

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

NOTICE OF PROPOSED RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 7. BOARD OF CHIROPRACTIC EXAMINERS

Editor's Note: The following two Notices of Proposed Rulemaking are exempt from Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 791).

[R13-44]

PREAMBLE

- | <u>1. Article, Part, or Section Affected (as applicable)</u> | <u>Rulemaking Action</u> |
|--|--------------------------|
| Article 14 | New Article |
| R4-7-1401 | New Section |
| R4-7-1402 | New Section |
| R4-7-1403 | New Section |
| R4-7-1404 | New Section |
| R4-7-1405 | New Section |
| R4-7-1406 | New Section |
| R4-7-1407 | New Section |
| R4-7-1408 | New Section |
- 2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**
Authorizing statute: A.R.S. § 32-904(B)(2)
Implementing statute: A.R.S. § 32-934
- 3. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the proposed rule:**
Notice of Rulemaking Docket Opening: 19 A.A.R. 154, February 1, 2013
- 4. The agency's contact person who can answer questions about the rulemaking:**
Name: Patrice A. Pritzl, Executive Director
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Telephone: (602) 864-5088
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E-mail: generalinfo@azchiroboard.us
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- 5. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**
The legislature has established the Board's authority to regulate business entities that employ the services of a chiropractic physician but that are not owned and operated by a health care professional. This rulemaking is necessary in order to implement the regulation established by statute. The statute was established to protect both consumers and the chiropractic profession from business entities that engage in practices that violate the chiropractic practice act. Prior to the establishment of Article 14, the Board had no means to prevent business entities from engaging in practices that threaten the health, safety and welfare of the public through services provided by a doctor of chiropractic.

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The Board's only option was to discipline the doctor of chiropractic. When that chiropractor left the business entity, it would hire another doctor of chiropractic and the violations would continue. Under the new law, the Board can impose any discipline on a business entity that it can impose on a doctor of chiropractic.

6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The agency did not review or rely on any study relevant to the rule.

7. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

8. The preliminary summary of the economic, small business, and consumer impact:

The Board's research indicates that there are currently 25 businesses that will fall under this law. Each business entity benefits financially from the chiropractic services offered at any of its facilities. The rule offers those business entities the opportunity to continue profiting financially from the chiropractic services with the additional benefit of the credibility that regulation endows by increasing public trust. The Board has no means to determine the level of revenues that business entities may generate at this time. The business entities will support the cost of the regulation through fees, which is true of any regulated profession or business. The proposed fees include the following: a \$30 fee for the application package, a \$200 application fee, a \$200 registration issuance fee, a \$200 annual renewal fee, a \$200 late fee, a \$25 fee for each duplicate registration, and a finger printing fee that will be transferred to the Department of Public Safety. A business entity could also incur a fine of \$100 to \$150 if it fails to timely file a change of address, owners or officers, or change of chiropractic provider with the Board. However, the late fee and the fines indicated in this paragraph are only incurred if the business entity chooses not to renew a registration timely or fails to comply with reporting requirements.

The Board will incur the cost of developing and maintaining a database for business entity registration and renewal, development of forms and applications, ongoing costs for general postage and certified mail, office supplies related to publications, staff time to process applications, investigate complaints, monitor compliance with Board orders, and Board review of complaint investigations. The Board may also incur the costs related to Formal Interviews and Formal Administrative Hearings. The fees paid by the business entity are anticipated to cover the costs incurred by the Board.

The public will benefit through the protection the regulation will offer against practices that incur physical or financial harm.

Arizona chiropractic licensees will benefit in two ways. Business entities that engage in unprofessional practice do so through the employment of services provided by a doctor of chiropractic. This leaves the doctor open to disciplinary action due to the action or omissions of the business entity. In addition, a business entity that is not held to the same standard as a licensed doctor or chiropractor may have an unfair advantage in competition with licensee owned businesses.

9. The agency's contact person who can answer questions about the economic, small business and consumer impact statement:

Name: Patrice A. Pritzl, Executive Director
Address: 5060 N. 19th Ave., Suite 416
Phoenix, AZ 85015
Telephone: (602) 864-5088
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Web site: azchiroboard.us

10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Written comment will be accepted at the Board office, 5060 N. 19th Ave, #416, Phoenix, AZ, 85015, on business days between the hours of 8:00 a.m. and 5:00 p.m. until 5:00 p.m. on May 20, 2013. An oral proceeding is not scheduled but may be requested.

11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

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A.R.S. § 32-934 requires any business entity that offers chiropractic services and is not owned and operated by a licensed health care professional to be registered with the Board and requires the Board to adopt rules to that effect. This rule making does not establish the requirements that the business entity be registered with the Board, but does define the registration requirements.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

No, federal law is not applicable to the subject of the rule.

c. Whether a person submitted an analysis to the agency that compares the rule's impact on the competitiveness of business in this state to the impact on business in other states:

No.

12. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

None.

13. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 7. BOARD OF CHIROPRACTIC EXAMINERS

ARTICLE 14. BUSINESS ENTITIES

Section

R4-7-1401.	<u>Application for Business Entity; Qualification of Applicant; Fee; Background Investigations</u>
R4-7-1402.	<u>Display of Registration</u>
R4-7-1403.	<u>Procedures for Processing Initial Registration Applications</u>
R4-7-1404.	<u>Business Entity Registration Renewal; Issuance, Reinstatement</u>
R4-7-1405.	<u>Business Entity Registration: Denial</u>
R4-7-1406.	<u>Reporting; Civil Penalty</u>
R4-7-1407.	<u>Licensed Doctors of Chiropractic and Business Entities, Unprofessional Conduct</u>
R4-7-1408.	<u>Exemptions</u>

ARTICLE 14. BUSINESS ENTITIES

R4-7-1401. Application for Business Entity; Qualification of Applicant; Fee; Background Investigations

A. A business entity that wishes to operate a clinic, franchise, business, club, or any other entity which uses the services of a licensed doctor of chiropractic to provide a service, supervise the provision of services, act as clinical director or otherwise perform any function under a person's chiropractic license (doctor of chiropractic) shall submit a complete application to the Board at least 60 days prior to the intended implementation of engaging the services of a licensed doctor of chiropractic. A business entity that uses the services of a doctor of chiropractic as defined in this subsection prior to the effective date of these rules shall submit a complete application to the Board no later than 10 days from the effective date of these rules. A business entity shall not engage the services of a doctor of chiropractic as noted in this section until the Board has approved and issued the registration. The registration shall serve as a license for the purpose of compliance with this Chapter.

B. Owner, officer or director means any person with a fiscal or an administrative interest in the business entity, regardless of whether the business has a for-profit or non-profit affiliation.

C. To be eligible for business entity registration, the applicant owners, officers or directors shall:

- 1. Be of good character and reputation; and**
- 2. Have obtained a license or a permit to conduct a business under applicable law and jurisdiction.**

D. The Board may deny registration to a business entity if:

- 1. The business entity fails to qualify for registration;**
- 2. An owner, an officer or a director has had a license to practice any profession refused, revoked, suspended or restricted by a regulatory entity in this or any other jurisdiction for any act that constitutes unprofessional conduct pursuant to this Chapter;**
- 3. An owner, an officer or a director is currently under investigation by a regulatory entity in this or any other jurisdiction for an act that may constitute unprofessional conduct pursuant to this Chapter;**
- 4. An owner, an officer or a director has surrendered a license for an act that constitutes unprofessional conduct pursuant to this Chapter in this or any other jurisdiction;**
- 5. An owner, an officer or a director has been convicted of criminal conduct that constitutes grounds for disciplinary action pursuant to this Chapter;**

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6. The business entity allows or has allowed any person to practice chiropractic without a license or fails or failed to confirm that a person that practices chiropractic is properly licensed;
7. The business entity allows or has allowed a person who is not a licensed doctor of chiropractic and who is not a chiropractic assistant to provide patient services as per this Chapter.

E. The applicant shall pay to the Board a nonrefundable application fee of \$200.

E. In order to determine an applicant business entity's (applicant) eligibility for approval, the Board may require the business entity's owners, officers or directors to submit a full set of fingerprints to the Board. The Board shall submit the fingerprints to the department of public safety for the purpose of obtaining a state and federal criminal records check pursuant to A.R.S. § 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation. The Board shall charge each applicant a fee that is necessary to cover the cost of the investigation. The Board shall forward this fee to the department of public safety.

R4-7-1402. Display of Registration

A business entity shall, at all times, display the registration issued to the business entity by the Board in a conspicuous place at all locations where a doctor of chiropractic is employed, contracted or otherwise functions in any capacity under a chiropractic license, including mobile practices. The business entity shall, upon request of any person, immediately produce for inspection the annual renewal certificate for the current registration period and shall keep a renewal certificate issued by the Board present at all locations.

R4-7-1403. Procedures for Processing Initial Registration Applications

A. An applicant may obtain an application package at the Board Office on a business day, or by requesting that the Board send the application to an address specified by the applicant. An applicant shall pay the Board a non-refundable fee of \$30 for each registration application package.

B. A completed business entity registration application package shall be submitted to the Board office on a business day. The Board shall deem the business entity application package received on the date that the Board stamps on the package as the date the package is delivered to the Board office.

C. To complete a business entity application package, an applicant shall provide the following information and documentation:

1. The full current name and any former names and title of any and all owners, officers or directors;
2. The current home and all office addresses, current home and all office phone numbers, all current office fax numbers, and any previous home or office addresses for the past five years for each owner, officer or director;
3. The business name and the current addresses, phone numbers and fax numbers for each office, clinic or other setting where any service is performed, supervised or directed by a licensed doctor of chiropractic as per R4-7-1401(A) and this Chapter;
4. The non-refundable application fee of \$200;
5. The name and license number of each doctor of chiropractic employed with, contracted with, or otherwise affiliated with the business entity as per R4-7-1401(A) and this Chapter;
6. A completed fingerprint card for each owner, officer or director;
7. Copies of any and all contracts or any other agreement between the business entity and the doctor of chiropractic, to include employment or franchise contracts, agreements or equivalent;
8. Any record of an owner, officer or director being convicted of, pleading guilty to, or pleading nolo contendere to a misdemeanor or a felony, even if the record of the conviction or plea was sealed or expunged or the conviction was set aside or forgiven, and any record of an arrest, investigation, indictment, or charge that has not been concluded;
9. Any record of an owner, officer or director being refused a license to practice chiropractic or any other profession in this or any other jurisdiction, and any record of a disciplinary action taken against an owner, officer or director's license in this or any other jurisdiction;
10. The social security number for each owner, officer, or director;
11. A government issued photo identification confirming U.S. citizenship or legal presence in the United States for each owner, officer or director, or if those individuals reside outside of the United States, confirmation of legal authority to operate a business in the United States;
12. A copy of the written protocol required by A.R.S. § 32-934(G);
13. The name, phone number and address for a contact person; and
14. A notarized signature for each owner, officer or director attesting to the truthfulness of the information provided by the applicants. A stamped signature will not be accepted for the purposes of completing the application.

D. Within 25 business days of receiving a business entity registration application package, the Board shall notify the applicant in writing that the package is either complete or incomplete. If the package is incomplete, the notice shall specify the information that is missing.

E. An applicant with an incomplete business entity registration application package shall supply the missing information within 30 calendar days from the date of the notice. An applicant who is unable to supply the missing information within

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30 calendar days may submit a written request to the Board for an extension of time in which to provide a complete application package. The request for an extension of time shall be submitted to the Board office before the 30-day deadline for submission of a complete application package, and shall state the reason that the applicant is unable to comply with the 30-day requirement and the amount of additional time requested. The Board shall grant a request for an extension of time if the Board finds that the reason the applicant was unable to comply with the 30-day requirement was due to circumstances beyond the applicant's control and that compliance can reasonably be expected to be remedied during the extension of time.

- F. If an applicant fails to submit a complete business entity registration application package within the time permitted, the Board shall close the applicant's file and send a notice to the applicant by U.S. Mail that the application file has been closed. An applicant whose file has been closed and who later wishes to become registered shall reapply under R4-7-1401 and R4-7-1403.
- G. After timely receipt of all missing information as specified in subsection (E), the Board shall notify the applicant that the application package is complete.
- H. The Board shall render a decision no later than 120 business days after receiving a completed registration application package. The Board shall deem a registration application package to be complete on the postmarked date of the notice advising the applicant that the package is complete.
- I. The Board shall approve the registration for a business entity that meets all of the following requirements:
 - 1. Timely submits a complete application.
 - 2. The Board does not find grounds to deny the application under subsection (D).
 - 3. Pays the original business entity registration fee of \$200 plus \$25 for each duplicate license issued by the Board for the purpose of compliance with R4-7-1402.
- J. An applicant shall reapply for registration if the applicant does not pay the original registration issuance fee within three months after having been notified by the Board that the applicant is eligible to receive an approved registration.
- K. For the purpose of A.R.S. § 41-1073, the Board establishes the following time-frames for initial registration:
 - 1. Administrative completeness review time-frame: 25 business days.
 - 2. Substantive review time-frame: 120 business days.
 - 3. Overall time-frame: 145 business days.

R4-7-1404. Business Entity Registration Renewal: Issuance, Reinstatement

- A. A business entity registration expires on May 31 of each year.
- B. At least 30 days before a renewal application and renewal fee are due, the executive director of the Board shall send a business entity a renewal application and notice by first class mail to its address of record for the business entity contact person.
- C. The business entity registration renewal application shall be returned to the Board office on a business day. The Board shall deem the business entity registration renewal application package received on the date that the Board stamps on the package as the date the package is delivered to the Board office.
- D. To complete a registration renewal application, a business entity shall provide the following information and documentation:
 - 1. The name of the business entity;
 - 2. The current addresses, phone numbers, and fax numbers for each facility requiring registration under this Chapter;
 - 3. Notice of any change of owners, officers or directors, to include any additions and/or deletions with the date of the change for each individual, and notice of any change in home address, office address and phone numbers for owners, officers or directors with the date of the change for each individual;
 - 4. The name and license number of each doctor of chiropractic employed with, contracted with, or otherwise affiliated with the business entity as per subsection R4-7-1401(A), to include any affiliation through a franchise;
 - 5. A record of any professional disciplinary investigation or action taken against an owner, officer or director in this or any other jurisdiction;
 - 6. Any record of an owner, officer or director being convicted of, pleading guilty to, or pleading nolo contendere to a misdemeanor or a felony, even if the record of the conviction or plea was sealed or expunged or the conviction was set aside or forgiven, within the last 12 months and any record of an arrest, investigation, indictment within the last 12 months, to include new owners, operators or directors;
 - 7. A statement attesting that the contract or any other form of agreement with the doctors of chiropractic has not changed, or if the contract or agreement has changed, a copy of any new or amended contract or agreement;
 - 8. Report any change in the status of the business entity's license or permit to own and operate a business in the State of Arizona;
 - 9. The renewal fee of \$200 plus a \$25 fee for each duplicate Board issued renewal certificate for the purpose of compliance with R4-7-1402. A business entity applying for renewal for the first time shall pay a prorated fee as per A.R.S. § 32-934(C);
 - 10. The name, address, phone number, fax number and email for a contact person; and

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11. The original signature of the delegated contact person attesting to the truthfulness of the information provided by the business entity. All owners, officers or directors also remain responsible for the accuracy and truthfulness of the application. A stamped signature will not be accepted for the purpose of a complete application.
- E.** A business entity registration shall automatically expire if the business entity does not submit a completed application for renewal, the renewal fee and the fee for duplicate renewal certificates for the purpose of complying with R4-7-1402 before June 1 of each registration period. The Board shall send written notice to the business entity that its registration has expired on or before June 20. A business entity shall not use the services of a licensed doctor of chiropractic as per R4-7-1401(A) if the business entity's registration has expired.
- E.** The Board shall reinstate an expired business entity registration if the business entity pays the annual renewal fee, the additional fee for duplicate certificates for the purpose of compliance with R4-7-1402, pays an additional non-refundable fee of \$200 as required by A.R.S. § 32-934(C), and submits a completed renewal application between June 1, and June 30 of the registration period for which the business entity registration renewal is made.
- G.** On or after July 1 of the registration period for which a renewal application was to be made, a business entity that wishes to have an expired registration reinstated shall apply in accordance with subsection (L).
- H.** If the business entity fails to timely submit a complete business entity reinstatement application within six months of the date the registration expired, the business entity's registration shall lapse. "Lapse" means that the business entity is no longer registered and cannot offer services per this Chapter.
- I.** A business entity that has had a registration lapse and that later wishes to become registered must apply as a new candidate under R4-7-1401 and R4-7-1403.
- J.** An application for reinstatement of business entity registration may be obtained from the Board office on business days or by requesting that the Board send one to an address specified by the applicant.
- K.** A completed application for reinstatement of a business entity registration shall be submitted to the Board office on a business day. The Board shall deem an application for reinstatement of a business entity registration received on the date that the Board stamps on the application as the date it is delivered to the Board office.
- L.** To complete an application for reinstatement of a registration, a business entity shall provide the following information and documentation:
1. The business entity's name and expired registration number;
 2. The current addresses, phone numbers, and fax numbers for each facility requiring registration under this Chapter;
 3. The names, home addresses, office addresses and phone numbers for each owner, officer or director;
 4. The name and license number of each doctor of chiropractic employed with, contracted with or otherwise affiliated with the business entity as per R4-7-1401(A) and this Chapter, to include franchises;
 5. The record of any professional disciplinary investigation or action taken against an owner, officer or director in this or any other jurisdiction;
 6. Any record of an owner, officer or director being convicted of, pleading guilty to, or pleading nolo contendere to a misdemeanor or a felony, even if the record of the conviction or plea was sealed or expunged or the conviction was set aside or forgiven, within the last 12 months and any record of an arrest, investigation, indictment, or charge within the last 12 months, to include new owners, operators or directors not previously reported to the Board;
 7. A statement attesting that the contract or other agreement with the doctors of chiropractic has not changed, or if the contract or agreement has changed, a copy of the new or amended contract or agreement;
 8. Report any change in the status of the business entity's license or other permit to own and operate a business in the State of Arizona;
 9. The non-refundable renewal fee of \$200 and a \$25 fee for each Board issued duplicate renewal certificate for the purpose of compliance with R4-7-1402;
 10. The non-refundable late fee of \$200;
 11. The name, phone number, fax number and email for a contact person; and
 12. The original signature of the delegated contact attesting to the truthfulness of the information provided by the business entity. All owners, officers or directors' also remain responsible for the accuracy and truthfulness of on application. A stamped signature will not be accepted for the purpose of completing an application.
- M.** The Board shall process a business entity registration reinstatement application in accordance with R4-7-1403(D) through (G).
- N.** The Board shall reinstate or renew a business entity registration if:
1. The business entity has timely submitted a complete application and paid all fees.
 2. The business entity has complied with the requirements of this Chapter and A.R.S. § 32-900 et seq.
 3. The Board does not find grounds to deny the application under subsection (D).
 4. The business holds a current business license or other permit to own and operate the business in the State of Arizona.
- O.** If the provisions of subsection (N) are satisfied, the Board shall issue a business registration renewal certificate. The renewal certificate shall serve as notice that the renewal application is complete and approved.
- P.** The Board shall make a decision no later than 70 business days after receiving all required documentation as specified in subsection (N). The Board shall deem required documentation received on the date that the Board stamps on the docu-

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mentation as the date the documentation is delivered to the Board's office.

O. For the purpose of A.R.S. § 41-1073, the Board establishes the following time-frames for registration renewal or reinstatement of registration:

- 1. Administrative completeness review time-frame: 25 business days.
2. Substantive review time-frame: 70 business days.
3. Overall time-frame: 95 business days.

R4-7-1405. Business Entity Registration: Denial

If the Board denies a business entity registration, the Board shall send the applicant written notice explaining:

- 1. The reason for denial, with citations to supporting statutes or rules;
2. The applicant's right to seek a fair hearing to challenge the denial;
3. The time periods for appealing the denial; and
4. The right to request a settlement conference with the Board's authorized agent.

R4-7-1406. Reporting: Civil Penalty

A business entity that fails to comply with A.R.S. § 32-934(D) shall pay to the Board a non-refundable civil penalty of \$100 for each violation. If the business entity fails to pay the civil penalty within 30 days, the business entity shall pay an increased civil penalty of \$150 for each violation.

R4-7-1407. Licensed Doctors of Chiropractic and Business Entities, Unprofessional Conduct

A. Nothing in this Section shall be construed to exempt a licensed doctor of chiropractic from complying with this Chapter.
B. The following are grounds for disciplinary action under A.R.S. § 32-924(A) and R4-7-902 for a licensed doctor of chiropractic who:

- 1. Performs any service as per R4-7-1401(A) for a business entity in the State of Arizona that is not registered per this Chapter, and/or;
2. Enters into an agreement of any nature with a business entity to engage in any activity that violates A.R.S. § 32-924(A), R4-7-901 or R4-7-902 or any provision of this Chapter, and/or;
3. Fails to report in writing to the Board any knowledge of a business entity that fails to register with this Board under this Chapter or a business entity that violates any provisions of this Chapter.

R4-7-1408. Exemptions

A chiropractic assistant does not hold a license and is not exempt from A.R.S. § 32-934 or this Section.

NOTICE OF PROPOSED RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

[R13-50]

PREAMBLE

1. Article, Part, and Section Affected (as applicable)

- R4-23-201
R4-23-202
R4-23-203
R4-23-301
R4-23-304
R4-23-1102
R4-23-1103

Rulemaking Action

- Amend
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Amend

2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):

Authorizing statute: A.R.S. §§ 32-1904(A)(1) and (5) and 32-1904(B)(7), (9), and (10).

Implementing statute: A.R.S. §§ 32-1922, 32-1923, 32-1923.01, 32-1924, 32-1925, 32-1926, 32-1933 and 32-1935.

3. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule:

Notice of Rulemaking Docket Opening: 19 A.A.R. 524, March 15, 2013

4. The agency's contact person who can answer questions about the rulemaking:

Name: Sandra Sutcliffe, Compliance Officer