

REFERENCE TITLE: legal tender; escrow agents

State of Arizona  
Senate  
Fifty-first Legislature  
Second Regular Session  
2014

## **SB 1096**

Introduced by  
Senator Crandell; Representatives Barton, Borrelli, Kwasman, Livingston,  
Seel, Thorpe, Townsend; Senator Ward; Representatives Farnsworth E,  
Mitchell

AN ACT

AMENDING TITLE 1, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 7; AMENDING SECTIONS 6-801 AND 6-834, ARIZONA REVISED STATUTES; AMENDING TITLE 6, CHAPTER 7, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 5; AMENDING TITLE 42, CHAPTER 5, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 42-5041; RELATING TO LEGAL TENDER.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Title 1, Arizona Revised Statutes, is amended by adding  
3 chapter 7, to read:

4 CHAPTER 7  
5 LEGAL TENDER

6 ARTICLE 1. GENERAL PROVISIONS

7 1-701. Definitions

8 IN THE STATUTES AND LAWS OF THIS STATE, UNLESS THE CONTEXT OTHERWISE  
9 REQUIRES:

10 1. "LEGAL TENDER" MEANS AN AUTHORIZED MEDIUM OF EXCHANGE FOR THE  
11 PAYMENT OF DEBTS AND TAXES.

12 2. "SPECIE" MEANS COIN OR BULLION HAVING GOLD OR SILVER CONTENT.

13 1-702. Legal tender recognition; use of specie

14 A. LEGAL TENDER IN THIS STATE CONSISTS OF ALL OF THE FOLLOWING:

15 1. LEGAL TENDER AUTHORIZED BY CONGRESS.

16 2. SPECIE COIN ISSUED AT ANY TIME BY THE UNITED STATES GOVERNMENT.

17 3. ANY OTHER SPECIE THAT A COURT OF COMPETENT JURISDICTION RULES BY A  
18 FINAL, UNAPPEALABLE ORDER TO BE WITHIN THE SCOPE OF STATE AUTHORITY TO MAKE A  
19 LEGAL TENDER.

20 B. EXCEPT AS EXPRESSLY PROVIDED BY CONTRACT, A PERSON MAY NOT COMPEL  
21 ANY OTHER PERSON TO TENDER OR ACCEPT SPECIE LEGAL TENDER.

22 1-703. Legal tender exchanges; payment of taxes

23 A. NOTWITHSTANDING ANY OTHER LAW, THE EXCHANGE OF ONE FORM OF LEGAL  
24 TENDER FOR ANOTHER DOES NOT GIVE RISE TO LIABILITY FOR ANY TYPE OF TAX.

25 B. LEGAL TENDER IS MONEY AND IS NOT SUBJECT TO TAXATION OR REGULATION  
26 AS PROPERTY OTHER THAN MONEY.

27 1-704. Enforcement

28 THE ATTORNEY GENERAL SHALL ENFORCE THIS CHAPTER WITHOUT PREJUDICE TO AN  
29 INDIVIDUAL'S RIGHT OF JUDICIAL ACTION PURSUANT TO THIS CHAPTER.

30 Sec. 2. Section 6-801, Arizona Revised Statutes, is amended to read:

31 6-801. Definitions

32 In this chapter, unless the context otherwise requires:

33 1. "Account servicing" means the holding of documents or written  
34 instruments and the receipt and disbursement of payments according to the  
35 instructions of the parties to the documents or written instruments.

36 2. "Affiliate" means an entity that directly or indirectly, through  
37 one or more intermediaries, controls, is controlled by or is under common  
38 control with the entity specified.

39 3. "Control" means ownership or the power to vote, either directly or  
40 indirectly, more than twenty per cent of the outstanding voting shares of the  
41 controlled person.

42 4. "Escrow" means any transaction in which any escrow property is  
43 delivered with or without transfer of legal or equitable title, or both, and  
44 irrespective of whether a debtor-creditor relationship is created, to a  
45 person not otherwise having any right, title or interest therein in  
46 connection with the sale, transfer, encumbrance or lease of real or personal

1 property, to be **CONVERTED, EXCHANGED**, delivered or redelivered by that person  
2 upon the contingent happening or nonhappening of a specified event or  
3 performance or nonperformance of a prescribed act, when it is then to be  
4 delivered by such person to a grantee, grantor, promisee, promisor, obligee,  
5 obligor, bailee or bailor, or any designated agent or employee of any of  
6 them. Escrow includes subdivision trusts and account servicing.

7 5. "Escrow agent" means any person engaged in the business of  
8 accepting escrows.

9 6. "Escrow business" means a commercial activity characterized by the  
10 regular and continuous carrying on of escrow transactions.

11 7. "Escrow property" means property, money, a written instrument or  
12 evidence of title or possession to real or personal property or any other  
13 thing of value.

14 8. "License" means a license issued pursuant to this chapter.

15 9. "Licensee" means a person licensed pursuant to this chapter.

16 10. "Subdivision trust" means an agreement in which title to real  
17 property or an interest therein is held for the limited purpose of holding,  
18 subdividing, developing or selling real property or an interest therein, or  
19 to facilitate any business transaction with respect thereto and under which  
20 agreement the trustee acts pursuant to direction of its beneficiaries, and  
21 without discretionary powers, with respect to the holding, subdivision,  
22 development or sale of real estate or an interest therein or the disposition  
23 of the proceeds therefrom. Subdivision trusts are, for the purpose of  
24 regulation under this chapter, escrows, except that this paragraph ~~shall~~ **DOES**  
25 ~~not be construed to~~ limit the obligation or liability of trustees of  
26 subdivision trusts under common law or otherwise.

27 Sec. 3. Section 6-834, Arizona Revised Statutes, is amended to read:

28 **6-834. Deposit of monies: definition**

29 A. Unless all of the parties to the escrow otherwise instruct the  
30 escrow agent in writing **AND EXCEPT AS PROVIDED IN SECTION 6-847.03**, the  
31 escrow agent shall deposit and maintain all monies deposited in escrow to be  
32 delivered on the close of the escrow or on any other contingency in a bank,  
33 savings bank or savings and loan association doing business in this state and  
34 the escrow agent shall keep all of the escrow monies separate, distinct and  
35 apart from monies belonging to the escrow agent. Notwithstanding the  
36 parties' instructions to the escrow agent, the escrow agent shall not deposit  
37 the escrow monies in an institution outside the United States. When  
38 deposited, the monies shall be designated as "escrow accounts" or given some  
39 other appropriate designation indicating that the monies are not the monies  
40 of the escrow agent. These monies shall be deposited immediately on receipt  
41 or as soon thereafter as is reasonably practicable.

42 B. A person shall not knowingly keep or cause to be kept any monies in  
43 any bank or savings and loan association under the heading of "escrow  
44 accounts" or any other name designating the monies as belonging to the  
45 clients of any escrow agent, except actual escrow monies deposited with ~~such~~  
46 **THE** escrow agent.

1 C. Escrow property is not subject to execution or attachment on any  
2 claim against the escrow agent.

3 D. Not later than three business days after receipt of any escrow  
4 monies, the escrow agent shall provide to each depositing buyer or seller,  
5 adequate notice of his right to earn interest on all deposited monies. The  
6 notice shall accurately set forth the following information with respect to  
7 this right:

8 1. A brief description of the depositor's right to earn interest on  
9 escrowed monies through an interest-bearing deposit account.

10 2. The dollar charge that may be imposed by the escrow agent solely to  
11 set up the interest-bearing account.

12 3. A good faith estimate of the amount of interest that may be earned  
13 during the life of the escrow account, or an example of a typical transaction  
14 calculated on a one thousand dollar deposit, using the prevailing savings  
15 account interest rate for a thirty day period.

16 4. A brief description of how the interest-bearing account can be  
17 established, including the name, address and telephone number of the escrow  
18 agent to be contacted.

19 E. An escrow agent shall not receive from any depository institution  
20 any interest earned or other benefit from monies deposited with an escrow  
21 agent in connection with any escrow. Nothing in this subsection prohibits  
22 the escrow agent from receiving accounting, data processing or other services  
23 directly related to the administration of escrow accounts.

24 F. For the purposes of this article, "adequate notice" means a printed  
25 notice to the depositing buyer or seller that sets forth the pertinent facts  
26 clearly and conspicuously. The notice shall be printed on the escrow  
27 instructions or on an independent document and given to the depositing  
28 customer in a manner reasonably assuring the customer's receipt of the  
29 notice.

30 Sec. 4. Title 6, chapter 7, Arizona Revised Statutes, is amended by  
31 adding article 5, to read:

32 ARTICLE 5. LEGAL TENDER SERVICES

33 6-847. Definitions

34 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

35 1. "GOLD CENT" MEANS SPECIE LEGAL TENDER THAT IS ONE ONE-HUNDREDTH OF  
36 A GOLD DOLLAR.

37 2. "GOLD DOLLAR" MEANS SPECIE LEGAL TENDER THAT IS ONE-FIFTIETH OF ONE  
38 TROY OUNCE OF FINE GOLD IN A UNITED STATES AMERICAN EAGLE COIN OR AMERICAN  
39 BUFFALO COIN THAT IS MINTED PURSUANT TO 31 UNITED STATES CODE SECTIONS  
40 5112(a)(7), (a)(8), (a)(10), (a)(11), (i)(1) AND (q).

41 3. "LEGAL TENDER CLASS" MEANS EACH OF THE FOLLOWING AS A SEPARATE  
42 CATEGORY OF LEGAL TENDER:

43 (a) PAPER DOLLAR AND PAPER CENT.

44 (b) PLATINUM DOLLAR AND PLATINUM CENT.

45 (c) GOLD DOLLAR AND GOLD CENT.

46 (d) SILVER DOLLAR AND SILVER CENT.

1 (e) OTHER SPECIE LEGAL TENDER IN WHICH THE PRO RATA PRECIOUS METAL  
2 CONTENT IS PROPORTIONAL TO THE DENOMINATION THAT IS USED IN THE CLASS.

3 4. "LEGAL TENDER ESCROW AGENT" MEANS AN ESCROW AGENT THAT IS LICENSED  
4 PURSUANT TO THIS CHAPTER THAT PROVIDES AUTHORIZED SERVICES AS PRESCRIBED IN  
5 SECTION 6-847.01.

6 5. "LEGAL TENDER EXCHANGE RATE" MEANS THE MOST RECENT PAPER DOLLAR  
7 LONDON FIXING PRICE FOR THE WEIGHT OF THE PRECIOUS METAL THAT IS CONTAINED IN  
8 ANY LEGAL TENDER CLASS OTHER THAN THE PAPER DOLLAR AND PAPER CENT CLASS.

9 6. "PAPER DOLLAR" MEANS A WHOLE OR FRACTIONAL PART OF A FEDERAL  
10 RESERVE NOTE THAT IS BASED ON THE DOLLAR DENOMINATION OF THE NOTE AS  
11 DESCRIBED IN 12 UNITED STATES CODE SECTION 418 OR THE NOTE'S ELECTRONIC  
12 EQUIVALENT THAT IS ISSUED THROUGH THE FEDERAL RESERVE BANKING SYSTEM AND THE  
13 BASE METAL COINAGE THAT IS ISSUED BY THE UNITED STATES GOVERNMENT.

14 7. "PLATINUM CENT" MEANS LEGAL TENDER THAT IS ONE ONE-HUNDREDTH OF A  
15 PLATINUM DOLLAR.

16 8. "PLATINUM DOLLAR" MEANS LEGAL TENDER THAT IS ONE-FIFTIETH OF ONE  
17 TROY OUNCE OF FINE PLATINUM IN A COIN THAT IS MINTED PURSUANT TO 31 UNITED  
18 STATES CODE SECTION 5112(k) AND THAT HAS A NOMINAL FACE VALUE OF ONE HUNDRED  
19 DOLLARS.

20 9. "SILVER CENT" MEANS SPECIE LEGAL TENDER THAT IS ONE ONE-HUNDREDTH  
21 OF A SILVER DOLLAR.

22 10. "SILVER DOLLAR" MEANS SPECIE LEGAL TENDER THAT IS A UNITED STATES  
23 AMERICAN LIBERTY COIN AND THAT HAS ONE TROY OUNCE OF FINE SILVER CONTENT AND  
24 A NOMINAL FACE VALUE OF ONE DOLLAR AS DESCRIBED IN 31 UNITED STATES CODE  
25 SECTION 5112(e).

26 6-847.01. Authorized services

27 AN ESCROW AGENT WHO IS LICENSED PURSUANT TO THIS CHAPTER MAY DO ANY OF  
28 THE FOLLOWING:

29 1. ACCEPT AND HOLD IN A FIDUCIARY CAPACITY LEGAL TENDER DEPOSITS,  
30 INCLUDING INDIVIDUAL RETIREMENT ACCOUNT DEPOSITS, AS PROVIDED IN 26 UNITED  
31 STATES CODE SECTION 408(a)(2), (m) AND (n).

32 2. PURSUANT TO THE ESCROW INSTRUCTIONS, DO EITHER OF THE FOLLOWING:

33 (a) EXCHANGE MONEY IN ONE LEGAL TENDER CLASS FOR MONEY IN ANOTHER  
34 LEGAL TENDER CLASS.

35 (b) PAY THE DEBTS, TAXES, PUBLIC CHARGES OR DUES OF A DEPOSITOR USING  
36 MONEY IN A LEGAL TENDER CLASS OTHER THAN THAT TENDERED INTO ESCROW BY THE  
37 DEPOSITOR.

38 6-847.02. Accounting

39 A. A LEGAL TENDER ESCROW AGENT SHALL:

40 1. KEEP BOOKS AND RECORDS BASED ON A UNIFORM SYSTEM OF ACCOUNTING FOR  
41 MONIES IN THE VARIOUS LEGAL TENDER CLASSES IN THE LEGAL TENDER ESCROW AGENT'S  
42 CUSTODY AND CONTROL THAT CONFORMS WITH GENERALLY ACCEPTED ACCOUNTING  
43 PRINCIPLES AND ANY RECORD KEEPING REQUIREMENTS PRESCRIBED BY THE DEPARTMENT.

44 2. WITH RESPECT TO EACH DEPOSITOR, MAINTAIN SEPARATE ACCOUNTS FOR  
45 DEPOSITS IN EACH LEGAL TENDER CLASS.

1 B. ACCOUNTS WITH DEPOSITS THAT ARE NEITHER GOLD DOLLAR AND GOLD CENT  
2 NOR SILVER DOLLAR AND SILVER CENT ARE VALUED IN GOLD DOLLARS AND GOLD CENTS  
3 OR SILVER DOLLARS AND SILVER CENTS ACCORDING TO THE FINE PRECIOUS METAL  
4 CONTENT OF THE SPECIE LEGAL TENDER THAT IS HELD IN THE ACCOUNT.

5 6-847.03. Vaulting and insurance

6 A LEGAL TENDER ESCROW AGENT SHALL PROVIDE:

7 1. FOR THE MAINTENANCE OF ALL PAPER DOLLAR AND PAPER CENT MONIES IN  
8 FEDERALLY INSURED DEPOSIT ACCOUNTS.

9 2. SECURE VAULTING OF ALL SPECIE LEGAL TENDER, PLATINUM DOLLARS AND  
10 PLATINUM CENTS ON DEPOSIT.

11 3. AUDITS OF ALL SPECIE LEGAL TENDER, PLATINUM DOLLARS AND PLATINUM  
12 CENTS ON DEPOSIT, CONDUCTED ON AT LEAST A QUARTERLY BASIS.

13 4. INSURANCE AGAINST DAMAGE OR LOSS OF ALL SPECIE LEGAL TENDER,  
14 PLATINUM DOLLARS AND PLATINUM CENTS WHILE THEY ARE VAULTED OR IN TRANSIT.

15 5. A MEANS TO VERIFY THE WEIGHT AND FINENESS OF THE PRECIOUS METAL  
16 CONTENT OF ANY SPECIE LEGAL TENDER OR PLATINUM DOLLARS AND PLATINUM CENTS  
17 THAT ARE RECEIVED OUTSIDE OF A DOCUMENTED CHAIN OF CUSTODY.

18 Sec. 5. Title 42, chapter 5, article 1, Arizona Revised Statutes, is  
19 amended by adding section 42-5041, to read:

20 42-5041. Payment in specie legal tender; definition

21 A. IF AMOUNTS THAT ARE EXCLUDED FROM GROSS INCOME, GROSS RECEIPTS OR  
22 GROSS PROCEEDS OF SALES AS DESCRIBED IN SECTION 42-5002, SUBSECTION A,  
23 PARAGRAPH 1 ARE PAID TO THE TAXPAYER IN SPECIE LEGAL TENDER AND THE  
24 DEPARTMENT DOES NOT ACCEPT SPECIE LEGAL TENDER FOR THE PAYMENT OF TAXES  
25 IMPOSED BY THIS CHAPTER OR CHAPTER 6, ARTICLE 3 OF THIS TITLE, THE TAXPAYER  
26 SHALL STATE ON THE TAXPAYER'S BOOKS AND RECORDS AND ON AN INVOICE, BILL OF  
27 SALE OR SIMILAR DOCUMENT THAT IS PROVIDED TO THE PURCHASER ALL OF THE  
28 FOLLOWING:

29 1. THE PURCHASE PRICE IN SPECIE LEGAL TENDER AND IN THE LEGAL TENDER  
30 THE TAXPAYER IS REQUIRED TO USE TO PAY THE TAX.

31 2. THE AMOUNT OF TAX IMPOSED BY THIS CHAPTER OR CHAPTER 6, ARTICLE 3  
32 OF THIS TITLE ON THE TRANSACTION WITH THE PURCHASER IN SPECIE LEGAL TENDER  
33 AND IN THE LEGAL TENDER THE TAXPAYER IS REQUIRED TO USE TO PAY THE TAX.

34 3. THE TAX RATE THAT IS APPLICABLE TO THE TRANSACTION.

35 4. THE DATE OF THE TRANSACTION.

36 B. IN DETERMINING THE AMOUNT OF TAX PURSUANT TO SUBSECTION A OF THIS  
37 SECTION, THE TAXPAYER SHALL USE THE MOST RECENT PAPER DOLLAR LONDON FIXING  
38 PRICE FOR THE SPECIE LEGAL TENDER USED BY THE PURCHASER. THE DEPARTMENT  
39 SHALL PRESCRIBE BY RULE A METHOD FOR DETERMINING THE AMOUNT OF TAX THAT IS  
40 DUE IF THE PAPER DOLLAR LONDON FIXING PRICE IS NOT AVAILABLE FOR A PARTICULAR  
41 DAY.

42 C. FOR THE PURPOSES OF THIS SECTION, "PAPER DOLLAR" HAS THE SAME  
43 MEANING PRESCRIBED IN SECTION 6-847.

44 Sec. 6. Effective date

45 This act is effective from and after ninety days after the fifty-second  
46 legislature, first regular session adjourns sine die.