprises.

1 Sec. 4. Section 6-111, Arizona Revised Statutes, is amended to read:
2 6-111. Superintendent; appointment; term; qualifications;
3 salary

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

6 B. The superintendent in office on the effective date of this section
7 shall hold office until the expiration of his term. The term of the
8 superintendent first appointed after January 1, 1974 shall end January 17,
9 1977, and, thereafter the term of office of the superintendent shall be four
10 years and shall expire on the third Monday in January of the appropriate
11 year. The superintendent may be removed by the governor for cause.

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

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

20 Sec. 5. Section 6-122, Arizona Revised Statutes, is amended to read:
21 6-122. Superintendent; authority; duties; exemption

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

24 B. The superintendent shall:

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

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

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

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

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

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

4 7. Publish a consumer information brochure that includes:
5 (a) The finance charges permitted by this state.
6 (b) The types of insurance that may be offered but THAT are not
7 required by law to be purchased with the granting of a loan.
8 (c) Interest rate limitations on all lenders including amounts that
9 may not be charged to borrowers.
10 (d) Consumer rights and means of recourse from unfair practitioners.

11 8. Conduct a survey in January and July of each calendar year of each
12 escrow agent that is regulated by the department. The superintendent shall
13 compile the results of each survey and make those results available to the
14 public. The survey shall be in substantially the following format:
15 "Please rate the performance of the ~~state banking~~ department OF
16 FINANCIAL INSTITUTIONS as one of the following: excellent, very good, good,
17 fair, poor.
18 Please describe any problems that you believe should be addressed by
19 the department."

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

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

27 Sec. 6. Section 6-123.01, Arizona Revised Statutes, is amended to
28 read:
29 6-123.01. Fingerprint requirements; fees

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

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

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

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

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

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

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

22 6-131.01. Appointment of superintendent as receiver; award of
23 property, fees and costs

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

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

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

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

43 6-135. Department revolving fund; use of fund

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

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

3 B. Any investigative costs, ~~attorney's~~ ATTORNEY fees or civil
4 penalties recovered for the state by the attorney general or the
5 superintendent as a result of actions brought pursuant to this title, whether
6 by final judgment, settlement, ~~—~~ or otherwise, shall be deposited in the
7 ~~banking~~ department revolving fund. If the unencumbered portion of the fund
8 exceeds fifty thousand dollars at the end of the fiscal year, all
9 unencumbered monies in excess of fifty thousand dollars shall be deposited in
10 the ~~banking~~ department receivership revolving fund, pursuant to section
11 6-135.01.

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

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

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

23 6-135.01. Department receivership revolving fund; use of fund

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

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

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

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

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

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

39 6-407. Applicants and initial capital

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

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

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

18 Sec. 11. Section 6-474, Arizona Revised Statutes, is amended to read:
 19 6-474. Accounting practices and records

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

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

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

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

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

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

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

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

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

8 Sec. 12. Section 6-851, Arizona Revised Statutes, is amended to read:
9 6-851. Definitions

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

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

12 ~~2.~~ 1. "Trust business" means the holding out by a person to the
13 public at large by advertising, solicitation or other means that such person
14 is available to act as a fiduciary in this state and accepting and
15 undertaking to perform the duties as such fiduciary in the regular course of
16 his business.

17 ~~3.~~ 2. "Trust company" means a corporation holding a certificate
18 issued under this article.

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

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

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

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

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

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

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

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

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

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

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

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

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

10 10-2258. Board of directors

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

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

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

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

30 10-2259. Method of incorporation

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

34 B. The articles of incorporation shall set forth:

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

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

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

42 4. The term of its existence.

43 5. The authorized capital stock of the corporation.

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

1 7. The names and addresses of eight temporary directors.

2 8. The name and address of the treasurer.

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

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

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

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

15 10-2260. Approval of articles of incorporation; incorporation

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

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

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

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

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

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

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

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

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

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

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

12 10-2261. Authorization to commence business

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

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

22 10-2265. Supervision and reports

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

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

36 13-2301. Definitions

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

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

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

43 3. "Debtor" means any person to whom an extension of credit is made or
44 any person who guarantees the repayment of an extension of credit, or in any

1 manner undertakes to indemnify the creditor against loss resulting from the
2 failure of any person to whom an extension is made to repay the extension.

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

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

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

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

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

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

22 2. "Stolen property" means property of another as defined in section
23 13-1801 that has been the subject of any unlawful taking.

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

29 C. For the purposes of this chapter:

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

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

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

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

- 1 3. "Communication service provider" has the same meaning prescribed in
2 section 13-3001.
- 3 4. "Criminal syndicate" means any combination of persons or
4 enterprises engaging, or having the purpose of engaging, on a continuing
5 basis in conduct that violates any one or more provisions of any felony
6 statute of this state.
- 7 5. "Explosive agent" means an explosive as defined in section 13-3101
8 and flammable fuels or fire accelerants in amounts over fifty gallons but
9 excludes:
- 10 (a) Fireworks as defined in section 36-1601.
11 (b) Firearms.
12 (c) A propellant actuated device or propellant actuated industrial
13 tool.
14 (d) A device that is commercially manufactured primarily for the
15 purpose of illumination.
16 (e) A rocket having a propellant charge of less than four ounces.
- 17 6. "Material support or resources" includes money or other financial
18 securities, financial services, lodging, sustenance, training, safehouses,
19 false documentation or identification, communications equipment, facilities,
20 weapons, lethal substances, explosives, personnel, transportation, disguises
21 and other physical assets but does not include medical assistance, legal
22 assistance or religious materials.
- 23 7. "Public establishment" means a structure that is owned, leased or
24 operated by this state or a political subdivision of this state or a health
25 care institution as defined in section 36-401.
- 26 8. "Terrorism" means any felony, including any completed or
27 preparatory offense, that involves the use of a deadly weapon or a weapon of
28 mass destruction or the intentional or knowing infliction of serious physical
29 injury with the intent to either:
- 30 (a) Influence the policy or affect the conduct of this state or any of
31 the political subdivisions, agencies or instrumentalities of this state.
32 (b) Cause substantial damage to or substantial interruption of public
33 communications, communication service providers, public transportation,
34 common carriers, public utilities, public establishments or other public
35 services.
- 36 9. "Toxin" means the toxic material of plants, animals,
37 microorganisms, viruses, fungi or infectious substances or a recombinant
38 molecule, whatever its origin or method of reproduction, including:
- 39 (a) Any poisonous substance or biological product that may be
40 engineered through biotechnology and that is produced by a living organism.
41 (b) Any poisonous isomer or biological product, homolog or derivative
42 of such substance.
- 43 10. "Vector" means a living organism or molecule, including a
44 recombinant molecule or biological product that may be engineered through

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

3 11. "Weapon of mass destruction" means:

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

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

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

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

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

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

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

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

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

42 (i) Homicide.

43 (ii) Robbery.

44 (iii) Kidnapping.

45 (iv) Forgery.

- 1 (v) Theft.
- 2 (vi) Bribery.
- 3 (vii) Gambling.
- 4 (viii) Usury.
- 5 (ix) Extortion.
- 6 (x) Extortionate extensions of credit.
- 7 (xi) Prohibited drugs, marijuana or other prohibited chemicals or
- 8 substances.
- 9 (xii) Trafficking in explosives, weapons or stolen property.
- 10 (xiii) Participating in a criminal syndicate.
- 11 (xiv) Obstructing or hindering criminal investigations or
- 12 prosecutions.
- 13 (xv) Asserting false claims including, but not limited to, false
- 14 claims asserted through fraud or arson.
- 15 (xvi) Intentional or reckless false statements or publications
- 16 concerning land for sale or lease or sale of subdivided lands or sale and
- 17 mortgaging of unsubdivided lands.
- 18 (xvii) Resale of realty with intent to defraud.
- 19 (xviii) Intentional or reckless fraud in the purchase or sale of
- 20 securities.
- 21 (xix) Intentional or reckless sale of unregistered securities or real
- 22 property securities.
- 23 (xx) A scheme or artifice to defraud.
- 24 (xxi) Obscenity.
- 25 (xxii) Sexual exploitation of a minor.
- 26 (xxiii) Prostitution.
- 27 (xxiv) Restraint of trade or commerce in violation of section 34-252.
- 28 (xxv) Terrorism.
- 29 (xxvi) Money laundering.
- 30 (xxvii) Obscene or indecent telephone communications to minors for
- 31 commercial purposes.
- 32 (xxviii) Counterfeiting marks as proscribed in section 44-1453.
- 33 5. "Records" means any book, paper, writing, computer program, data,
- 34 image or information that is collected, recorded, preserved or maintained in
- 35 any form of storage medium.
- 36 6. "Remedy racketeering" means to enter a civil judgment pursuant to
- 37 this chapter or chapter 39 of this title against property or a person who is
- 38 subject to liability, including liability for injury to the state that is
- 39 caused by racketeering or by actions in concert with racketeering.
- 40 E. For the purposes of sections 13-2316, 13-2316.01 and 13-2316.02:
- 41 1. "Access" means to instruct, communicate with, store data in,
- 42 retrieve data from or otherwise make use of any resources of a computer,
- 43 computer system or network.
- 44 2. "Access device" means any card, token, code, account number,
- 45 electronic serial number, mobile or personal identification number, password,

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

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

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

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

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

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

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

- 35 (a) Medical personnel and institutions.
- 36 (b) Emergency services agencies.
- 37 (c) Public and private utilities, including water, power,
38 communications and transportation services.
- 39 (d) Fire departments, districts or volunteer organizations.
- 40 (e) Law enforcement agencies.
- 41 (f) Financial institutions.
- 42 (g) Public educational institutions.
- 43 (h) Government agencies.

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

1 10. "Financial instrument" means any check, draft, money order,
2 certificate of deposit, letter of credit, bill of exchange, credit card or
3 marketable security or any other written instrument as defined in section
4 13-2001 that is transferable for value.

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

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

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

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

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

21 14-3603. Bond required; exceptions

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

23 1. The will expressly waives the bond.

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

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

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

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

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

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

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

12 14-5411. Bond; exception

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

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

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

35 14-10702. Trustee's bond

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

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

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

- 45 1. A national banking association.

- 1 2. A holder of a banking permit under the laws of this state.
- 2 3. A savings and loan association authorized to conduct trust business
- 3 in this state.
- 4 4. A title insurance company qualified to do business under the laws
- 5 of this state.
- 6 5. A trust company holding a certificate to engage in trust business
- 7 from the ~~state~~ superintendent of ~~banks~~ FINANCIAL INSTITUTIONS.
- 8 6. The public fiduciary.

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

11 20-1593. Joint examination; department of financial
12 institutions; powers and duties

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

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

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

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

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

30 23-1361. Blacklist; definition; exceptions; privileged
31 communications; immunity

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

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

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

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

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

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

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

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

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

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

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

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

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

17 25-519. Regulatory entities; suspension of license

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

- 19 1. All boards established under title 32.
- 20 2. The superintendent of ~~banks~~ FINANCIAL INSTITUTIONS.
- 21 3. The registrar of contractors.
- 22 4. The department of public safety.
- 23 5. Boards and agencies that provide occupational, recreational and
24 professional licenses or certificates pursuant to titles 3, 4, 5, 6, 8, 15,
25 17, 20, 36 and 41 and title 28, chapter 8.

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

27 28-450. Release of information prohibited; classification;
28 definition

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

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

- 33 (a) The name of the owner.
- 34 (b) The vehicle identification number of the vehicle.
- 35 (c) The vehicle license plate number assigned to the vehicle.

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

- 39 (a) The name of the licensee or the name of the person whose record is
40 requested.
- 41 (b) The driver license number of the licensee, a statement that the
42 person whose record is requested has not applied for a license or a statement
43 that the license has been suspended or revoked.
- 44 (c) The date of birth of the licensee or the expiration date of the
45 driver license of the licensee.

- 1 B. Subsection A of this section does not apply to:
- 2 1. A licensed private investigator.
- 3 2. A financial institution or enterprise under the jurisdiction of the
- 4 ~~state banking~~ department OF FINANCIAL INSTITUTIONS or a federal monetary
- 5 authority.
- 6 3. A federal, state or local governmental agency, including any court,
- 7 law enforcement agency or political subdivision, that is carrying out its
- 8 functions or any private person or entity that is acting on behalf of the
- 9 governmental agency and that is carrying out the person's or entity's
- 10 functions.
- 11 4. An attorney who is admitted to practice in this state and who
- 12 alleges that the information is relevant to a pending or potential court
- 13 proceeding.
- 14 5. A motor vehicle dealer who is licensed and bonded by the department
- 15 or a state organization of licensed and bonded motor vehicle dealers.
- 16 6. The release of any of the following information to a person who is
- 17 involved in an accident or to the owner of a vehicle involved in an accident
- 18 if the person who requests the information submits proof to the department of
- 19 involvement in the accident:
- 20 (a) The driving record of a person who operates a motor vehicle
- 21 involved in the accident.
- 22 (b) The vehicle title or registration record of a vehicle involved in
- 23 the accident.
- 24 7. The release of the driving record or title and registration record
- 25 if that record is for the requester's vehicle or is the requester's own
- 26 driving record, except that the director may require any information from the
- 27 requester that is deemed necessary to ensure that the requester is entitled
- 28 to receive the record.
- 29 8. An insurer that writes automobile liability or motor vehicle
- 30 liability policies and that is under the jurisdiction of the department of
- 31 insurance, except that an insurer or its authorized agent requesting
- 32 information pursuant to subsection A of this section shall provide two of the
- 33 three requirements under subsection A, paragraph 1 or 2 of this section
- 34 before the department divulges or releases the information.
- 35 9. The release of a title and registration record if all of the
- 36 following conditions exist:
- 37 (a) The requester verifies to the satisfaction of the director that
- 38 the vehicle on which the requester is requesting the record is in the
- 39 requester's possession.
- 40 (b) The record is requested in order for the requester to notify the
- 41 registered owner of the requester's intent to apply to the department for a
- 42 bonded title.
- 43 (c) The requester provides a verification of a vehicle inspection that
- 44 was performed by an authorized department employee or agent.

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

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

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

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

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

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

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

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

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

29 3. Violates subsection C of this section.

30 F. For the purposes of this section, "authorized agent" means a third
31 party retained by an insurer for the purpose of requesting department
32 information pursuant to subsection A of this section and subsection B,
33 paragraph 8 of this section but does not include an insurance producer as
34 defined in section 20-281 or a managing general agent as defined in section
35 20-311.

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

38 28-4301. Definitions

39 In this chapter, unless the context otherwise requires:

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

- 1 that lies closer to that dealer than to other dealers of the same
2 line-make.
- 3 2. "Automotive recycler" means a person who is engaged in the business
4 of buying or acquiring a motor vehicle solely for the purpose of dismantling,
5 selling or otherwise disposing of the parts or accessories and who dismantles
6 six or more vehicles in a calendar year.
- 7 3. "Branch license" means a license that is issued by the director to
8 a licensed motor vehicle dealer and that permits the licensee to sell motor
9 vehicles from an established place of business within the same county but
10 other than the original or principal place of business for which the license
11 was issued.
- 12 4. "Broker" means a person who for any fee, commission or other
13 valuable consideration offers to provide, provides or represents that the
14 person will provide a service of arranging or assisting in effecting the
15 purchase of a motor vehicle and who is not:
- 16 (a) A new motor vehicle dealer or an employee or agent of a new motor
17 vehicle dealer.
- 18 (b) A used motor vehicle dealer or an employee or agent of a used
19 motor vehicle dealer.
- 20 (c) A manufacturer or employee or agent of a manufacturer.
- 21 (d) An auctioneer or engaged in the auto auction business.
- 22 (e) A wholesale motor vehicle dealer.
- 23 5. "Community" means the relevant market area. For the purposes of
24 this paragraph, "relevant market area" means the incorporated city or town in
25 which the franchise is located.
- 26 6. "Distributor" means a person who either:
- 27 (a) Sells or distributes new motor vehicles to new motor vehicle
28 dealers in this state.
- 29 (b) Maintains distributor representatives in this state.
- 30 7. "Distributor branch" means a branch office maintained or availed of
31 by a distributor for either:
- 32 (a) The sale of new motor vehicles to new motor vehicle dealers in
33 this state.
- 34 (b) Directing or supervising its representatives in this state.
- 35 8. "Established place of business":
- 36 (a) Means a permanent enclosed building or structure that is owned
37 either in fee or leased with sufficient space to display two or more motor
38 vehicles of a kind and type that the dealer is licensed to sell and that is
39 devoted principally to the use of a motor vehicle dealer in the conduct of
40 the business of the dealer.
- 41 (b) In the case of a used motor vehicle dealer, trailer dealer or
42 semitrailer dealer:
- 43 (i) Need not be a permanent building or structure or part of a
44 permanent building or structure.
- 45 (ii) May be a vacant lot or part of a vacant lot.

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

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

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

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

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

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

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

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

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

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

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

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

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

35 13. "Franchisee" means a person who both:

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

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

39 14. "Franchisor" means a person who both:

40 (a) Manufactures or distributes new motor vehicles.

41 (b) May enter into a franchise.

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

- 1 16. "Lead" means any retail consumer who satisfies all of the
2 following:
- 3 (a) Responds to a factory-directed program that obtains consumer
4 contact information and that provides such information to one or more
5 dealers.
- 6 (b) Expresses an interest to the factory in purchasing, leasing or
7 acquiring any vehicle or product, service or financing available from the
8 dealers of that factory.
- 9 (c) Does not qualify for any reasonable factory sponsored employee,
10 retiree or vendor new vehicle purchase program or any other reasonable
11 similar factory new vehicle purchase program.
- 12 17. "Line-make" means those motor vehicles that are offered for sale,
13 lease or distribution under a common name, trademark, service mark or brand
14 name of the manufacturer of those same motor vehicles.
- 15 18. "Major component part" includes a motor vehicle or vehicle part
16 that the manufacturer has assigned any factory, motor, serial or other
17 identification number or mark.
- 18 19. "Manufacturer" means any person who either:
- 19 (a) Manufactures or assembles new motor vehicles.
- 20 (b) Manufactures or installs on previously assembled truck chassis
21 special bodies or equipment that when installed forms an integral part of the
22 new motor vehicle and that constitutes a major manufacturing alteration,
23 excluding the installation of a camper on a pickup truck.
- 24 20. "Motor home" means a motor vehicle that is primarily designed as
25 temporary living quarters and that:
- 26 (a) Is built onto as an integral part of, or is permanently attached
27 to, a motor vehicle chassis.
- 28 (b) Contains at least four of the following independent life support
29 systems if each is permanently installed and designed to be removed only for
30 purposes of repair or replacement:
- 31 (i) A cooking facility with an on board fuel source.
- 32 (ii) A gas or electric refrigerator.
- 33 (iii) A toilet with exterior evacuation.
- 34 (iv) A heating or air conditioning system with an on board power or
35 fuel source separate from the vehicle engine.
- 36 (v) A potable water supply system that includes at least a sink, a
37 faucet and a water tank with an exterior service supply connection.
- 38 (vi) A 110-125 volt electric power supply.
- 39 21. "Motor vehicle" means an automobile, motor bus, motorcycle, truck
40 or truck tractor or any other self-propelled vehicle, trailer or semitrailer.
- 41 22. "Motor vehicle dealer" means a new motor vehicle dealer, a used
42 motor vehicle dealer, a broker or a wholesale motor vehicle auction dealer,
43 excluding a person who comes into possession of a motor vehicle as an
44 incident to the person's regular business and who sells or exchanges the
45 motor vehicle.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 28-5104. Bond requirement

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

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

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

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

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

7 2. Insolvency or discontinuance of business.

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

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

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

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

15 2. An Arizona court.

16 3. An Arizona law enforcement agency or department.

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

20 5. The federal government or any of its agencies.

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

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

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

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

28 10. A public utility.

29 11. A tribal government.

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

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

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

36 28-5105. Criminal records check; provisional authorization or
37 certification

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

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

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

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

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

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

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

16 4. Violated a rule or policy of the department.

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

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

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

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

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

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

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

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

- 8 1. A department, agency or political subdivision of this state.
- 9 2. An Arizona court.
- 10 3. An Arizona law enforcement agency or department.
- 11 4. A financial institution or enterprise under the jurisdiction of the
12 ~~state banking~~ department OF FINANCIAL INSTITUTIONS or a federal monetary
13 authority.
- 14 5. The federal government or any of its agencies.
- 15 6. A motor vehicle dealer that is licensed and bonded by the
16 department of transportation or a state organization of licensed and bonded
17 motor vehicle dealers.
- 18 7. A manufacturer, importer, factory branch or distributor licensed by
19 the department of transportation.
- 20 8. An insurer under the jurisdiction of the department of insurance.
- 21 9. An owner or registrant of a fleet of one hundred or more vehicles.
- 22 10. A public utility.
- 23 11. A tribal government.
- 24 12. A title service company that is bonded by the department of
25 transportation.
- 26 13. An employer or association that has at least five hundred employees
27 or members.

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

30 32-1001. Definitions

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

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

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

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

- 1 (i) The final payment has not been tendered to the seller or assignor.
- 2 (ii) Title has not yet passed.
- 3 (iii) The purchaser or assignee has a right of recourse against the
- 4 seller or assignor.

5 2. "Collection agency" means:

6 (a) All persons engaged directly or indirectly in soliciting claims

7 for collection or in collection of claims owed, due or asserted to be owed or

8 due.

9 (b) Any person who, in the process of collecting debts occurring in

10 the operation of his own business, uses any name other than his own which

11 would indicate that a third person is collecting or attempting to collect

12 such debts.

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

14 INSTITUTIONS.

15 4. "Financial institution" means a person who does business under any

16 other law of this state or law of another state or the United States relating

17 to banks, trust companies, savings and loan associations, credit unions and

18 savings banks.

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

20 corporation.

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

22 INSTITUTIONS.

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

24 read:

25 32-1391.01. Powers and duties of board

26 A. The board shall adopt rules that:

27 1. Describe or define deceptive, misleading or professionally

28 negligent practices concerning the offer or sale of prearranged funeral

29 agreements funded by trust and the handling of these funds or accounts.

30 2. Implement and interpret consumer disclosure requirements of this

31 article to provide adequate information to purchasers of prearranged

32 funerals.

33 3. Prescribe funeral establishment record keeping requirements

34 concerning prearranged funeral trust sales and trust accounts and the

35 handling and disposition of trust funds.

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

37 article.

38 B. The board shall enter into an intergovernmental agreement with the

39 ~~state banking~~ department OF FINANCIAL INSTITUTIONS to examine and report on

40 prearranged funeral trust accounts of funeral establishments and to review

41 prearranged funeral trust sales and trust account forms and procedures used

42 by funeral establishments.

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

3 32-1391.03. Department of financial institutions powers and
4 duties; prearranged funeral trust accounts

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

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

10 2. The location and status of all monies received.

11 3. The total amount in trust accounts.

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

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

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

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

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

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

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

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

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

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

41 32-1391.04. Prearranged funeral trust accounts; books and
42 records; inspection and examination

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

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

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

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

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

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

16 32-1391.05. Prearranged funeral agreements funded by trusts

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

31 B. Except as provided in this article:

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

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

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

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

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

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

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

9 32-1391.16. Annual trust report

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

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

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

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

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

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

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

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

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

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

42 8. Other information required by the board.

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

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

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

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

10 ~~35-311.~~ State board of investment; membership; powers and
11 duties

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

22 B. The state board of investment shall:

23 1. Hold regular monthly meetings.

24 2. Review investments of treasury monies.

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

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

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

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

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

2 35-321. **Definitions**

3 In this article, unless the context otherwise requires:

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

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

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

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

20 5. "Eligible depository" means any:

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

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

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

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

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

38 9. "Public monies" includes subdivision monies.

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

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

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

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

5 ~~14.~~ 13. "Treasurer" includes the treasurer or officer exercising the
6 functions of treasurer of any subdivision but excludes the state treasurer.

7 ~~15.~~ 14. "Trust funds" means those monies entrusted to a public body or
8 official for preservation and investment, as prescribed by the instrument
9 establishing such funds.

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

11 35-323. Investing public monies; bidding; security and other
12 requirements

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

16 1. Certificates of deposit in eligible depositories.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 2. Securities or instruments of the following character:

16 (a) United States government or agency obligations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 N. The following restrictions on investments are applicable:

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

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

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

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

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

10 38-871. Annuity and deferred compensation governing committee;
11 members; powers and duties

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

- 15 1. Three employees of the state appointed by the governor.
- 16 2. The director of the department of administration or the director's
17 designee.
- 18 3. The superintendent of ~~the state banking department~~ FINANCIAL
19 INSTITUTIONS or the superintendent's designee.
- 20 4. The director of insurance or the director's designee.
- 21 5. The director of the Arizona state retirement system or the
22 director's designee.

23 B. The governing committee may:

- 24 1. Investigate and approve tax deferred compensation and annuity
25 programs which give employees of the state income tax benefits authorized by
26 title 26, United States Code Annotated.
- 27 2. In carrying out the purposes of this article, enter into agreements
28 with life insurance companies authorized to do business in this state and
29 with bank trustees or custodians and investment counseling firms registered
30 with the securities exchange commission.

31 C. The governing committee shall:

- 32 1. Arrange for consolidated billing and efficient administrative
33 services in order that any such plans approved shall operate without cost or
34 contribution from the state except for the incidental expense of
35 administering the payroll salary deduction or reduction and remittance
36 thereof to the trustee or custodian of the plan or plans.
- 37 2. Meet monthly or more frequently as the chairman of the committee
38 deems necessary.
- 39 3. Arrange for an annual financial audit of the programs and a
40 performance audit of the programs at least once every three years.
- 41 4. Adopt rules governing the solicitation of employees by persons
42 offering tax deferred compensation or annuity plans to such employees.

1 (iv) Power shovels.

2 (v) Road machinery.

3 (vi) Agricultural machinery.

4 7. "Person" means an individual, partnership, association, trust,
5 corporation, or other legal entity.

6 8. "Retail buyer" or "buyer" means a person who buys a motor vehicle
7 from a retail seller, not for the purpose of resale, and who executes a
8 retail installment contract in connection therewith.

9 9. "Retail installment contract" or "contract":

10 (a) Means an agreement, entered into in this state, pursuant to which
11 the title to or a lien upon the motor vehicle, which is the subject matter of
12 a retail installment transaction, is retained or taken by a retail seller
13 from a retail buyer as security for the buyer's obligation.

14 (b) Includes:

15 (i) A conditional sales contract and a contract for the bailment or
16 leasing of a motor vehicle by which the bailee or lessee contracts to pay as
17 compensation for its use a sum substantially equivalent to or in excess of
18 its value and by which it is agreed that the bailee or lessee is bound to
19 become, or has the option of becoming, the owner of the motor vehicle for no
20 other or a nominal consideration upon full compliance with the provisions of
21 the contract.

22 (ii) A secondary motor vehicle finance transaction.

23 10. "Retail installment transaction" means any transaction evidenced by
24 a retail installment contract entered into between a retail buyer and a
25 retail seller wherein the retail buyer buys a motor vehicle from the retail
26 seller at a cost payable in one or more deferred installments. The cash sale
27 price of the motor vehicle, the amount included for insurance if a separate
28 charge is made and the finance charge shall together constitute the cost of
29 the motor vehicle.

30 11. "Retail seller" or "seller" means a person who sells a motor
31 vehicle to a retail buyer for purposes other than resale under or subject to
32 a retail installment contract. For the purposes of paragraph 13 of this
33 section "seller" means a person who sells and retains the use of the motor
34 vehicle.

35 12. "Sales finance company":

36 (a) Means a person engaged, in whole or in part, in the business of
37 purchasing retail installment contracts from one or more retail sellers.

38 (b) Includes a person engaged, in whole or in part, in the business of
39 creating or holding retail installment contracts that exceed a total
40 aggregate outstanding indebtedness of twenty-five thousand dollars.

41 (c) Does not include the pledgee of an aggregate number of retail
42 installment contracts to secure a bona fide loan thereon.

43 13. "Secondary motor vehicle finance transaction":

44 (a) Means any contract that includes provisions for either:

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

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

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

10 (c) Does not include any commercial transaction as defined in section
11 44-291.

12 Sec. 41. Section 44-287, Arizona Revised Statutes, is amended to read:
13 44-287. Contents of contract

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

18 B. The contract shall contain the following items:

19 1. The cash sale price of the motor vehicle.

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

22 3. The difference between paragraphs 1 and 2.

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

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

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

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

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

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

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

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

9 44-1601. Definitions

10 In this article, unless the context otherwise requires:

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

14 (a) Investment brokerage houses.

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

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

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

21 (a) Execute orders for investment items.

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

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

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

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

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

33 6. "Precious item" means:

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

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

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

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

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

1 Sec. 43. Section 44-3101, Arizona Revised Statutes, is amended to
2 read:

3 44-3101. Definitions

4 In this chapter, unless the context otherwise requires:

5 1. "Closed-end company" means any management company other than an
6 open-end company or unit investment trust.

7 2. "Depository institution" means a bank, savings and loan association
8 or trust company whose business is supervised and regulated by an agency of
9 this state or the United States, or an employee, as defined in title 10,
10 chapter 1, of any such bank, savings and loan association or trust company
11 while acting within the scope of the employee's employment.

12 3. "Federal covered adviser" means an investment adviser registered
13 under the investment advisers act of 1940.

14 4. "IARD" means the investment adviser registration depository
15 operated by the national association of securities dealers.

16 5. "Investment adviser" means any person who, for compensation,
17 engages in the business of advising others, either directly or through
18 publications or writings, as to the value of securities or as to the
19 advisability of investing in, purchasing or selling securities or who, for
20 compensation and as a part of a regular business, issues or promulgates
21 analyses or reports concerning securities. Investment adviser includes
22 financial planners and other persons who, as an integral component of other
23 financially related services, provide the foregoing investment advisory
24 services to others for compensation and as part of a business or who hold
25 themselves out as providing the foregoing investment advisory services to
26 others for compensation. Investment adviser does not include:

27 (a) An investment adviser representative.

28 (b) A depository institution.

29 (c) A lawyer, law firm, certified public accountant or accounting firm
30 whose performance of the investment advisory services is solely incidental to
31 the practice of the person's profession or who does not do any of the
32 following:

33 (i) Exercise investment discretion with respect to the assets of
34 clients or maintain custody of the assets of clients for the purpose of
35 investing the assets, except if the person is acting in a bona fide fiduciary
36 capacity such as an executor, trustee, personal representative, estate or
37 trust agent, guardian or conservator.

38 (ii) Accept or receive directly or indirectly any commission, fee or
39 other remuneration contingent on the purchase or sale of any specific
40 security by a client of the person.

41 (iii) Give advice on the purchase or sale of specific securities other
42 than advice about specific securities that is based on financial statement
43 analysis or tax considerations that are reasonably related to and in
44 connection with the person's profession.

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

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

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

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

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

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

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

35 (b) Manages accounts or portfolios of clients.

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

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

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

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

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

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

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

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

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

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

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

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

31 46-138.01. Public assistance and administration revolving fund

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

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

38 2. Refunds for federal food stamp coupons.

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

41 4. Reimbursements for federal food stamp job search clients.

42 5. Immediate outlays for postage, C.O.D. packages, supplies, travel or
43 other miscellaneous and minor items. No check shall be drawn against the fund
44 unless state or federal funds are available at the time for reimbursing the
45 fund as provided for in subsection C.

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

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

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

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

19 46-300.03. Individual development accounts; definition

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

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

- 25 1. The individual account holder.
- 26 2. A member of the individual account holder's assistance unit.
- 27 3. A nonprofit organization.
- 28 4. Individual contributors.

29 C. The department shall:

- 30 1. Adopt rules regarding:

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

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

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

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

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

44 4. Not approve an individual development account for any recipient who
45 has been found by either the department or a court of law to have committed

1 any act of fraud or abuse with respect to any cash or in-kind benefit program
2 including aid to families with dependent children, food stamps or medicaid.

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

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

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

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

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

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

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

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

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

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

44 I. Subject to the limitations prescribed in this section, deposits
45 made into an individual development account and the account balance,

1 including interest earned, shall be disregarded by the department in
2 determining the account holder's and the assistance unit's eligibility for
3 the cash assistance and food stamp programs as well as any other assistance
4 or services in which eligibility for receipt is directly linked to
5 eligibility for cash assistance and food stamp programs. If an assistance
6 unit with an individual development account experiences any break in
7 eligibility for cash assistance, and then subsequently reapplies for either
8 cash assistance or food stamp program benefits, the department shall consider
9 any remaining account monies, unless otherwise excludable, as countable
10 assets and shall not disregard, for purposes of eligibility in either
11 program, future deposits into an individual development account.

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

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

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

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

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

36 48-101. State certification board

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

40 B. The board shall elect one of its members chairman, and appoint a
41 secretary who shall keep the records and minutes of the board. One or more
42 members of the board shall from time to time, as may be required, designate
43 from his or their regularly employed personnel the secretary and such clerks
44 and assistants as are necessary to perform the duties of the board but
45 without extra compensation.

