

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

SENATE BILL 1096

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 EXCEPT A NUMISMATIC COIN WITH A FAIR MARKET VALUE THAT IS AT LEAST FIFTEEN
18 PER CENT GREATER THAN THE VALUE OF THE METAL IT CONTAINS.

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

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

24 1-703. Legal tender exchanges; payment of taxes

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

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

29 1-704. Enforcement

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

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

33 6-801. Definitions

34 In this chapter, unless the context otherwise requires:

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

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

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

1 4. "Escrow" means any transaction in which any escrow property is
2 delivered with or without transfer of legal or equitable title, or both, and
3 irrespective of whether a debtor-creditor relationship is created, to a
4 person not otherwise having any right, title or interest therein in
5 connection with the sale, transfer, encumbrance or lease of real or personal
6 property, to be **CONVERTED, EXCHANGED**, delivered or redelivered by that person
7 upon the contingent happening or nonhappening of a specified event or
8 performance or nonperformance of a prescribed act, when it is then to be
9 delivered by such person to a grantee, grantor, promisee, promisor, obligee,
10 obligor, bailee or bailor, or any designated agent or employee of any of
11 them. Escrow includes subdivision trusts and account servicing.

12 5. "Escrow agent" means any person engaged in the business of
13 accepting escrows.

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

16 7. "Escrow property" means property, money, a written instrument or
17 evidence of title or possession to real or personal property or any other
18 thing of value.

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

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

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

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

33 **6-834. Deposit of monies: definition**

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

1 of the escrow agent. These monies shall be deposited immediately on receipt
2 or as soon thereafter as is reasonably practicable.

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

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

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

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

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

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

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

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

31 F. For the purposes of this article, "adequate notice" means a printed
32 notice to the depositing buyer or seller that sets forth the pertinent facts
33 clearly and conspicuously. The notice shall be printed on the escrow
34 instructions or on an independent document and given to the depositing
35 customer in a manner reasonably assuring the customer's receipt of the
36 notice.

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

39 ARTICLE 5. LEGAL TENDER SERVICES

40 6-847. Definitions

41 **IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:**

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

1 2. "GOLD DOLLAR" MEANS SPECIE LEGAL TENDER THAT IS ONE-FIFTIETH OF ONE
2 TROY OUNCE OF FINE GOLD IN A UNITED STATES AMERICAN EAGLE COIN OR AMERICAN
3 BUFFALO COIN THAT IS MINTED PURSUANT TO 31 UNITED STATES CODE SECTIONS
4 5112(a)(7), (a)(8), (a)(10), (a)(11), (i)(1) AND (q).

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

7 (a) PAPER DOLLAR AND PAPER CENT.

8 (b) PLATINUM DOLLAR AND PLATINUM CENT.

9 (c) GOLD DOLLAR AND GOLD CENT.

10 (d) SILVER DOLLAR AND SILVER CENT.

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

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

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

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

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

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

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

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

36 6-847.01. Authorized services

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

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

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

43 (a) EXCHANGE MONEY IN ONE LEGAL TENDER CLASS FOR MONEY IN ANOTHER
44 LEGAL TENDER CLASS.

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

4 6-847.02. Accounting

5 A. A LEGAL TENDER ESCROW AGENT SHALL:

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

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

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

16 6-847.03. Vaulting and insurance

17 A LEGAL TENDER ESCROW AGENT SHALL PROVIDE:

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

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

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

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

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

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

31 42-5041. Payment in specie legal tender; definition

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

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

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

1 3. THE TAX RATE THAT IS APPLICABLE TO THE TRANSACTION.
2 4. THE DATE OF THE TRANSACTION.
3 B. IN DETERMINING THE AMOUNT OF TAX PURSUANT TO SUBSECTION A OF THIS
4 SECTION, THE TAXPAYER SHALL USE THE MOST RECENT PAPER DOLLAR LONDON FIXING
5 PRICE FOR THE SPECIE LEGAL TENDER USED BY THE PURCHASER. THE DEPARTMENT
6 SHALL PRESCRIBE BY RULE A METHOD FOR DETERMINING THE AMOUNT OF TAX THAT IS
7 DUE IF THE PAPER DOLLAR LONDON FIXING PRICE IS NOT AVAILABLE FOR A PARTICULAR
8 DAY.
9 C. FOR THE PURPOSES OF THIS SECTION, "PAPER DOLLAR" HAS THE SAME
10 MEANING PRESCRIBED IN SECTION 6-847.
11 Sec. 6. Effective date
12 This act is effective from and after ninety days after the fifty-second
13 legislature, first regular session adjourns sine die.