

REFERENCE TITLE: escrow agents; legal tender

State of Arizona
House of Representatives
Fifty-second Legislature
First Regular Session
2015

HB 2173

Introduced by
Representatives Finchem, Barton, Livingston, Thorpe, Senator Smith:
Representatives Cobb, Leach

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 PERCENT 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~~ PERCENT of the outstanding voting
43 shares of the controlled person.

44 4. "Escrow" means any transaction in which any escrow property is
45 delivered with or without transfer of legal or equitable title, or both, and
46 irrespective of whether a debtor-creditor relationship is created, to a

1 person not otherwise having any right, title or interest therein in
2 connection with the sale, transfer, encumbrance or lease of real or personal
3 property, to be CONVERTED, EXCHANGED, delivered or redelivered by that person
4 ~~upon~~ ON the contingent happening or nonhappening of a specified event or
5 performance or nonperformance of a prescribed act, when it is then to be
6 delivered by such person to a grantee, grantor, promisee, promisor, obligee,
7 obligor, bailee or bailor, or any designated agent or employee of any of
8 them. Escrow includes subdivision trusts and account servicing.

9 5. "Escrow agent" means any person engaged in the business of
10 accepting escrows.

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

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

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

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

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

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

30 6-834. Deposit of monies; definition

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

44 B. A person shall not knowingly keep or cause to be kept any monies in
45 any bank or savings and loan association under the heading of "escrow
46 accounts" or any other name designating the monies as belonging to the

1 clients of any escrow agent, except actual escrow monies deposited with ~~such~~
2 THE escrow agent.

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

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

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

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

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

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

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

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

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

34 ARTICLE 5. LEGAL TENDER SERVICES

35 6-847. Definitions

36 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

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

39 2. "GOLD DOLLAR" MEANS SPECIE LEGAL TENDER THAT IS ONE-FIFTIETH OF ONE
40 TROY OUNCE OF FINE GOLD IN A UNITED STATES AMERICAN EAGLE COIN OR AMERICAN
41 BUFFALO COIN THAT IS MINTED PURSUANT TO 31 UNITED STATES CODE SECTIONS
42 5112(a)(7), (a)(8), (a)(10), (a)(11), (i)(1) AND (q).

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

45 (a) PAPER DOLLAR AND PAPER CENT.

46 (b) PLATINUM DOLLAR AND PLATINUM CENT.

- 1 (c) GOLD DOLLAR AND GOLD CENT.
- 2 (d) SILVER DOLLAR AND SILVER CENT.
- 3 (e) OTHER SPECIE LEGAL TENDER IN WHICH THE PRO RATA PRECIOUS METAL
- 4 CONTENT IS PROPORTIONAL TO THE DENOMINATION THAT IS USED IN THE CLASS.
- 5 4. "LEGAL TENDER ESCROW AGENT" MEANS AN ESCROW AGENT THAT IS LICENSED
- 6 PURSUANT TO THIS CHAPTER THAT PROVIDES AUTHORIZED SERVICES AS PRESCRIBED IN
- 7 SECTION 6-847.01.
- 8 5. "PAPER DOLLAR" MEANS A WHOLE OR FRACTIONAL PART OF A FEDERAL
- 9 RESERVE NOTE THAT IS BASED ON THE DOLLAR DENOMINATION OF THE NOTE AS
- 10 DESCRIBED IN 12 UNITED STATES CODE SECTION 418 OR THE NOTE'S ELECTRONIC
- 11 EQUIVALENT THAT IS ISSUED THROUGH THE FEDERAL RESERVE BANKING SYSTEM AND THE
- 12 BASE METAL COINAGE THAT IS ISSUED BY THE UNITED STATES GOVERNMENT.
- 13 6. "PLATINUM CENT" MEANS LEGAL TENDER THAT IS ONE ONE-HUNDREDTH OF A
- 14 PLATINUM DOLLAR.
- 15 7. "PLATINUM DOLLAR" MEANS LEGAL TENDER THAT IS ONE-FIFTIETH OF ONE
- 16 TROY OUNCE OF FINE PLATINUM IN A COIN THAT IS MINTED PURSUANT TO 31 UNITED
- 17 STATES CODE SECTION 5112(k) AND THAT HAS A NOMINAL FACE VALUE OF ONE HUNDRED
- 18 DOLLARS.
- 19 8. "SILVER CENT" MEANS SPECIE LEGAL TENDER THAT IS ONE ONE-HUNDREDTH
- 20 OF A SILVER DOLLAR.
- 21 9. "SILVER DOLLAR" MEANS SPECIE LEGAL TENDER THAT IS A UNITED STATES
- 22 AMERICAN LIBERTY COIN AND THAT HAS ONE TROY OUNCE OF FINE SILVER CONTENT AND
- 23 A NOMINAL FACE VALUE OF ONE DOLLAR AS DESCRIBED IN 31 UNITED STATES CODE
- 24 SECTION 5112(e).
- 25 6-847.01. Authorized services
- 26 AN ESCROW AGENT WHO IS LICENSED PURSUANT TO THIS CHAPTER MAY DO ANY OF
- 27 THE FOLLOWING:
- 28 1. ACCEPT AND HOLD IN A FIDUCIARY CAPACITY LEGAL TENDER DEPOSITS,
- 29 INCLUDING INDIVIDUAL RETIREMENT ACCOUNT DEPOSITS, AS PROVIDED IN 26 UNITED
- 30 STATES CODE SECTION 408(a)(2), (m) AND (n).
- 31 2. PURSUANT TO THE ESCROW INSTRUCTIONS, DO EITHER OF THE FOLLOWING:
- 32 (a) EXCHANGE MONEY IN ONE LEGAL TENDER CLASS FOR MONEY IN ANOTHER
- 33 LEGAL TENDER CLASS.
- 34 (b) PAY THE DEBTS, TAXES, PUBLIC CHARGES OR DUES OF A DEPOSITOR USING
- 35 MONEY IN A LEGAL TENDER CLASS OTHER THAN THAT TENDERED INTO ESCROW BY THE
- 36 DEPOSITOR.
- 37 6-847.02. Accounting
- 38 A. A LEGAL TENDER ESCROW AGENT SHALL:
- 39 1. KEEP BOOKS AND RECORDS BASED ON A UNIFORM SYSTEM OF ACCOUNTING FOR
- 40 MONIES IN THE VARIOUS LEGAL TENDER CLASSES IN THE LEGAL TENDER ESCROW AGENT'S
- 41 CUSTODY AND CONTROL THAT CONFORMS WITH GENERALLY ACCEPTED ACCOUNTING
- 42 PRINCIPLES AND ANY RECORD KEEPING REQUIREMENTS PRESCRIBED BY THE DEPARTMENT.
- 43 2. WITH RESPECT TO EACH DEPOSITOR, MAINTAIN SEPARATE ACCOUNTS FOR
- 44 DEPOSITS IN EACH LEGAL TENDER CLASS.
- 45 B. ACCOUNTS WITH DEPOSITS THAT ARE NEITHER GOLD DOLLAR AND GOLD CENT
- 46 NOR SILVER DOLLAR AND SILVER CENT ARE VALUED IN GOLD DOLLARS AND GOLD CENTS

1 OR SILVER DOLLARS AND SILVER CENTS ACCORDING TO THE FINE PRECIOUS METAL
2 CONTENT OF THE SPECIE LEGAL TENDER THAT IS HELD IN THE ACCOUNT.

3 6-847.03. Vaulting and insurance

4 A LEGAL TENDER ESCROW AGENT SHALL PROVIDE:

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

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

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

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

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

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

18 42-5041. Payment in specie legal tender; definition

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

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

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

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

33 4. THE DATE OF THE TRANSACTION.

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

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

42 Sec. 6. Effective date

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